

KNOWLEDGE UPDATE

Dear Professionals,

We are pleased to present to you our first edition of Knowledge Update on recent developments in the field of Corporate Laws. This issue covers updates for the month of February, 2020.

We are sharing this with the hope that you will find great value in its content and it aids your learning and growth.

The endeavor is to collate and share all the amendments, updates, and articles with all the corporate stakeholders and practitioners of Corporate Laws in different capacities.

The Knowledge update is divided into separate sections so that you can refer the portion that you are interested in.

We hope you will enjoy reading this update. Please help us grow and learn by sharing your valuable feedback and comments for improvement.

*Best Regards,
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COMPANY LAW

1. WINDING UP RULES:

Effective Date: April 1, 2020

- ❖ MCA has notified Companies Winding Up Rules 2020, for winding up of Companies under the Companies Act 2013.
- ❖ These rules inter alia includes summary procedure for liquidation of Companies with asset size not exceeding 1crore and;
 - which have not accepted deposits exceeding 25 lakh; or
 - total outstanding loan not exceeding 50 lakh; or
 - turnover not exceeding 50 crore;or
 - Paid up share capital not exceeding ₹ 1Crore.The Central government will provide required approvals to such companies for winding up instead of the tribunal.
- ❖ The said notification also covers rules for:
 - Procedure for filing of petition for Winding up of Company
 - Appointment of Liquidator
 - Proceedings after winding up order is made
 - Application for stay of suits on winding up order
 - Formation of Advisory Committee to advise the Company Liquidator and to report to the Tribunal
 - Conducting of meeting of creditors and contributories.
 - Registers and Books of Account to be Maintained by Company Liquidators
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 - Collection and Distribution of Assets and making calls in Winding up by Tribunal
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 - Termination of Winding up

2. CHANGES IN RULES FOR APPOINTMENT OF WHOLE TIME COMPANY SECRETARY AND SCOPE OF SECRETARIAL AUDIT.

Effective Date: April 1, 2020

- ❖ The paid up share capital limit for appointment of whole-time company secretary for a Private Company has been increased from **five crore rupees to ten crore rupees**.
- ❖ Secretarial Audit is also applicable to every Company having outstanding loans or borrowings from banks or Public Financial Institution of one hundred crore rupees or more.

3. FILINGS OF FINANCIALS BY NBFC

- ❖ Every NBFC that is required to comply with Indian Accounting Standards (Ind AS)

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shall file the financial statements with Registrar together with Form AOC-4 NBFC (Ind AS) and the consolidated financial statement, if any, with Form AOC-4 CFS NBFC (IndAS).

4. EXTENSION FOR FILING BEN-2

- ❖ Time limit for filing Form No. BEN-2 (*Return of Significant Beneficial Owners by a Company*) has been extended up to **March 31, 2020**.

5. NEW WEB FORM SPICE +

Effective Date: Form yet to be deployed

- ❖ SPICe+ would be an integrated Web form offering multiple services viz. name reservation, incorporation, DIN allotment, mandatory issue of PAN, TAN, EPFO, ESIC, Profession Tax (Maharashtra), Opening of Bank Account and also facilitate allotment of GSTIN.
- ❖ All new name reservations for new companies as well as new incorporations shall be applied through SPICe+ only.

6. FILLING OF FORMS IN THE REGISTRY MCA-21 BY THE INSOLVENCY PROFESSIONAL (INTERIM RESOLUTION PROFESSIONAL (IRP OR RESOLUTION PROFESSIONAL (RP) OR LIQUIDATOR APPOINTED UNDER INSOLVENCY BANKRUPTCY CODE, 2016.

- ❖ The IRP/RP/Liquidator would have to first file the NCLT order approving him as the IRP/RP/Liquidator in Form INC-28 on the MCA21 portal by selecting option "Others" at serial no. 5(a) (1) from the drop down menu in the form.
- ❖ After filling in the form, IRP/RP/Liquidator while affixing his DSC, shall choose his designation as "Others" in the declaration box.

SECURITIES LAW

1. FORMAT FOR STATEMENT INDICATING DEVIATION OR VARIATION IN THE USE OF PROCEEDS OF ISSUE OF LISTED NON- CONVERTIBLE DEBT SECURITIES OR LISTED NON-CONVERTIBLE REDEEMABLE PREFERENCE SHARES.

Effective Date: Half Year ended March 31, 2020.

- ❖ **Relevancy:** Listed entities which have issued NCDs or NCRPs, shall submit the statement indicating deviation or variation in the use of proceeds of issue, if any, as per the format prescribed in the Circular.
- ❖ **Frequency:** Within **45 days from the end of the half year** until such funds are fully utilised or the purpose for which these proceeds were raised has been achieved.

Role of the Audit Committee: The statement indicating deviation report shall be placed before the Audit Committee of the listed entity for review on half yearly basis and after such review, the comments of Audit Committee along with the report shall be disclosed/submitted to the stock exchange, as part of the format.

2. EXTENSION: TIMELINE FOR SEPERATING THE ROLES OF CHAIRPERSON AND MD/CEO.

- ❖ Effective date for applicability of Regulation 17[1B] of SEBI(LODR), 2015, i.e. the top 500 listed entities shall ensure that the Chairperson of the board of such listed entity shall –
 - (a) be a non-executive director;
 - (b) not be related to the Managing Director or the Chief Executive Officer .

This has been deferred by two years from April 1,2020 to April 1,2022.

3. NON-COMPLIANCE WITH CERTAIN PROVISIONS OF THE SEBI LISTING REGULATIONS AND THE STANDARD OPERATING PROCEDURE (“SOP”) FOR SUSPENSION AND REVOCATION OF TRADING OF SPECIFIED SECURITIES.

Effective date: April 1, 2020.

- ❖ Pursuant to the amendments to SEBI(LODR), 2015 and to further streamline the SOP for dealing with non- compliances, SEBI has issued a circular dated January 22, 2020 to the stock exchanges in regard to the interests of investors and the securities market.

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SI No.	Regulation	Fine payable and/or other action to be taken for non-compliance in respect of listed entity
1.	Regulation 6(1) Non-compliance with requirement to appoint a qualified company secretary as the compliance officer	₹ 1,000 per day
2.	Regulation 7(1)* Non-compliance with requirement to appoint share transfer agent	₹ 1,000 per day
3	Regulation 13(1)* Failure to ensure that adequate steps are taken for expeditious redressal of investor complaints	₹ 1,000 per day
4	Regulation 13(3) Non-submission of the statement on shareholder complaints within the period prescribed under this regulation or under any circular issued in respect of redressal of investor grievances	₹ 1,000 per day
5	Regulation 17(1) Non-compliance with the requirements pertaining to composition of the Board including failure to appoint woman director	₹5,000 per day
6	Regulation 17(1A) Non-compliance with the requirements pertaining to appointment or continuation of Non-executive director who has attained the age of seventy five years	₹2,000 per day
7	Regulation 17(2) Non-compliance with the requirements pertaining to the number of Board meetings	₹10,000 per instance
8	Regulation 17(2A) Non-compliance with the requirements pertaining to quorum of Board meetings	₹ 10,000 per instance
9	Regulation 18(1) Non-compliance with the constitution of audit committee	₹ 2,000 per day
10	Regulation 19(1)/19(2) Non-compliance with the constitution of nomination and remuneration committee	₹ 2,000 per day
11	Regulation 20(2)/(2A) Non-compliance with the constitution of stakeholder relationship committee	₹ 2,000 per day
12	Regulation 21(2) Non-compliance with the constitution of risk management committee	₹ 2,000 per day
13	Regulation 23(9)	₹5,000 per day

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	Non-compliance with disclosure of related party transactions on consolidated basis	
14	Regulation 24A Non-compliance with submission of secretarial compliance report	₹ 2,000 per day
15	Regulation 27(2) Non-submission of the corporate governance compliance report within the period provided under the regulation	₹ 2,000 per day
16	Regulation 28(1) Non-compliance with obtaining in-principle approval of stock exchange(s) before issuance of securities	₹50,000 per instance
17	Regulation 29(2)/29(3) Delay in furnishing prior intimation about the meeting of the board of directors	₹ 10,000 per instance of non-compliance per item
18	Regulation 31 Non-submission of shareholding pattern within the period prescribed	₹2,000 per day
19	Regulation 31A(3)(a) Non-compliance pertaining to delay in submission of reclassification application to stock exchanges	₹ 5,000 per day
20	Regulation 32(1) Non- submission of deviation/variations in utilization of issued proceeds	₹ 1,000 per day
21	Regulation 33 Non-submission of the financial results within the period prescribed under this regulation (Levy of fine is in addition to the requirement of providing reasons for non-submission of the financial result as per circular no. CIR/CFD/CMD-1/142/2018 dated November 19, 2018.)	₹ 5,000 per day
22	Regulation 34 Non-submission of the Annual Report within the period prescribed under this regulation	₹ 2,000 per day

The Concerned recognized stock exchange shall display on their website non – compliance by the listed entity and details of fine levied/ action taken and the fines imposed shall continue to accrue till the time of rectification of the non-compliance to the satisfaction of the concerned recognized stock exchange.

❖ SOP for suspension and revocation of suspension of trading of specified securities:

Snapshots of the SOP are as under:

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In case Listed entity is non-compliant with the provisions of the SEBI(LODR), 2015:

- Move the scrip of the listed entity to "Z" category wherein trades shall take place on 'Trade for Trade' basis; and
- Suspend trading in the shares of such listed entity.

Criteria for suspension of the trading in the shares of the listed entities:

- ❖ failure to comply with regulation 17(1) with respect to board composition including appointment of woman director for two consecutive quarters;
- ❖ failure to comply with regulation 18(1) with respect to constitution of audit committee for two consecutive quarters;
- ❖ failure to comply with regulation 27(2) with respect to submission of corporate governance compliance report for two consecutive quarters;
- ❖ failure to comply with regulation 31 with respect to submission of shareholding pattern for two consecutive quarters;
- ❖ failure to comply with regulation 33 with respect to submission of financial results for two consecutive quarters;
- ❖ failure to comply with regulation 34 with respect to submission of Annual Report for two consecutive financial years;
- ❖ failure to submit information on the reconciliation of shares and capital audit report, for two consecutive quarters;
- ❖ receipt of the notice of suspension of trading of that entity by any other recognized stock exchange on any or all of the above grounds.

ARTICLE: INDEPENDENT DIRECTOR REGISTRATION

Requirement by Independent Directors (ID) of inclusion of their names in the data bank of Indian Institute of Corporate Affairs, Manesar and clearance of Proficiency Test The Companies Appointment and Qualification of Directors) Fifth Amendment Rules, 2019.

Classes of companies to which ID appointment is required:

As per Rule 4 of Companies (Appointment and Qualification of Directors) Rules, 2014:-

The following class or classes of companies shall have at least two directors as independent directors

(i) the Public Companies having paid up share capital of ten crore rupees or more; or

(ii) the Public Companies having turnover of one hundred crore rupees or more; or

(iii) the Public Companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding fifty crore rupee

The Ministry of Corporate Affairs/the Central Government, vide its notification dated October 22, 2019, has amended the Companies (Appointment and Qualification of Directors) Rules, 2014.

The effective date of this notification is December 1, 2019 (the Effective Date).

Following are the requirements to be complied with by an individual, who is an Independent Director or eligible and willing to be appointed as an Independent Director.

- The existing Independent Director or any individual who intends to get appointed as an independent director shall apply (online) to the "Indian Institute of Corporate Affairs at Manesar" (the Institute) for inclusion of his name in the data bank on or before February 29, 2020, i.e., within a period of 3 months from the Effective Date. The said application could be for a period of 1 year or 5 years or for life-time as is decided by the individual making an application.
- If the concerned independent director has made an application for a period of 1 year or 5 years, he/she needs to renew the same in the data base for a further period of either 1 year or 5 years or for life-time within a period of 30 days from the date of expiry of the initial period. No such application is required to be made if the initial application was made for life-time.
- While submitting declaration as an independent director under Section 149(7) of the Companies Act, 2013, he/she will have to also submit a declaration of compliance of inclusion of his name in the data bank.
- Every individual whose name has been included in the data bank as above shall have to clear the Proficiency test (needs to score a minimum of 60% in aggregate) conducted by the Institute within one year from the date of inclusion of his/her name in the data bank.
- There is no limit on the number of attempts an individual may make for passing the online proficiency self-assessment test.

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- In case the above test is not passed by such individual, his/her name shall stand removed from the data bank by the Institute.

For existing Independent Director - They need to include their name in the data base AND pass the online test. If they do not pass after number of attempts, their name will be "removed" from the data base. It means after removal they should not continue as Independent Director, but they are not disqualified. They can be appointed as "normal Director". The restriction is that the incumbent can not be appointed/continue as an "Independent Director".

For the appointment of new Independent Director - They need to include their name in the data base and pass the exam within one year of inclusion.

Since every Independent Director need to give a declaration u/s 149(7) in the beginning of every Financial year, which also include this criteria, it is a MUST for the ID or else they cannot be appointed or continue since the declaration is a mandatory requirement

Exemption from the requirement of passing the above proficiency test

An individual who has served, in aggregate, for a period of not less than ten years as a director and/or a Key Managerial Personnel in a listed public company or in an unlisted public company having a paid-up share capital of Rs. 10 crore or more as on the date of inclusion of his name in the data bank shall not be required to clear the proficiency test.

For the purpose of determining a period of 10 years as above, any overlapping period during which an individual has acted both as a director and/or key managerial personnel (KMP) at the same time in two or more companies shall be counted only once; for e.g., if an individual has acted both as a director and/or the KMP from 1.1.2018 to 31.12.2018, the number of years of his serving would be counted as 1 year and not two years.

The Databank, which was launched by Secretary Ministry of Corporate Affairs, can be accessed at <http://www.mca.gov.in/> or <https://www.independentdirectorsdatabank.in/>.

Companies also may register themselves with the databank.

Those companies which are required to appoint ID under the CA, 2013 to search, select and connect with individuals who possess the right skills and attitude for being considered for appointment as independent directors.

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COMPLIANCE DUE DATES

15th February

Approval of Financial results for Quarter ended December 31, 2019 by Listed entities

29th February

- ❖ Filing of Cost Audit Report with the Central Government
- ❖ Registration by existing independent directors in data bank portal

31st March

Filing of BEN 2

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Disclaimer

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The views and opinions expressed in this newsletter are those of the author of this document and don't represent views of any organization to which he/she belongs and are based on the internal research done by the Author.

Sources:

- ❖ <http://www.mca.gov.in/>
- ❖ <https://www.sebi.gov.in/>
- ❖ <https://www.icsi.edu/home/>