

## In brief

Companies Amendment Bill  
2020 introduced in the Lok  
Sabha on 17<sup>th</sup> March 2020



## This issue

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## The Companies (Amendment) Bill, 2020

The Government introduced a Bill in Lok Sabha to amend the Companies Act, 2013 proposing 72 changes to removing criminality from host of offences under the Act and paving the way for direct overseas listing of Indian companies. Key Amendments include-

- ♦ To empower the Central Government to exclude, in consultation with the SEBI, certain class of companies from the definition of 'listed company', mainly for listing of debt securities.
- ♦ Separate Chapter on 'Producer Company' is proposed to be introduced.
- ♦ To make provisions for allowing payment of adequate remuneration to non-executive directors in case of inadequacy of profits, by aligning the same with the provisions for remuneration to executive directors in such cases.
- ♦ To extend applicability of section 446B, relating to lesser penalties for small companies and one person companies, to all provisions of the Act which attract monetary penalties and also extend the same benefit to Producer Companies and start-ups.
- ♦ To provide that the companies which have Corporate Social Responsibility (CSR) spending obligation up to Rs, 50 lakh will not be required to constitute the CSR Committee and to allow eligible companies under Section 135 to set off any amount spent in excess of their CSR spending obligation in a particular financial year (FY) towards such obligation in subsequent FYs.
- ♦ To allow direct listing of securities by Indian companies in permissible foreign jurisdictions as per Rules to be prescribed.

[Read more](#)

## In brief

Rules which apply to winding up under Companies Act, 2013 notified  
(Notification dated 24<sup>th</sup> January 2020)

Rule 12-Filing of FS and fees to be paid amended  
(Notification dated 30<sup>th</sup> January 2020)

Norms for takeover pursuant compromise or arrangement notified  
Rule 3-Application for order of a meeting amended  
(Notification dated 3<sup>rd</sup> February 2020)

## Companies Act, 2013 – Rules and Amendment Rules

### Companies (Winding Up) Rules, 2020

The MCA has notified the above-mentioned Rules which will **come into force on 1<sup>st</sup> April, 2020**. These Rules will apply to winding up under of Companies Act 2013.

Following classes of companies can close their business by making a winding up application to Central Government (CG) without having to go to National Company Law Tribunal (NCLT)

Class of Companies	Criteria based on latest audited Balance Sheet
Companies taking deposit and total outstanding deposits	Not more than Rs. 25 Lakhs
Companies with total outstanding loan including secured loan	Not more than Rs. 50 Lakhs
Companies with turnover	Not more than Rs. 50 Crore
Companies with paid up capital	Not more than Rs. 1 Crore

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### Companies (Accounts) Amendment Rules, 2020

The MCA has amended the Companies (Accounts) Rules 2014. As per the amendment, every Non-Banking Financial Company (NBFC) that is required to comply with Indian Accounting Standards (Ind AS) should file the Financial Statements (FS) with Registrar together with Form AOC-4 NBFC (Ind AS) and the consolidated FS, if any, with Form AOC-4 CFS NBFC (Ind AS).

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### Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2020

The MCA has amended the Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2016. An overview of the amendment is-

- ♦ A member of the company should make an application for arrangement, for the purpose of takeover offer provided –
  - ▲ such member along with any other member holds at least 3/4<sup>th</sup> of the shares in the company, and
  - ▲ the application has been filed for acquiring any part of the remaining shares of the company.
- ♦ "Shares" means the equity shares of the company carrying voting rights, and includes any securities, such as depository receipts, which entitles the holder thereof to exercise voting rights.

## In brief

Process for Incorporation of Companies simplified by notifying new forms 'SPICe+' and 'AGILE-PRO' (Notification dated 18<sup>th</sup> February 2020)

2 more months granted for directors of companies to register themselves with the online data bank launched for directors and listed body corporates brought under proficiency test exemption criteria (Notification dated 28<sup>th</sup> February 2020)

- ♦ This sub-rule will not apply to
  - ▲ Transfer or transmission of shares through a contract, arrangement or succession or
  - ▲ Transfer made in pursuance of any statutory or regulatory requirement.

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### Companies (Incorporation) Amendment Rules, 2020

The MCA has amended the Companies (Incorporation) Rules, 2014. The amended Rules are effective from 23<sup>rd</sup> February 2020. The amendment brought the following changes in the Principal Rule –

- ♦ **Rule 9- Reservation of name or change of name**

An application for reservation of name should be made through the web service available at [www.mca.gov.in](http://www.mca.gov.in) by using web service SPICe+ (Simplified Proforma for Incorporating Company Electronically Plus: INC-32), and for change of name by using web service RUN (Reserve Unique Name) along with fee with effect from 23<sup>rd</sup> February 2020.

- ♦ 38A-Application for registration of Goods and Service Tax Identification Number (GSTIN), Employee State Insurance Corporation (ESIC) registration 65[,Employees' Provident Fund Organisation (EPFO) Registration and Profession Tax Registration and Opening of Bank Account]

The application for incorporation of a company under Rule 38 should be accompanied by e-form AGILE - PRO (INC-35)

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

The MCA has amended Companies (Appointment and Qualification of Directors) Rules, 2014. As per the amendment-

- ♦ Every individual who has been appointed as an independent director in a company, on the date of commencement of the Companies (Appointment and Qualification of Directors) 5<sup>th</sup> Amendment Rules, 2019 (i.e. 1<sup>st</sup> December 2019), should within a period of 5 months (*earlier 3 months*) from such commencement apply online to the institute for inclusion of his name in the data bank launched for Directors.
- ♦ An individual will not be required to pass the online proficiency self-assessment test, when he has served as a director or key managerial personnel, for a total period of at least 10 years, as on the date of inclusion of his name in the databank in one or more of the following-

## In brief

Requirement of holding Board meetings with physical presence of directors relaxed till 30<sup>th</sup> June 2020  
(Notification dated 19<sup>th</sup> March 2020)

- ⤴ listed public company or
- ⤴ unlisted public company having a paid-up share capital of Rs. 10 crore or more; or
- ⤴ a body corporate listed on a recognized stock exchange

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### Companies (Meetings of Board and its Powers) Amendment Rules, 2020.

The MCA has amended Companies (Meetings of Board and its Powers) Rules, 2014. As per the amendment below mentioned matters may be held through video conferencing or other audio-visual means in accordance with Rule 3 for the period beginning from the commencement of the above mentioned Amendment Rules 2020 and ending on the 30<sup>th</sup> June 2020. The matters include-

- ♦ approval of the annual FS;
- ♦ approval of the Board's report;
- ♦ approval of the prospectus;
- ♦ Audit Committee Meetings for consideration of FS including consolidated FS, if any, to be approved by the Board; and
- ♦ approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover.

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### Notifications/Circulars/Orders/Consultation Paper from the Ministry of Corporate Affairs (MCA)

#### Notifications

#### Commencement Notification

The MCA has appointed 3<sup>rd</sup> February 2020 as the date on which Section 230 (11) and (12) (Power to compromise or make arrangements with creditors and members) will come into force.

- ♦ Section 230(11) states that any compromise or arrangement may include takeover offer made in the prescribed manner.
- ♦ Section 230(12) states that Subsection 12 of Section 230 of the Cos Act states that an aggrieved party may make an application to the National Company Law Tribunal (NCLT) in the event of any grievances with respect to the takeover offer of companies other than listed companies in the prescribed manner and the Tribunal may, on application, pass such order as it may deem fit. The provisions of Section 66 will not apply to the reduction of share capital effected in pursuance of the order of the NCLT under this Section.

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Commencement of Section 230(11) and (12) from 3<sup>rd</sup> February 2020  
(Notification dated 3<sup>rd</sup> February 2020)

## In brief

**LLP Settlement Scheme 2020 for one-time condonation of delay in statutory filings**  
(Circular No 13/2020 dated 30<sup>th</sup> March 2020)

**Funds spent to tackle COVID-19 under CSR activity**  
(Circular No 10/2020 dated 23<sup>rd</sup> March 2020 and Office Memorandum dated 28<sup>th</sup> March 2020)

**Scheme for companies to file pending forms, returns without late fees; make fresh start introduced**  
(General Circular No. 12/2020 dated 30<sup>th</sup> March 2020)

**Measures implemented to reduce compliance burden and other risks in view of COVID-19 outbreak**  
(Circular No 11/20 dated 24<sup>th</sup> March 2020)

## Circulars

### **LLP Settlement Scheme 2020 for condonation of delay in statutory filings**

The MCA has introduced the above scheme which allows one –time condonation of delay in statutory filings. The salient features are -

- ♦ This scheme has come into force from 1<sup>st</sup> April 2020 and will remain in force up to 30<sup>th</sup> September 2020.
- ♦ Any "defaulting LLP" is permitted to file belated documents, which were due for filing till 31<sup>st</sup> August 2020 in accordance with the provisions of this Scheme.
- ♦ This Scheme will not apply to LLPs which have made applications in Form 24 to the Registrar, for striking off their names from the Register.

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### **Clarification on spending of CSR funds for COVID-19**

The MCA has clarified that spending of CSR funds for COVID-19 is eligible under CSR activity

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As per Office Memorandum the MCA has clarified that contribution to PM-CARES Fund (Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund) will qualify as CSR spending

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### **Companies Fresh Start Scheme 2020**

The above Scheme enables companies make good of any filing-related defaults, irrespective of duration of default, and make a fresh start as a fully compliant entity. It also gives an opportunity to inactive companies to get their companies declared 'dormant company' to by filing a simple application at a normal fee. Salient features are-

- ♦ The Scheme will come into force on 1st April 2020 and will remain in force till 30th September 2020.
- ♦ Any defaulting company is permitted to file belated documents which were due for filing on any given date in accordance provision of this Scheme.

[Read more](#)

### **Special Measures under Companies Act, 2013 and Limited Liability Partnership (LLP) Act, 2008 in view of COVID-19 outbreak**

The MCA has introduced several measures to address the COVID-19 pandemic to reduce Companies and LLP compliance burden and other risks. They include the following-

- ♦ No additional fees will be charged for late filing during a moratorium period from

## In brief

CARO 2020 applicable to Audit Reports for the FYs commencing on or after 1<sup>st</sup> April 2020 notified (Order dated 25<sup>th</sup> February 2020 and Notification dated 24<sup>th</sup> March 2020)

1<sup>st</sup> April to 30<sup>th</sup> September 2020, in respect of any document, return, statement etc., required to be filed in the MCA-21 Registry, irrespective of its due date.

- ♦ The mandatory requirement of holding meetings of the Board of the companies within the prescribed interval of 120 days as per Section 173 has been extended by 60 days till next 2 quarters i.e. quarter ended 30<sup>th</sup> June 2020 and 30<sup>th</sup> September.
- ♦ The CARO 2020 will be made applicable from the FY 2020-21 instead of being applicable from the FY 2019-2020 notified earlier.
- ♦ If the Independent Directors are not able to hold a meeting during the FY 2019-20 without the attendance of non-independent directors and members of the management, the same will not be viewed as a violation
- ♦ Requirement under Section 73(2)(c) to create the deposit repayment reserve of 20% of deposits maturing during the FY 2020-21 and before 30<sup>th</sup> April 2020 will be allowed to be complied with till 30<sup>th</sup> June 2020.
- ♦ Requirement under Rule 18 of the Companies (Share Capital & Debentures) Rules, 2014 to invest or deposit at least 15% of amount of debentures maturing in specified methods of investments or deposits before 30<sup>th</sup> April 2020, may be complied with till 30<sup>th</sup> June 2020.
- ♦ Newly incorporated companies are required to file a declaration for Commencement of Business within 180 days of incorporation under Section 10A. An additional period of 180 more days is allowed for this compliance.
- ♦ Non-compliance of minimum residency in India for a period of at least 182 days by at least 1 director of every company, under Section 149 will not be treated as a non-compliance for the FY 2019-20.

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## Orders

### Companies (Auditor's Report) Order, 2020

The MCA has notified the above Order which supersedes Companies (Auditor's Report) (CARO), 2016. The CARO, 2020 is applicable for an audit of FS of eligible companies for the FYs **commencing on or after the 1<sup>st</sup> April 2020** and would be applicable to all those companies on which CARO 2016 was applicable.

Under the revised CARO 2020, auditors are now required to report more extensively on many crucial aspects including frauds, loan defaults, whistle blower complaints, ever-greening of loans and benami properties etc.

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On 24<sup>th</sup> March 2020 MCA has, in view of the current lockdown and difficulties in getting the required information by the companies and auditors, deferred the applicability of CARO 2020 to FY 2020-21

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## In brief

MCA proposes steps to enhance audit independence and accountability  
(Notice dated 6<sup>th</sup> February 2020)

### Consultation Paper

Consultation Paper to examine the existing provisions of law and make suitable amendments therein to enhance audit independence and accountability

The MCA has proposed significant amendments to existing regulations to enhance independence and accountability of auditors. Against the backdrop of instances of many auditors and auditing entities coming under the regulatory lens for alleged misdoings, the MCA has come out with a consultation paper on proposed legal changes regarding audit.

The paper has suggestions for curbing 5 "threats" for the independence of auditors. The threats pertain to self-interest, self-review, advocacy, familiarity and intimidation

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## In brief

Requirement for listed companies to split the roles of Chairman and MD has been deferred by 2 years to April 2022 (Notification No. SEBI/LAD-NRO/GN/2020/02 dated 10<sup>th</sup> January 2020)

Circular issued pursuant to amendments to the Listing Regulations and to further streamline the SOP for dealing with non-compliance (Circular No. SEBI/HO/CFD/CMD/CIR/P/2020/12 dated 22<sup>nd</sup> January 2020)

# Securities and Exchange Board of India (SEBI)

## Notifications

### SEBI (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2020

SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 has been amended. As per the amendment, with effect from 1<sup>st</sup> April 2022 (*earlier 1<sup>st</sup> April 2020*), the top 500 listed entities should ensure that the Chairperson of the Board of such listed entity should -

- ♦ be a non-executive director;
- ♦ not be related to the Managing Director (MD) or the Chief Executive Officer as per the definition of the term “relative” defined under the Companies Act, 2013

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## Circulars

### Non-compliance with certain provisions of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and the Standard Operating Procedure for suspension and revocation of trading of specified securities

SEBI has issued the above mentioned Circular in supersession of the Circular No. [SEBI/HO/CFD/CMD/CIR/P/2018/77](#) dated 3<sup>rd</sup> May 2018.

Henceforth, the stock exchanges are required to –

- ♦ Take action in case of non-compliances with the Listing Regulations as specified in the Circular and
- ♦ Follow the Standard Operating Procedure (SOP) for suspension and revocation of suspension of trading of specified securities as specified in the Circular

Every recognized stock exchange should review the compliance status of the listed entities and issue notices to the non-compliant listed entities within 30 days from the due date of submission of information. Non-compliant listed entity should ensure that the subject matter of non-compliance which has been identified and indicated by the stock exchange and any subsequent action taken by the stock exchange in this regard should be placed before the Board of Directors (**BoD**) of the entity in its next meeting. Comments made by the BoD should be informed to the recognised stock exchange for dissemination.

This Circular will come into force with effect from compliance periods ending on or after 31<sup>st</sup> March 2020.

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## In brief

Relaxation granted to listed entities due to COVID-19 virus pandemic (Circular No. SEBI/HO/CFD/CMD1/CIR/P/2020/38 dated 19<sup>th</sup> March 2020, Circular No. SEBI/HO/DDHS/ON/P/2020/41 dated 23<sup>rd</sup> March 2020 and Circular No. SEBI/HO/CFD/CMD1/CIR/P/2020/48 dated 26<sup>th</sup> March 2020)

Due date for regulatory filings and compliances for year ending 31<sup>st</sup> March 2020 extended by 1 month (Circular No. SEBI/HO/DDHS/CIR/P/2020/42 dated 23<sup>rd</sup> March 2020)

### Relaxation from compliance with certain provisions of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 due to the COVID -19 virus pandemic

Due to developments arising due to the spread of the CoVID-19 virus, SEBI has provided the certain temporary relaxations in compliance requirements specified under the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR) to listed entities. The relaxations pertain to -

- ♦ Extension of timing for various filings with the stock exchange
- ♦ Relaxation of time gap between 2 Board / Audit Committee meetings

This Circular has come into force with immediate effect

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In continuation to the above mentioned Circular, SEBI has decided to clarify with regards to certain timelines for listed entities and grant relaxations to listed entities which have listed their Non-Convertible Debentures (NCDs), Non-Convertible Redeemable Preference Shares (NCRPS), Municipal Debt Securities (MDS) and Commercial Papers (CPs).

This Circular has come into force with immediate effect

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In continuation to the above-mentioned Circular, SEBI has decided to grant the further relaxations from the LODR which *inter alia* relate to Certificate from Practicing Company Secretary on timely issue of share certificates, holding of AGM by top 100 listed entities by market capitalization for FY 2019-20.

This Circular has come into force with immediate effect.

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### Relaxation from compliance to REITs and InvITs due to the CoVID -19 virus pandemic

SEBI has decided to extend the due date for regulatory filings and compliances for REIT and InvIT for the period ending 31<sup>st</sup> March 2020 by 1 month over and above the timelines, prescribed under SEBI (Infrastructure Investment Trusts) Regulations, 2014(InvIT Regulations)and SEBI (Real estate Investment Trusts) Regulations, 2014(REIT Regulations) and Circulars issued thereunder.

This Circular has come into force with immediate effect

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## In brief

Compliance requirements temporary relaxed for Mutual Funds pursuant to COVID 19

(Circular No. SEBI/HO/IMD/DF3/CIR/P/2020/47 dated 23<sup>rd</sup> March 2020)

Circular on Stewardship Code for all Mutual Funds extended to 1<sup>st</sup> July 2020

(Circular No.: SEBI/HO/CFD/CMD1/CIR/P/2020/55 dated 30<sup>th</sup> March 2020)

Compliance requirements deferred by 2 months

(Circular No. SEBI/HO/IMD/DF1/CIR/P/2020/57 and 58 dated 30<sup>th</sup> March 2020)

### Relaxation in compliance with requirements pertaining to Mutual Funds

In light of the recent market events pursuant to COVID 19, a need has been felt for temporary relaxations with respect to compliance requirements for Mutual Funds. Accordingly, SEBI has decided to grant certain relaxations specified in SEBI (Mutual Funds) Regulations, 1996 and Circulars. *Inter alia*, it includes the following-

- ♦ Dead line of Half-yearly disclosures of unaudited financial results as required under Regulation 59 of SEBI (Mutual Funds) Regulations, 1996 extended to 31<sup>st</sup> May 2020 from 30<sup>th</sup> April 2020
- ♦ Disclosure of commission paid to distributors as required under Point 2 (a) of [SEBI Circular](#) dated 18<sup>th</sup> March 2016 extended to 10<sup>th</sup> May 2020 from 10<sup>th</sup> April 2020.

[Read more](#)

### Extension of deadline for implementation of the circular on Stewardship Code for all Mutual Funds and all categories of AIFs due to the CoVID-19 pandemic

SEBI had a [Stewardship Code for all Mutual Funds](#) and all categories of AIFs, in relation to their investment in listed equities. The Code was to come in to effect from 1<sup>st</sup> April 2020.

The implementation of the aforesaid circular on Stewardship Code has been extended to 1<sup>st</sup> July 2020.

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### Relaxation in compliance with requirements pertaining to AIF, VCF and Portfolio Managers

In light of recent market events due to COVID-19 pandemic, SEBI has decided to extend the due date for regulatory filings for AIFs and VCFs. 2. for the periods ending 31<sup>st</sup> March 2020 and 30<sup>th</sup> April 2020 by 2 months, over and above the timelines prescribed under SEBI (Alternative Investment Funds) Regulations, 2012 and circulars issued thereunder, [Read more](#)

SEBI has decided to extend the time lines for the following by 2 months:

- ♦ Monthly reporting to SEBI by Portfolio Managers for the periods ending 31<sup>st</sup> March 2020 and 30<sup>th</sup> April 2020.
- ♦ Applicability of SEBI Circular dated 13<sup>th</sup> February 2020 on [‘Guidelines for Portfolio Managers’](#)

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## In brief

GN on Audit of Banks 2020 bifurcated into 2 Section A and B

An advisory on impact of corona virus on Financial Reporting and Audit of FS issued  
(Dated 27<sup>th</sup> March 2020)

## Accountancy and Audit

### Guidance Notes on Audit of Banks 2020 Edition

The Guidance Note (GN) is an important resource which provides detailed guidance to the members on various aspects of bank audits. This GN is a comprehensive and self-contained reference document.

The Guidance given in the GN is broadly bifurcated into two Sections i.e.

- ♦ **Section A - Statutory Central Audit**
- ♦ **Section B - Bank Branch Audit.**

Department wise guidance is given in Section A viz. Personal Banking and Operations, Retail Banking and Marketing, Wealth Management and Third-Party Products, Credit Monitoring and Restructuring, Treasury Operations, Audit of Information Technology and Digital Banking, Long Form Audit Reports Consolidation, etc.

[Read more](#)

### ICAI Accounting & Auditing Advisory on Impact of Coronavirus on Financial Reporting and the Auditors Consideration

The advisory is applicable to –

- ♦ Entities to whom Ind AS is applicable and
- ♦ Entities to whom AS is applicable, i.e.
  - ▲ Companies to whom Companies, Accounting Standards Rules, 2006 is applicable and
  - ▲ Non-corporate entities to whom AS issued by ICAI is applicable.

The Advisory highlights important areas which require particular attention in respect of FS for the year 2019-20. *Inter alia*, it covers Inventory Measurement, Impairment of Non-Financial Assets, Financial Instruments, Leases, Income Tax, Property, Plant and Equipment, Post Balance Events etc.

This document discusses key Advisory to auditors related to conditions that may arise as a result of COVID-19. Auditors must carefully evaluate unique circumstances prevailing in their audits and assess risk accordingly when applying the concepts in this Advisory in their audits. Some areas which require special attention of auditors in current scenario are-

- ♦ Identifying and Assessing the Risk of Material Misstatements and Materiality in Planning and Performing an Audit
- ♦ Assessing Financial Impact and their Reasonable

## In brief

Announcement on notification/ circular/ advisories issued by the MCA in view of COVID-19 Pandemic issued

(Dated 27<sup>th</sup> March 2020)

- ♦ Valuation of Inventory on a date other than date of FS i.e. 31<sup>st</sup> March 2020
- ♦ Reporting on Key Audit Matters
- ♦ Subsequent Events or Events after Reporting date
- ♦ Audit of Consolidated FS where Components/component auditors are located in severely affected places

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### Announcement on Notification/ Circular/ Advisories Issued by the MCA in view of COVID-19 outbreak

ICAI has issued an announcement which *inter alia* includes- Special Measures under Companies Act, 2013 and Limited Liability Partnership Act, 2008 in view of COVID-19 outbreak, Companies Affirmation of Readiness towards COVID-19 Form, Board Meetings under the Companies Act, 2013 etc.

[Read more](#)

### Ind AS

For developments in Ind AS refer *CNK IFRS/Ind AS Updates, April 2020* which was mailed earlier

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## Key Take Away

- The MCA decision to bring the ‘body corporate listed in a recognised stock exchange’ under online self-assessment proficiency test exemption would bring relief to senior bankers who had served the public sector bank system for several years as post their stint in the Boards of top notch PSBs, several banking industry stalwarts take up the role of ‘independent directors’ in Boards of private sector companies.
- CARO 2020 notified by the MCA paves the way for enhanced due diligence and disclosures on the part of auditors. It is expected to significantly improve the overall quality of reporting by the auditors on the financial statements of the companies and thereby lead to greater transparency and faith in the financial affairs of the companies. It has also put greater onus on companies to share information with the auditors.
- Measures introduced by the MCA due to COVID-19 outbreak will go a long way in reducing the compliance burden and financial burden of companies, LLP etc.
- The Fresh Start Scheme and modified LLP Settlement Scheme reduce compliance burden during the unprecedented public health situation caused by Covid-19. Both these schemes significantly reduce the related financial burden on them, especially for those with long standing defaults, thereby giving them an opportunity to make a “fresh start”.

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