

In brief

Scope of filing Form DIR-12 by ACTIVE non-compliance company widened, new timeline prescribed for passing order by the RD in case of shifting of registered office within the same State (Notification dated 16th October 2019)



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Companies Act, 2013 – Rules and Amendment Rules

Companies (Incorporation) 8th Amendment Rules, 2019

The MCA has amended Companies (Incorporation) Rules, 2014. The amendments pertain to the following-

♦ Rule 25A -Active Company Tagging Identities and Verification (ACTIVE)

In addition to the case of cessation of any director, an ACTIVE-non-compliant company can also file Form DIR-12 in the following cases:

- ▲ Appointment of directors in such company where the total number of directors are less than the minimum number (i.e. 1 in case of One Person Company, 2 in case of private company and 3 in case of public company) on account of disqualification of all or any of the director under Section 164;
- ▲ Appointment of any director in such company where DINs of all or any its director(s) have been deactivated;
- ▲ Appointment of director(s) for implementation of the order passed by the Court or NCLT or NCLAT under the provisions of the Act or under IBC, 2016.

♦ Rule 28- Shifting of registered office within the same State.-

Timeline for passing order by the Regional Director (RD) has been revised.

Particulars	No. of days as per Section 12(6) of the Act	No. of days as per the Rule
Approval or Rejection order passed by RD	30	15
Filing of certified copy of the order of RD with the Registrar	60	30

[Read more](#)

In brief

Rule 6 - Creation and maintenance of databank of persons offering to become independent directors substituted. (Notification dated 22nd October 2019)

Companies Act, 2013 – Rules and Amendment Rules

Companies (Appointment and Qualification of Directors) 5th Amendment Rules

The MCA has amended Companies (Appointment and Qualification of Directors) Rules, 2014. Rule 6 has been substituted. Summary of the substituted Rules is as follows-

Rule 6 – Compliance required by a person eligible and willing to be appointed as an independent director

Application/Registration

- ♦ Every independent director (**ID**) as on 1st December 2019 should within 3 months from the commencement of the above Rule, or
- ♦ Who intends to get appointed as an ID after the commencement of the Rules should mandatorily apply to Indian Institute of Corporate Affairs (**IICA**) for inclusion of his name in databank for a period of 1 year or 5 years or for life-time.

Any individual, including an individual not having DIN may voluntarily apply to the IICA for inclusion of his name in the data bank.

Renewal

After expiry of such 1 year or 5 years, individual may also apply for renewal within a period of 30 days for the date of expiry of such period. However, no application for renewal is required if life-time fees has been paid of inclusion of name in the data bank.

Proficiency self- assessment test

Such Individual should also pass an online proficiency self- assessment test conducted by IICA within a period of 1 year from the date of inclusion of his name in data bank, failing which, his name will be removed from the databank. Such test needs to be undertaken only once after registration and not every year.

Minimum 60% marks is required to qualify the proficiency self- assessment test and there is no limit on the number of attempts an individual may take for passing this test.

Persons exempt from online proficiency test

The individual who has served for a period of at least 10 years as on the date of inclusion of his name in the databank as director or key managerial personnel in the following companies –

- ♦ a listed public company or

In brief

Rules providing for creation and maintenance of data bank of IDs notified
(Notification dated 22nd October 2019)

Additional information to be included in the Board Report
(Notification dated 22nd October 2019)

Criteria for transaction/s entered into as contracts or arrangements with any related party amended
(Notification dated 18th November 2019)

- ♦ unlisted public company having a paid-up share capital of Rs. 10 crore or more will not be required to pass the online proficiency self-assessment test

The Rule has come into force from 1st December 2019.

[Read more](#)

Companies (Creation and Maintenance of Databank of Independent Directors) Rules, 2019

The MCA has notified the above mentioned Rules which provide for the manner of creation and maintenance of databank of ID by the IICA with its duties.

These Rules are effective from 1st December 2019 except those pertaining to definitions and panel for approving the outline of the courses and study material prepared by the IICA.

[Read more](#)

Companies (Accounts) Amendment Rules, 2019

The MCA has amended Companies (Accounts) Rules, 2014. As per the amendment, Board Report should include a statement regarding opinion of the Board with regard to integrity, expertise and experience (including the proficiency) of ID appointed during the year.

‘Proficiency’ means the proficiency of the ID as ascertained from the online proficiency self-assessment test conducted by the IICA

[Read more](#)

Amendments in approvals, etc. with respect to related parties.

The MCA has notified Companies (Meetings of Board and its Powers) 2nd Amendment Rules, 2019 which amends the Companies (Meetings of Board and its Powers) Rules, 2014. For entering into any contract or arrangement with any related party, approval of the Company by a resolution is required by companies fulfilling certain criteria. The criteria/limits have been amended as follows-

Criteria for transaction/s entered into as contracts or arrangements	Earlier Limits	Revised Limits
Sale, purchase or supply of any goods or materials directly or through appointment of agent	♦ 10% or more of the turnover or ♦ Rs. 100 crore Whichever is lower	10% or more of the turnover

In brief

Limits for appointment of Company Secretary and Secretarial Audit revised (Notification dated 3rd January 2020)

Criteria for transaction/s entered into as contracts or arrangements	Earlier Limits	Revised Limits
Selling or otherwise disposing of, or buying, property of any kind directly or through appointment of agent	<ul style="list-style-type: none"> ♦ 10% or more of net worth or ♦ Rs. 100 crore Whichever is lower	10% or more of net worth
Leasing of property of any kind	<ul style="list-style-type: none"> ♦ 10% or more of net worth or ♦ 10% or more of turnover or ♦ Rs. 100 crore Whichever is lower	10% or more of turnover
Availing or rendering of any services directly or through appointment of agent	<ul style="list-style-type: none"> ♦ 10% or more of the turnover of or ♦ Rs. 50 crore Whichever is lower	10% or more of the turnover

[Read more](#)

Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2020

The MCA has amended the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014. The amendments pertain to the following –

♦ Appointment of Company Secretaries in companies

Every listed company, every other public company private company which has a paid up share capital of Rs. 10 crore or more should have a whole -time company secretary (*earlier every company which has a paid up share capital of Rs. 5 crore or more was required to have a whole-time company secretary.*

♦ Secretarial Audit

Earlier only public companies having a paid-up share capital of Rs. 50 crore or more; or turnover of Rs. 250 crore or more were covered under the Secretarial Audit criteria. Now in addition to this, every company (*including a private company*) having outstanding loans or borrowings from banks or public financial institutions of Rs. 100 crore or more are also required to get Secretarial Audit Report from a Company Secretary in Practice.

Note: Paid-up share capital, turnover, or outstanding loans or borrowings as the case may be, existing on the last date of latest audited FS should be taken into account.

The amendments are **applicable in respect of FYs commencing on or after 1st April, 2020**

[Read more](#)

In brief

Scope of contribution to incubators as CSR Activities broadened (Notification dated 11th October 2019)

Last date for filing various e-Forms extended (Circular No 14/2019 dated 27th November 2019, 17/2019 dated 30th December 2019, 1/2020 dated 1st January 2020)

Company Law Committee Report suggests amendments to penal provisions and other amendments to further improve ease of doing business (Report dated 14th November 2019)

Notifications/Circulars/Reports from the Ministry of Corporate Affairs (MCA)

Notifications

Amendment of Schedule VII of the Companies Act, 2013

The MCA has amended Schedule VII to provide that the companies may contribute to the followings as its CSR Activities:

- ♦ Incubators funded by Central Government (CG) or State Government; and
- ♦ Public funded Universities and various institutions engaged in conducting research in science, technology, engineering and medicine aimed at promoting Sustainable Development Goals (SDGs).

[Read more](#)

For Corrigendum to Amendment of Schedule VII [Read more](#)

Circulars

Relaxation of additional fees and extension of last date in filing of forms CRA-4, NFRA-2 and BEN-2 under the Companies Act, 2013-

The MCA has extended the due date for filing of the following e-forms without levy of additional fee.

e-Forms	Extended Due Date
CRA-4 (Cost Audit Report)	29 th February 2020
NFRA-2	90 days from the date of deployment (i.e. 9 th December 2019) of this form on the website of National Financial Reporting Authority (NFRA)
BEN-2	31 st March 2020

General Circular 14/2019 [Read more](#)

General Circular 17/2019 [Read more](#)

General Circular 1/2020 [Read more](#)

Others

Report of the Company Law Committee

The Committee has submitted its Report dated 14th November 2019 which proposes to amend 46 penal provisions which will further declog the Special Courts and the National Company Law Tribunal (NCLT). It also addresses the need for certain other amendments so as to further improve ease of doing business of corporates. *Inter alia*

the recommendations include-

- ♦ Re-categorising 23 offences which are in the category of compoundable offences to an in-house adjudication framework
- ♦ Omitting 7 compoundable offences, limiting 11 compoundable offences to fine only and recommending 5 offences to be dealt with an alternate framework
- ♦ Power to exclude certain class of companies from the definition of 'listed company', in consultation with SEBI.
- ♦ Allowing payment of 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
- ♦ Excluding certain companies /bodies corporate from Section 89 (Declaration in respect of Beneficial Interest in any Share) and Chapter XXII (Companies incorporated outside India)
- ♦ Enabling powers to modify the thresholds which trigger applicability of CSR provisions
- ♦ Revising provisions of disqualifications of Directors
- ♦ Reviewing provisions in respect of debarment of audit firms
- ♦ Reviewing penalty for delay in filing Annual Returns and Financial Statements.

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In brief

Norms to deal with abrupt resignations of auditors tightened
(Circular No. CIR/CFD/CMD1/114/2019 dated 18th October 2019)

Banks to declare NPA divergences on continuous basis
(Circular No.: CIR/CFD/CMD1/120/2019 dated 31st October 2019)

Securities and Exchange Board of India (SEBI)

Circulars

Resignation of statutory auditors from listed entities and their material subsidiaries

This Circular lays down the conditions to be complied with upon resignation of the statutory auditor of a listed entity/material subsidiary w.r.t. limited review / audit report as per SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015. *Inter alia* its states the following

- ♦ Compliance with conditions while appointing/re-appointing an auditor

Time of resignation of Auditor	Conditions to be complied with before resignation
Within 45 days from the end of a quarter of a financial year (FY)	Issue the limited review/ audit report for such quarter
After 45 days from the end of a quarter of a FY	Issue the limited review/ audit report for such quarter as well as the next quarter.
Has signed the limited review/ audit report for the first 3 quarters of a FY	Issue the limited review/ audit report for the last quarter of such FY as well as the audit report for such FY.

- ♦ 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 will not apply.
- ♦ This Circular has come into force with immediate effect (i.e. 18th October 2019)

[Read more](#)

Disclosure of divergence in the asset classification and provisioning by banks

RBI vide it [Notification No RBI/2016-17/283 dated 18th April 2017](#) and amended [Notification No. RBI/2018- 19/157 dated 1st April 2019](#) mandated banks to disclose certain cases of divergence in the asset classification and provisioning in the Notes to Accounts in the ensuing Annual FS published immediately following communication of such divergence by RBI to the bank.

Accordingly, in consultation with RBI, it has been decided that the listed banks should make disclosures of divergences and provisioning beyond specified threshold, as mentioned in aforesaid RBI notifications, within 24 hours upon receipt of the RBI's Final Risk Assessment Report (RAR), rather than waiting to publish them as part of annual FS.

In brief

Listed companies must disclose default in 31 days and in case of NCD and NCRPS, default should be disclosed in 24 hours
(Circular No. SEBI/HO/CFD/CMD1/CIR /P/2019/140 dated 21st November 2019)

Format on Statement of Deviation or Variation for proceeds of public issue, rights issue, preferential issue, Qualified Institutions Placement (QIP) etc. modified
(Circular No. CIR/CFD/CMD1/162/2019 dated 24th December 2019)

The disclosures are to be made in either or both of the following cases:

- ♦ the additional provisioning for NPAs assessed by RBI exceeds 10% of the reported profit before provisions and contingencies for the reference period, and
- ♦ the additional gross NPAs identified by RBI exceed 15% of the published incremental Gross NPAs for the reference period.

This circular has **come into force with immediate effect (i.e. 31st October 2019)**.

[Read more](#)

Disclosures by listed entities of defaults on payment of interest/repayment of principal amount on loans from banks / financial institutions and unlisted debt securities

In order to address the critical gap in the availability of information to investors, listed entities are required to comply with the requirements of this circular. *Inter alia*, the requirements are as follows-

- ♦ The circular will be **applicable to all listed entities** which have listed any of the following: specified securities (*equity and convertible securities*), Non-Convertible Debentures (NCDs) and Non-Convertible Redeemable Preference Shares (NCRPS).
- ♦ The disclosures should be made to the stock exchanges.
- ♦ In case of default beyond 30 days on loans, revolving facilities like cash credit, from banks /financial institutions, disclosure should be made within 31 days.
- ♦ In case of default on unlisted debt securities i.e. NCDs and NCRPS, the disclosure of default should be made within 24 hours from the occurrence of the default.
- ♦ **Disclosures should be made beginning 1st January 2020** in the prescribed format.
- ♦ If on the last date of any quarter, any loan including revolving facilities like cash credit from banks / financial institutions where the default continues beyond 30 days or there is any outstanding debt security under default, then the listed entity is required to provide specified details of such default in the prescribed format within 7 days from the end of each quarter.

[Read more](#)

Format on Statement of Deviation or Variation for proceeds of public issue, rights issue, preferential issue, Qualified Institutions Placement (QIP) etc.

As per the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (**Listing Regulation**), a listed entity is, *inter alia*, required to submit to the stock exchange, a statement of deviation or variation, pursuant to review by the audit committee, on a quarterly basis for public issue, rights issue, preferential issue etc.

In brief

BRR to be included by the top 1,000 listed entities by market capitalisation (PR No. 24/2019 dated 20th November 2019)

SEBI has revised the format of this Statement. The salient features of the format are -

- ♦ **Applicability:** The format will be applicable for funds raised by listed entities through public issue, rights issue, preferential issue, QIPs etc.
- ♦ **Frequency of Disclosure:** The disclosure will be made by listed entities on quarterly basis to the Stock Exchange along with the declaration of financial results (within 45 days of end of each quarter / 60 days from the end of the last quarter of the FY) until such funds are fully utilised or the purpose for which these proceeds were raised has been achieved.
- ♦ **Role of the Audit Committee (AC):** The statement of deviation report should be placed before the AC of the listed entity for review on quarterly basis and after such review, the comments of the AC along with the report should be disclosed/submitted to the stock exchange, as part of the format.

The first such submission should be made by the listed entities for the quarter ending 31st December 2019. Subsequent submissions will be quarterly as explained above.

[Read more](#)

Press Release

SEBI Board Meeting

At the SEBI Board Meeting held on 20th November 2019, among other matters, following decision was taken—

- ♦ Extension of Business Responsibility Reporting (BRR) to top 1,000 listed entities by market capitalisation

The SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 require that as on 31st March of every FY, the top 500 listed entities based on market capitalisation should include BRR as part of their Annual Reports. SEBI has approved a proposal to extend the applicability of BRR to top 1,000 listed entities.

[Read more](#)

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In brief

Insolvency and
Bankruptcy Code Rules
and certain provisions
notified
(Notification dated 15th
November 2019)

Others

The Insolvency and Bankruptcy Code, 2016

The MCA has notified 1st December, 2019 as the date on which certain provisions of the above Code (only in so far as they relate to personal guarantors to corporate debtors), have come into force. [Read more](#)

The MCA has also notified the following Insolvency and Bankruptcy Rules, 2019.

- ♦ Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019.

- ▲ These Rules are **applicable from 1st December 2019**.

- ▲ These Rules will apply to insolvency resolution process for personal guarantors to corporate debtors.

[Read more](#)

- ♦ Insolvency and Bankruptcy (Application to Adjudicating Authority for Bankruptcy Process for Personal Guarantors to Corporate Debtors) Rules, 2019.

- ▲ These Rules are **applicable from 1st December 2019**

- ▲ These Rules will apply to matters relating to bankruptcy of personal guarantors to corporate debtors.

[Read more](#)

- ♦ Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019.

These Rules will apply to such financial service providers or categories of financial service providers, as may be notified by the CG under Section 227 (Power of CG to notify financial service providers, etc.) from time to time, for the purpose of their insolvency and liquidation proceedings under these Rules.

[Read more](#)

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In brief

Statutory auditors of listed entities and their material subsidiaries are required to comply with the SEBI dated 18th October 2019 regarding ‘Resignation of statutory auditors from listed entities and their material subsidiaries’

(Announcement dated 9th December 2019)

While reporting as per Exhibit B3 there is no need to report on net profit/(loss) after tax and cash flows of branches if such details are not contained in the FS (Advisory dated 11th December 2019)

Accountancy and Audit

ICAI Announcement on Applicability of “Implementation Guide (IG) on Resignation/ Withdrawal from an Engagement to Perform Audit of Financial Statements” to Statutory Auditors of Listed Entities and their Material Subsidiaries

Paragraph 25 of the aforesaid IG states that – *‘this IG is applicable in case of audits of all listed entities. Further, in case of audits of banks, insurance companies and other corporate entities, the guidance given in this IG be also followed, as applicable’.*

SEBI has issued a Circular dated 18th October 2019 regarding [‘Resignation of statutory auditors from listed entities and their material subsidiaries’](#). The aforesaid Circular prescribes various conditions to be satisfied by listed entities, their material subsidiaries and their statutory auditors.

ICAI has clarified that statutory auditors of listed entities and their material subsidiaries are required to comply with the aforesaid Circular.

This Announcement has **come into force with immediate effect (i.e. 9th December 2019)**
[Read more](#)

ICAI Advisory on Exhibit B3 of SEBI’s Circular dated 29th March 2019 regarding Procedure and formats for limited review / audit report of the listed entity and those entities whose accounts are to be consolidated with the listed entity

SEBI has issued a [Circular dated 29th March 2019 regarding Procedure and formats for limited review / audit report of the listed entity and those entities whose accounts are to be consolidated with the listed entity](#). Exhibit B3 of the this Circular pertains to “Independent Auditor’s Review Report on Review of Consolidated Unaudited Quarterly and Year to date Financial Results for banks”. Point Nos. 7 and 8 of Exhibit B3 require quantification of (a) total assets (b) total revenue (c) Total net profit/(loss) after tax (d) cash flows(net) with respect to branches of banks.

It has been advised that while reporting as per Exhibit B3 there is no need to report on net profit/(loss) after tax and cash flows of branches if such details are not contained in the FS.

This Advisory has **come into force with immediate effect (i.e. 11th December 2019)**
[Read more](#)

In brief

Time limit for generation of UDIN restricted to 15 days from 1st January 2020

Time limit of UDIN generation

ICAI has announced that from 1st January 2020 onwards, Members will be required to generate UDIN within 15 days for all Certificates / Reports / Documents signed on or after 1st January 2020.

[Read more](#)

Ind AS

For developments in Ind AS refer *CNK IFRS/Ind AS Updates, January 2020* [Read more](#)

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Key Take Away

- Amendment in Rule 25A relating to Active Company Tagging Identities and Verification (ACTIVE) brings a big relief to companies that had been rendered inactive after they failed to comply with the know-your-customer (KYC) rules. The government has given them an option to change their status and become active.
- Independent directors of companies will now have to take up an online proficiency self-assessment test conducted by the Indian Institute of Corporate Affairs to get appointed or maintain their Board positions.
- The MCA notified IBC Rules extends the scope of the IBC to personal guarantors of corporate debtors. These Rules will open the doors for resolution of stressed non-banking finance companies under this framework. As per experts, this would benefit both the banks and the personal guarantors in minimising litigation.
- The Companies (Meetings of Board and its Powers) 2nd Amendment Rules, 2019 eases the compliance burden on large companies as the threshold now is only related to the turnover/net worth of such company.
- SEBI's circular on resignation of statutory auditors comes following a spike in auditors at listed firms in recent years. There has been many instances of auditors resigning in an abrupt manner citing reasons like companies not sharing material information despite repeated attempts to get the information. This circular tightens norms to deal with abrupt resignations of auditors.
- SEBI's circular on disclosure on loan defaults by listed entities give a boost to corporate governance by requiring listed entities to give timely information in a transparent manner

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