

## In brief

- Companies (Registration of Charges) Amendment Rules, 2019- substitution of Rules 3(2) and (3), 4 and 12, substitution of Form CHG-1, CHG-8 and CHG-9

(Notification dated 30<sup>th</sup> April 2019)



## This issue

The Companies Act, 2013	P.1
SEBI	P.5
IRDAI	P.7
ICSI	P.8
Accounting and Auditing	P.9

## Companies Act, 2013 – Rules and Amendment Rules

## Companies (Registration of Charges) Amendment Rules, 2019

The Companies (Registration of Charges) Rules, 2014, have also been amended. Among other matters, the amendments are as follows:

- **Rule 3- Registration of creation or modification of charge**

If the particulars of a charge are not filed, such creation or modification should be filed in Form No. CHG-1 or Form No. CHG-9 within the period as specified in Section 77 (within 30 days of its creation) on payment of additional fee or *ad valorem* fee as prescribed in the Rules.

Where the company fails to register the charge and the registration is effected on the application of the charge-holder, such charge-holder will be entitled to recover from the company the amount of any fees or additional fees or *ad valorem* fees paid by him to the Registrar for the purpose of registration of charge.

- **Rule 12- Rectification in register of charges on account of omission or misstatement of particulars in charge previously recorded and extension of time in filing of satisfaction of charge.**

On application being made, the Central Government may direct rectification in register of charges on account of omission or misstatement of particulars in charge previously recorded and extension of time in filing of satisfaction of charge.

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## In brief

- Companies (Registration Offices and Fees) 3<sup>rd</sup> Amendment Rules, 2019- amendment in the Annexure

(Notification dated 30<sup>th</sup> April 2019)

- National Company Law Tribunal (2<sup>nd</sup> Amendment) Rules, 2019- Insertion of Rule 84(2) and 84(3)

(Notification dated 8<sup>th</sup> May 2019)

- Companies (Removal of Names of Companies from the Register of Companies) Amendment Rules, 2019- Amendment of Rule 4 and Form STK-4 and insertion of Form STK-8

(Notification dated 8<sup>th</sup> May 2019)

- Companies (Incorporation) 5<sup>th</sup> Amendment Rules, 2019- substitution of Rule 8, insertion of Rule 8A and 8B

(Notification dated 10<sup>th</sup> May 2019)

## Companies (Registration Offices and Fees) 3<sup>rd</sup> Amendment Rules, 2019

MCA has amended the Companies (Registration Offices and Fees) Rules, 2014. The amendment provides fees for filing charge documents and such fees will be levied as specified under the Amended Rules.

[Read more](#)

## National Company Law Tribunal (2<sup>nd</sup> Amendment) Rules, 2019

The MCA has amended **Rule 84 - Right to apply under Section 245** of the National Company Law Tribunal Rules, 2016. The amendment specifies the eligibility criteria of members and depositors who can file an application for Class Action Suit.

A Class Action Suit can be filed if members or depositors are of the opinion that the management or conduct of the affairs of the company is being conducted in a manner prejudicial to the interests of the company or its members or depositors.

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## Companies (Removal of Names of Companies from the Register of Companies) Amendment Rules, 2019

The MCA has amended the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016. Among other matter, the amendments pertains to –

- ♦ Fee for filing application for removal of name of the company has been increased to Rs 10,000 (*earlier Rs. 5,000*)
- ♦ No application in Form No. STK-2 can be filed by a company unless it has filed overdue returns in Form No. AOC-4 (Financial Statement) or AOC-4 XBRL and Form No. MGT-7 (Annual Return), up to the end of the FY in which the company ceased to carry its business operations
- ♦ Format for Statement of Accounts containing assets and liabilities of the company should be in newly inserted Form STK-8

[Read more](#)

## Companies (Incorporation) 5<sup>th</sup> Amendment Rules, 2019.

The MCA has amended Companies (Incorporation) Rules, 2014. The amendments pertain to reservation of name.

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## In brief

- Companies (Appointment and Qualification of Directors) 2<sup>nd</sup> Amendment Rules, 2019- Insertion of new Rule 12B

(Notification dated 16<sup>th</sup> May 2019)

- Companies (Prospectus and Allotment of Securities) 3<sup>rd</sup> Amendment Rules, 2019- amendment of Rule 9A and insertion of Form PAS- 6

(Notification dated 22<sup>nd</sup> May 2019)

- Companies (Significant Beneficial Owners) 2<sup>nd</sup> Amendment Rules, 2019- substitution of Form BEN-2

(Notification dated 1<sup>st</sup> July 2019)

### Companies (Appointment and Qualification of Directors) 2<sup>nd</sup> Amendment Rules, 2019

The MCA has amended Companies (Appointment and Qualification of Directors) Rules, 2014 by inserting a new **Rule 12B- Directors of company required to file e-form ACTIVE**. As per the this Rule,

- If a company which is required to file e-form ACTIVE fails to do so within the specified period, the DIN allotted to its existing Directors, will be marked as *Director of ACTIVE non-compliant company*.
- Where the DIN of a Director has been so marked, such Director should take all necessary steps to ensure that all companies eligible to file e-form ACTIVE, where such director has been so appointed, file e-form ACTIVE
- After all such companies referred to above, file the e-form ACTIVE, the DIN of such director will be marked as *Director of ACTIVE compliant company*

[Read more](#)

### Companies (Prospectus and Allotment of Securities) 3<sup>rd</sup> Amendment Rules, 2019

The MCA has amended the Companies (Prospectus and Allotment of Securities) Rules, 2014. Among other matters, amended pertains to the following-

#### **Rule 9A- Issue of securities in dematerialised form by unlisted public companies**

Every unlisted public company is required to submit Form PAS-6 (Half-yearly Reconciliation of Share Capital Audit Report) to the Registrar within 60 days from the conclusion of each half year duly certified by a company secretary in practice or chartered accountant in practice.

The company should immediately bring to the notice any difference observed in its issued capital and the capital held in dematerialised form to the depositories.

This Rule will **come into force with effect from 30<sup>th</sup> September 2019**

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### Companies (Significant Beneficial Owners) 2<sup>nd</sup> Amendment Rules, 2019.

The MCA has amended the Companies (Significant Beneficial Owners) Rules, 2018 by substituting Form BEN-2 (Return to the Registrar in respect of declaration under Section 90). Form BEN-2 states the format in which companies will have to disclose their 'Significant Beneficial Owners' to the Registrar

[Read more](#)

## In brief

- Amendment of Schedule VII (Activities which may be included by companies in their CSR Policies) of the Companies Act, 2013

(Notification dated 30<sup>th</sup> May 2019)

- Commencement of Section 406 from 15<sup>th</sup> August 2019

- NFRA-1 to be filed by 31<sup>st</sup> July 2019

## Notifications from the Ministry of Corporate Affairs (MCA)

### Notifications

#### Amendment of Schedule VII of the Companies Act, 2013

The MCA has amended Schedule VII of the Companies Act, 2013, to add, *disaster management, along with relief, rehabilitation and reconstruction activities*, to the list of permitted activities that qualify as Corporate Social Responsibility (CSR) activities by Companies

[Read More](#)

### Commencement of Section 81

The Central Government has appointed 15<sup>th</sup> August 2019 as the date on which provisions of Section 406 (Provisions relating to Nidhis and its application, etc.) as substituted by the Companies (Amendment) Act, 2017 will come into force.

[Read more](#)

### Others

National Financial Reporting Authority (NFRA) Rules, 2018 were notified on 13<sup>th</sup> November 2018. ([Read More](#))

NFRA-1 Form for intimation of appointment of Auditors to NFRA has been deployed on the website of NFRA ([www.nfra.gov.in](http://www.nfra.gov.in)) and accordingly the last date of filing the same by the entities concerned is 31<sup>st</sup> July 2019.

[Read more](#)

[Return](#)

## In brief

- Enhanced disclosure in case of listed debt securities- existing regulatory framework for governing DTs amended

(Circular No. SEBI/ HO/ MIRSD/ DOS3/CIR/P/2019/68 dated 27<sup>th</sup> May 2019)

- SEBI Board Meeting – materiality threshold for payments relating to brand or royalty revised to 5%, disclosure of encumbrances, and review of Risk Management Framework of Liquid Funds, Investment Norms and Valuation of Money Market and Debt Securities by Mutual Fund (MF)

(PR No. 16/2019 dated 27<sup>th</sup> June 2019)

## Securities and Exchange Board of India (SEBI)

### Circulars

#### Enhanced disclosure in case of listed debt securities

With a view to further secure the interests of investors in listed debt securities, enhance transparency and to enable Debenture Trustees (DTs) to perform their duties effectively and promptly, pursuant to public consultation, amendments to the existing regulatory framework for governing DTs, were carried out. The guidelines are issued on -

- ♦ Disclosure of compensation arrangement with clients by DTs on their websites
- ♦ Calendar of interest/ redemptions, due and paid, to be displayed on the website of DT(s) for the FY.
- ♦ Furnishing of updated list of debenture holders to the DTs by Issuers/ Registrars to an Issue and Share Transfer Agent (RTA).
- ♦ Additional covenants in case of privately placed issues

For details refer: [https://www.sebi.gov.in/legal/circulars/may-2019/enhanced-disclosure-in-case-of-listed-debt-securities\\_43118.html](https://www.sebi.gov.in/legal/circulars/may-2019/enhanced-disclosure-in-case-of-listed-debt-securities_43118.html)

### Press Release

#### SEBI Board Meeting

At the SEBI Board Meeting held on 27<sup>th</sup> June 2019, among other matters, took the following decisions –

- ♦ Amendments to SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015

It has decided that payments made to related parties towards brand usage or royalty may be considered material if the transaction(s) exceed 5% (*earlier 2%*) of the annual consolidated turnover of the listed entity during a FY and would require approval of the shareholders, with no related party having a vote to approve such resolutions.

- ♦ Disclosure of Encumbrances

Definition of ‘encumbrance’ has been widened, reasons for encumbrance to be disclosed, the promoters will be required to declare to the audit committee of the company and to the stock exchanges on a yearly basis, that they along with persons acting in concert (PACs), have not made any encumbrance directly or indirectly, other than already disclosed, during the FY

- ♦ Review of Risk Management Framework of Liquid Funds, Investment Norms and Valuation of Money Market and Debt Securities by Mutual Fund **(MF)**

Among other matter, Liquid Schemes shall be mandated to hold at least 20% in liquid assets such as Cash, Government Securities, T-bills and Repo on Government Securities, MF schemes will be mandated to invest only in listed NCDs and the same would be implemented in a phased manner. All fresh investments in Commercial Papers **(CPs)** will be made only in listed CPs pursuant to issuance of guidelines by SEBI in this regard, all fresh investments in equity shares by MF schemes will only be made in listed or to be listed equity shares.

For details refer: [https://www.sebi.gov.in/media/press-releases/jun-2019/sebi-board-meeting\\_43417.html](https://www.sebi.gov.in/media/press-releases/jun-2019/sebi-board-meeting_43417.html)

### **Return**

## In brief

- Preparation of Financial Statements for FY 2019-20 and Onwards- directions for preparation of FS in order to bring uniformity, comparability and fair presentation.

(Circular No. IRDA/F&A/CIR/MISC/0 81/05/2019 dated 20<sup>th</sup> May 2019)

- Preparation of Solvency Statement for FY 2019-20 and Onwards- circular to bring uniformity, consistency and comparability of Solvency Statements

(Circular No. IRDA/F&A/CIR/MISC/0 81/05/2019 dated 20<sup>th</sup> May 2019)

# Insurance Regulatory and Development Authority of India (IRDAI)

## Circulars

### Preparation of Financial Statements for FY 2019-20 and Onwards

In order to bring uniformity, comparability and fair presentation of FS filed by the insurer the IRDAI has, among other matters, issued the below mentioned directions.

- ♦ Presentation of Excess Expenses of Management (EoM) in Operating Expenses
- ♦ Personal Accident Policies in Health Segment
- ♦ Rewards and Remuneration to Agents/Brokers/Other intermediaries
- ♦ Segregation of Policyholders' and Shareholders' Funds
- ♦ Corporate Social Responsibility Expenditure

The insurers are required to comply with the circular while finalizing the accounts of Q1 of FY 2019-20 and thereafter.

[Read more](#)

### Preparation of Solvency Statement for FY 2019-20 and Onwards

The IRDAI has issued circular stating directions for the preparation of solvency statement for FY 2019-20 and onwards. The said circular is issued in order to bring uniformity, consistency and comparability of Solvency Statements filed by the insurer. The insurers are required to comply with the circular while finalizing the accounts of Q1 of FY2019-20 and thereafter.

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[Return](#)



## In brief

- GN on RPT by ICSI aims to explain the procedures, practices and compliances associated with RPTs.

- GN on ASC Report highlights the process and scope of ASC Report

# Institute of Chartered Secretaries of India (ICSI)

## Guidance Notes (GN)

The ICSI has issued the following guidance notes:

### ♦ GN on Related Party Transactions (RPT)

This GN explains the provisions, procedures and compliances for transactions with related parties after considering the following:

- ▲ Companies Act, 2013 read with the Rules thereunder
- ▲ Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015
- ▲ Companies (Auditor's Report) Order, 2016
- ▲ Indian Accounting Standard (Ind AS) 24 – Related party disclosures notified under the Companies (Ind AS) Rules, 2015
- ▲ Accounting Standard (AS) 18- Related party disclosures under the Companies (Accounting Standards) Rules, 2006.
- ▲ Secretarial Standards

[Read more](#)

### ♦ GN on Annual Secretarial Compliance (ASC) Report

This GN highlights the process and scope of ASC Report and also provides detailed checklists with respect to all mandatory laws as specified in the prescribed format by SEBI.

The ASC Report postulates for an independent verification of the records, books, papers and documents by a Company Secretary in Practice to check the compliance status of the company with the provisions of all applicable SEBI laws, Regulations and circulars/ guidelines issued thereunder.

[Read more](#)

[Return](#)



## In brief

- Guidance Note on Division I- Non Ind AS Schedule III to the Companies Act, 2013 (Revised July 2019)

Facilitates the preparation of FS in compliance with the Schedule III

- Clarification on Auditor's Certificate on Return of Deposits pursuant to Rule 16 of the Companies (Acceptance of Deposits) Rules, 2014

MCA has given clarification vide its letter to the ICAI

## Accountancy and Audit

### Guidance Note

#### **Guidance Note on Division I- Non Ind AS Schedule III to the Companies Act, 2013 (Revised July 2019)**

Schedule III to the Companies Act, 2013 provides the manner in which every company registered under the Act shall prepare its Balance Sheet, Statement of Profit and Loss and notes thereto

The objective of this Guidance Note **(GN)** is to provide guidance in the preparation and presentation of Financial Statements **(FS)** of companies in accordance with various aspects of the Schedule III. The primary focus of the GN has been to lay down broad guidelines to deal with practical issues that may arise in the implementation of the Schedule III

It does not provide guidance on disclosure requirements under Accounting Standards, other pronouncements of the ICAI, other statutes, etc.

C N K Partner, Mr. Himanshu Kishnadwala is one of the co-authors of this GN

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### Announcements

#### **Clarification on Auditor's Certificate on Return of Deposits pursuant to Rule 16 of the Companies (Acceptance of Deposits) Rules, 2014**

The ICAI has stated that the MCA vide its letter dated 24<sup>th</sup> June 2019 has clarified that -

- ♦ The Auditor's Certificate is mandatory only in case of return of deposits.
- ♦ For filing particulars of transactions not considered as deposits information contained therein as on 31<sup>st</sup> March of that year need not be from the duly audited Financial Statement.
- ♦ Only in case of Return of Deposit information contained therein as on 31<sup>st</sup> March of that year should be from duly audited financial statement of the company.

Also in order to provide guidance to members, the Auditing and Assurance Standards Board of ICAI has issued [Illustrative Auditor's Certificate on Return of Deposits](#)

[Read more](#)

## In brief

- UDIN being made mandatory from 1<sup>st</sup> July 2019 for all Audit/Assurance/Attest function to curb menace and malpractices

### Unique Document Identification Number (UDIN) being made mandatory from 1<sup>st</sup> July 2019 for all Audit/Assurance/Attest function

Financial Documents / Reports / Certificates are being signed by Non-CAs misrepresenting themselves as CA Members thereby misleading the Regulators, Authorities and Stakeholders. To curb this menace and malpractices, ICAI has conceptualised and implemented an innovative concept called UDIN.

ICAI at its 379th Council Meeting held on 17th – 18th December, 2018 made generation of UDIN mandatory for every signature of Full time Practising Chartered Accountants in phased manner for the following services:

- ♦ All Certificates with effect from 1<sup>st</sup> February 2019
- ♦ GST and Income Tax Audit with effect from 1<sup>st</sup> April 2019
- ♦ All Audit and Assurance Functions with effect from 1<sup>st</sup> July 2019

Therefore, UDIN is being made mandatory for all Audit and Assurance Functions like Documents and Reports certified / issued by full time Practising Chartered Accountants from 1<sup>st</sup> July 2019.

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[Return](#)



## Key Take Away

- The Directors of companies which are eligible to file e-form ACTIVE have got added responsibility to ensure that all such eligible companies in which they are Directors file e-form ACTIVE failing which they run the risk of not being eligible to be associated with compliant companies.
- The information to be furnished while filing Form PAS-6 will be for the half year ended 30<sup>th</sup> September and 31<sup>st</sup> March in every year for each International Securities Identification Number (ISIN) separately.
- The decision of SEBI to revise the materiality threshold for payments to brand or royalty to 5% is in line with the Kotak Committee recommendation and brings relief to the listed companies.

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