

Company Law

Rules and Amendment Rules

Companies (Incorporation) Amendment Rules, 2021

[Notification dated 22nd July 2021](#)

**Commencement Notification (amendment of
Section 16) w.e.f 1st September 2021**

[Dated 22nd July 2021](#)

The MCA has amended the Companies (Incorporation) Rules 2014. The amended Rules came into force from 1st September 2021. A new Rule 33A- *Allotment of a new name to the existing company under Section 16(3) of the Act* has been inserted. Inter alia, Rule 33A states that in case the company fails to change its name or new name in accordance with the direction issued under Section 16(1) of the Act within a period of 3 months from the date of issue of such direction, the letters "ORDNC" (Order of Regional Director Not Complied), the year of passing of the direction, the serial number and the existing Corporate Identity Number (CIN) of the company will become the new name of the company without any further act or deed by the company,

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and the Registrar will accordingly make entry of the new name in the register of companies and issue a fresh certificate of incorporation in Form No.INC-11C.

Companies (Registration of Foreign Companies) Amendment Rules, 2021

[Notification dated 5th August 2021](#)

Companies (Specification of definitions details) 3rd Amendment Rules, 2021

[Notification dated 5th August 2021](#)

Notification under Section 393A

[Dated 5th August 2021](#)

The Central Government (CG) has exempted the following companies from the provisions of Sections 387 to 392 -

- foreign companies;
- companies incorporated or to be incorporated outside India, whether the company has or has not established, or when formed may or may not establish,, a place of business in India,

which are offering securities in the International Financial Services Centres (IFSCs) set up under

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Section 18 of the Special Economic Zones (SEZ) Act, 2005, insofar as they relate to the offering for subscription in the securities, requirements related to the prospectus, and all matters incidental thereto.

The MCA through the amendment of the above-mentioned Rules, has clarified that for the purpose of Section 2(42) (Definition of Foreign Company) electronic based offering of securities, subscription thereof or listing of securities in the IFSCs set up under the SEZ Act, will not be construed as 'electronic mode'

Companies (Appointment and Qualification of Directors) Amendment Rules, 2021

[Notification dated 19th August 2021](#)

The MCA has amended Rule 6- *Compliances required by a person eligible and willing to be appointed as an independent director* of the Companies (Appointment and Qualification of Directors) Rules, 2014. It has provided the following new exemptions from online proficiency self-assessment test-

- In the pay scale of Director or equivalent or above in any Ministry or Department, of the CG or any State Government, and having experience in handling,—
- the matters relating to commerce, corporate affairs, finance, industry or public enterprises; or
- the affairs related to Government companies or statutory corporations set up under an Act of Parliament or any State Act and carrying on commercial activities.
- Individuals, who are or have been, for at least 10 years as-
 - an advocate of a court; or
 - in practice as a chartered accountant; or
 - in practice as a cost accountant; or
 - in practice as a company secretary

Companies (Creation and Maintenance of databank of Independent Directors) 2nd Amendment Rules, 2021

[Notification dated 19th August 2021](#)

In the Companies (Creation and Maintenance of databank of Independent Directors) Rules, 2019, the following Rule has been inserted -*Rule 6- Annual report on the capacity building of independent directors*

As per this Rule, The Indian Institute of Corporate Affairs (IICA) should send an Annual Report within 60 days from the end of every financial year (FY) to every individual whose name is included in the data bank and also to every company in which such individual is appointed as an independent director (ID) in format provided in the Schedule to these Rules

Circulars

Clarification on spending CSR funds for COVID-19 vaccination

[Circular No. 13/2021 dated 30th July 2021](#)

The MCA had earlier clarified that spending of CSR funds for COVID-19 is an eligible CSR Activity vide [Circular No. 10/2020 dated 23rd March 2020](#). In continuation to the said Circular, it has been further clarified that spending of CSR funds for COVID-19 vaccination for persons other than the employees and their families is considered to be an eligible CSR activity under item no (i) and (xii) of Schedule VII of the Companies Act, 2013.

Frequently Asked Questions (FAQs) on Corporate Social Responsibility (CSR)

[Circular No. 14/2021 dated 25th August 2021](#)

From time to time several amendments have been made to the CSR provisions through various notifications and clarifications by the MCA to streamline its implementation. To facilitate the implementation of these amendments, the MCA has issued the above FAQs. This FAQs supersedes all the erstwhile clarifications and FAQs issued by the MCA pertaining to CSR. The main areas covered include-

- Applicability of CSR
- CSR Framework
- CSR Expenditure

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- CSR Activities
- CSR Implementation
- Ongoing Project
- Treatment of Unspent CSR Amount
- CSR Enforcement
- Impact Assessment
- CSR Reporting & Disclosure

Notifications

Extension of last date of filing Cost Audit Report to the Board of Directors under Rule 6(5) of the Companies (Cost Records and Audit) Rules, 2021

[Circular No.15/2021 dated 27th September 2021](#)

The MCA has permitted the companies to file cost audit report (CAR) for the FY 2020-21 by the cost auditor to the Board of Directors of the companies till 31st October 2021. Consequently, the CAR for the FY ended on 31st March 2021 should be filed in e-form CRA-4 within 30 days from the date of receipt of the copy of the CAR by the company. However, in case a company has got extension of time for holding AGM under Section 96(1) of the Act then e-form CRA-4 may be filed within the timeline provided under the proviso to Rule 6(6) of the Companies (Cost Records and Audit) Rules, 2014.

Order

Extension of time for holding of Annual General Meeting (AGM) for the FY ended on 31st March 2021 in terms of 3rd proviso to Section 96(1)

[Orders dated 23rd September 2021](#)

All Registrar of Companies (RoC) have extended the time to hold the AGM for the FY ended 31st March 2021 for companies which lie within the jurisdiction of their respective office, which are unable to hold their AGM within the due date of holding the AGM (i.e. 30th September 2021) **by a period of 2 months** from the due date (i.e. 30th November 2021) by which the AGM ought to have been held in accordance with the Act , without requiring the companies to file applications for seeking such extension by filling the prescribed Form No. GNL-1.

It has been clarified that the extension granted in the Order will also cover the following:

- pending applications filed in Form GNL-1 for the extension of AGM which are yet to be approved;
- applications filed in Form GNL-1 for the extension of AGM, which were rejected;
- applications filed in Form GNL-1 for the extension of AGM, where the extension approved was for a period less than 2 months.

Others

The Limited Liability Partnership (Amendment) Act, 2021 [Dated 13th August 2021](#)

The Limited Liability Partnership (Amendment) Bill 2021 was introduced in Rajya Sabha on 30th July 2021. It was passed by the Rajya Sabha on 4th August 2021 and by the Lok Sabha on 9th August 2021. It got the President’s assent on 13th August 2021 and is thus operative since that date.

The Amendment Act encourages the start-up ecosystem, decriminalises 12 offences and further enhances ease of doing business by amending the Limited Liability Partnership (LLP) Act, 2008. Inter alia, other key amendments include the following-

- **Small LLP**
Concept of ‘small LLP’ has been introduced. Small LLP will mean an LLP -
 - the contribution of which, does not exceed Rs. 25 lakh or such higher amount, not exceeding Rs. 5 crore ; and
 - the turnover of which, as per the Statement of Accounts and Solvency for the immediately preceding FY, does not exceed Rs. 40 lakh or such higher amount, not exceeding Rs. 50 crore

in line with the concept of “small company” under the Companies Act, 2013;

- **New Section 34A- Accounting and Auditing Standards**

The CG may, in consultation with the National

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Financial Reporting Authority (NFRA) prescribe the standards of accounting and standards of auditing as recommended by the ICAI for LLPs.

Securities and Exchange Board of India (SEBI)

Standard Operating Procedure for listed subsidiary company desirous of getting delisted through a Scheme of Arrangement wherein the listed parent holding company and the listed subsidiary are in the same line of business

[Circular No.: SEBI/ HO/ CFD/ DIL1/ CIR/ P/ 2021/ 0585 dated 6th July 2021](#)

In this Circular, among other matters, SEBI has clarified the criteria to be fulfilled by the listed holding company and the listed subsidiary company for the purposes of defining 'same line of business' which are as follows-

- The principal economic activities of both Holding company and Subsidiary Company are under the same Group (3-digit numeric code) under the National Industrial Classification (NIC) Code 2008.
- At least 50% of revenue from the operations of the listed holding and listed subsidiary company must come from the same line of business as per last audited annual financial results submitted by both the companies in compliance with SEBI Listing Obligations and Disclosure Requirements Regulations, 2015 (LODR) .
- At least 50% of the net tangible assets of the listed holding and listed subsidiary must have been invested in the same line of business as per last audited annual financial results submitted by both the companies in compliance with SEBI (LODR) Regulations, 2015.
- In case of change of name of the listed entities, within the last one year, at least 50% of the revenue, calculated on a restated and consolidated basis, for the preceding one full year has to be earned by it from the activity indicated by its new name.

- The listed holding company and the listed subsidiary have to provide a self certification with respect to both the companies being in the same line of business

All of the above-mentioned criteria should be certified by the Statutory Auditor and SEBI Registered Merchant Banker.

Extension of time for holding the Annual General Meeting (AGM) by top 100 listed entities by market capitalization

[Circular No. SEBI/ HO/ CFD/ CMD1/ P/ CIR/ 2021/602 dated 23rd July 2021](#)

Regulation 44(5) of the SEBI LODR requires top 100 listed entities by market capitalization to hold their AGM within a period of 5 months from the date of closing of the FY. SEBI has **extended the timeline for conducting AGM of such entities to 6 months** from the date of closing of the FY for 2020-21.

This Circular has come into force with immediate effect.

SEBI (Share Based Employee Benefits and Sweat Equity) Regulations, 2021

[Notification dated 13th August 2021](#)

The above Regulations have become **effective on 13th August 2021**.

The provisions of these Regulations will apply to the following- employee stock option schemes; employee stock purchase schemes; stock appreciation rights schemes; general employee benefits schemes; retirement benefit schemes; and sweat equity shares.

The provisions of these Regulations will apply to any company whose equity shares are listed on a recognised stock exchange in India and who seeks to issue sweat equity shares or has a scheme:-

- for direct or indirect benefit of employees;
- Involving dealing in or subscribing to or purchasing securities of the company , directly or indirectly ; and

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- satisfying conditions like the scheme is set up by / funded or guaranteed by / controlled or managed by the company or a group company

Key provisions, inter alia, include the following-

- For accounting purposes, the grant date should be determined in accordance with applicable accounting standards.
- Companies will be allowed to provide share-based employee benefits to employees who are exclusively working for such company or any of its group companies including subsidiary or its associates

SEBI (LODR) (3rd Amendment, 4th Amendment) and 5th Amendment), Regulations 2021

[Notification No. SEBI/LAD-NRO/GN/2021/35 dated 3rd August 2021](#)

[Notification No. SEBI/LAD-NRO/GN/2021/42 dated 13th August 2021](#)

[Notification No. SEBI/LAD-NRO/GN/2021/47 dated 7th September 2021](#)

These Regulations amend the SEBI LODR, 2015. Inter alia, the amendments include the following –

Regulation 15- Applicability

Provisions of Regulation 15-27 of **Chapter IV- Obligations of a Listed Entity which has Listed its Specified Securities and Non-Convertible Debt** will apply to a listed entity which has listed its non-convertible debt securities (NCDS) and has an outstanding value of listed NCDS of Rs. 500 crore and above. In case an entity that has listed its NCDS triggers the specified threshold of Rs. 500 crore during the course of the year, it should ensure compliance with these provisions within 6 months from the date of such trigger. These provisions will be applicable to a 'high value debt listed entity' (HVD) on a 'comply or explain' @ basis till 31st March 2023 and on a mandatory basis thereafter.

@'Comply or explain' means that the entity should comply with the requirements by 31st March 2023. In case the entity is not able to achieve full compliance, it should explain the reasons for such non-compliance/ partial compliance and the steps initiated to achieve full

compliance in the quarterly compliance report filed under Regulation 27.

Regulation 16-Definitions

In case of a 'high value debt listed entity' (HVD):

- which is a body corporate, mandated to constitute its Board of directors (BoD) in a specific manner in accordance with the law under which it is established, the non-executive directors on its Board will be treated as IDs;
- which is a Trust, mandated to constitute its 'Board of Trustees' in accordance with the law under which it is established, the non-employee trustees on its Board will be treated as IDs

Regulation 17- Board of Directors (BoD)

The listed entity should ensure that shareholders' approval for appointment of a person on the BoD is taken at the next general meeting or within 3 months from the date of appointment, whichever is earlier.

Regulation 18- Audit Committee (AC).

At least 2/3rds (*earlier 2/3rds*) of the members of AC should be IDs and in case of a listed entity having outstanding special voting right equity shares (SR equity shares), the AC should only comprise of IDs.

Regulation 23- Related party transactions (RPT)

- RPT should be approved by only those members of the AC who are ID.
- HVD is required to submit disclosures of RPTs on a consolidated basis along with its standalone financial results for the half year in the format specified in the relevant accounting standards for annual results to the stock exchanges and publish the same on its website.

Regulation 25-Obligations with respect to IDs

- The appointment, re-appointment or removal of an ID of a listed entity, should be subject to the approval of shareholders by way of a special resolution
- An ID who resigns or is removed from the BoD

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of the listed entity should be replaced by a new ID by listed entity at the earliest but not later than the immediate next meeting of the BoD or 3 months from the date of such vacancy, whichever is later. However, where the listed entity fulfils the requirement of ID in its BoD without filling the vacancy created by such resignation or removal, the requirement of replacement by a new ID will not apply.

- Only after completion of 1 year from the date of resignation of an ID, he will be appointed as an executive/whole time director on the Board of the listed entity, its holding, subsidiary or associate company or on the Board of a company belonging to its promoter group.
- With effect from 1st January 2022, the top 1,000 listed entities by market capitalization calculated as on 31st March of the preceding FY, should undertake Directors and Officers insurance (D and O insurance) for all their IDs.
- A HVD should undertake D and O insurance for all its IDs for such sum assured and for such risks as may be determined by its BoD.

▪ Regulation 52 – Financial Results

- The listed entity should prepare and submit un-audited or audited quarterly and year to date standalone financial results on a quarterly basis in the format as specified by the Board within 45 days from the end of the quarter, other than last quarter, to the recognised stock exchange.
- In case of entities which have listed their debt securities, a copy of the financial results submitted to stock exchanges should also be provided to Debenture Trustees on the same day the information is submitted to stock exchanges.
- The listed entity should also submit as a part of its standalone or consolidated financial results for the half year, by way of note, a Statement of Assets and Liabilities and Statement of Cash Flows as at the end of the full year.
- The listed entity, while submitting half yearly / annual financial results, is not required to

disclose the following line items along with the financial results-

- credit rating and change in credit rating (if any);
- asset cover available, in case NCDS;
- previous due date for the payment of interest/ dividend for non-convertible redeemable preference shares/ repayment of principal of non-convertible preference shares (NCPS) /NCDS and whether the same has been paid or not; and,
- next due date for the payment of interest/ dividend of NCPS /principal along with the amount of interest/ dividend of NCPS shares payable and the redemption amount.
- The annual audited standalone and consolidated financial results for the FY should be submitted to the stock exchange within 60 days from the end of the FY along with the audit report
- The listed entity should also submit, by way of a note, a Statement of Assets and Liabilities and Statement of Cash Flows as at the end of the half year as part of its standalone or consolidated financial results for the half year

SEBI's Proposed Amendment to LODR

[PR No.: 28/2021 dated 28th September 2021](#)

At the meeting held on 28th September 2021, SEBI, inter alia considered and approved the amendments to SEBI LODR 2015, in relation to regulatory provisions on RPT. Key amendments are as follows-

- The definition of related party (RP) will include-
 - a) all persons or entities forming part of promoter or promoter group irrespective of their shareholding;
 - b) any person/entity holding equity shares in the listed entity, as below, either directly or on a beneficial interest basis at any time during the immediately preceding FY-
 - (i) to the extent of 20 % or more
 - (ii) to the extent of 10% or more w.e.f. 1st April 2023
- The definition of RPT will include transactions between:

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- a) the listed entity or any of its subsidiaries on one hand and a RP of the listed entity or any of its subsidiaries on the other hand;
- b) the listed entity or any of its subsidiaries on one hand, and any other person or entity on the other hand, the purpose and effect of which is to benefit a RP of the listed entity or any of its subsidiaries w.e.f. 1st April 2023.
- Prior approval of the shareholders of the listed entity will be required for material RPTs having a threshold of lower of Rs. 1,000 crore or 10% of the consolidated annual turnover of the listed entity.
- Approval of the AC will be required for
 - a) All RPTs and subsequent material modifications as defined by the AC;
 - b) RPTs where subsidiary is a party, but listed entity is not a party subject to threshold of-
 - (i) 10% of the consolidated turnover of the listed entity,
 - (ii) 10% of the standalone turnover of the subsidiary w.e.f. 1st April 2023.
- Enhanced disclosure of information related to RPTs to be:
 - a) placed before the AC,
 - b) provided in the notice to shareholders for material RPTs, and
 - c) provided to the stock exchanges every 6 months in the format specified by the Board with the following timelines-
 - (i) within 15 days from the date of publication of financials;
 - (ii) simultaneously with the financials w.e.f. 1st April 2023.

The amendments **will come into force with effect from 1st April 2022** unless otherwise specified above.

Accountancy and Audit

Aligning the time limit of generating UDIN from 15 days to 60 days

[Dated 17th September 2021](#)

With an aim to align the time limit for generating UDIN with the Standard of Auditing and

Standard on Quality Control, the ICAI at its meeting held on 17th September 2021 has decided that the time limit of generating UDIN would be 60 days (*earlier 15 days*) from the date of the signing of certificates/reports/document henceforth.

Consultation Paper – September 2021 on Statutory Audit and Auditing Standards for Micro, Small and Medium Companies (MSMCs)

[Dated 29th September 2021](#)

NFRA has done a preliminary analysis on the key financial parameters of the companies registered in India which have made MCA-21 filings in order to understand issues related to compliance with the regulatory framework specifically by smaller size companies. The focus of the analysis is companies with Net worth below Rs. 250 crores. It is found that the fees paid to auditors by a large majority of MSMCs are way below what an audit, when performed in compliance with the letter and spirit of the Standards of Auditing, would require. The analysis clearly brings out that a preponderant majority of these companies is very small in size in terms of key financial parameters. Payment to auditors by such companies is miniscule and far below the minimum standard audit fees cost estimates.

Exempting small companies from mandatory audit would result in furthering ease of doing business for MSMCs and reducing the compliance burden and costs on such enterprises.

NFRA has prepared a Consultation Paper explaining the issues involved and providing the data and information required for responding to the questions raised in an informed manner, with the objective to seek the comments/suggestions of the wider stakeholder group and the public at large on questions raised.

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