

Company Law

Rules and Amendment Rules

Companies (Incorporation) Amendment Rules, 2021

[Notification dated 7th June 2021](#)

The MCA has amended the Companies (Incorporation) Rules, 2014. Rule 38A - *Application for registration of Goods and Service Tax Identification Number (GSTIN), Employee State Insurance Corporation (ESIC) registration [Employees' Provident Fund Organisation (EPFO) Registration and Profession Tax Registration and Opening of Bank Account and Shops and Establishment Registration]* has been revised. As per the amendment, the application for incorporation of a company under Rule 38 should be accompanied by e-form AGILE – PRO-S (INC-35) which *inter alia*, contains an application for registration of the following –

- Profession Tax Registration with effect from 23rd February 2020 (earlier 15th February 2020)
- Opening Bank Account with effect from 23rd February 2020 (earlier 15th February 2020)
- Shops and Establishment Registration

Companies (Meetings of Board and its Powers) Amendment Rules, 2021

[Notification dated 15th June 2021](#)

The MCA has amended the Companies (Meetings of Board and its Powers) Rules, 2014. As per the amendment, **Rule 4 - *Matters not to be dealt with in a meeting through video conferencing (VC) or other audio-visual means (OAVM)* has been deleted.** Restrictions to conduct Board Meetings through VC or OAVM to approve annual Financial Statements (FS), Board Reports, prospectus, Audit Committee meetings for considerations of FS and approval of matter relating to amalgamation, merger, demerger, acquisition and takeover has been removed.

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

[Notification dated 18th June 2021](#)

The MCA has amended Rule 3 - *Creation and maintenance of data bank* of the Companies (Creation and Maintenance of databank of Independent Directors) Rules, 2019. As per the

amendment, in case of delay on the part of an individual in applying to the Indian Institute of Corporate Affairs (IICA) for inclusion of his name in the data bank or in case of delay in filing an application for renewal thereof, the Institute will allow such inclusion or renewal, after charging a further fees of Rs. 1,000 on account of such delay.

Revised thresholds for turnover and borrowings for definition of Small and Medium Companies (SMCs) effective from 1st April 2021 – Companies (Accounting Standards) Rules, 2021

[Notification dated 23rd June 2021](#)

As per the above Rules, the Accounting Standards will come into effect in respect of accounting periods commencing on or after 1st April 2021. Key highlights include the following-

▪ Definition

Small and Medium Company (SMC) means, a company –

- whose equity or debt securities are not listed or are not in the process of listing on any stock exchange, whether in India or outside India;
- which is not a bank, financial institution or an insurance company;
- whose turnover (excluding other income) does not exceed **Rs.250 crore** (*earlier Rs. 50 crore*) in the immediately preceding accounting year;
- which does not have borrowings (including public deposits) in excess of **Rs. 50 crore** (*earlier Rs. 10 crore*) at any time during the immediately preceding accounting year; and
- which is not a holding or subsidiary company of a company which is not a SMC

For the purpose of this clause, a company would qualify as a SMC, if the conditions mentioned therein are satisfied as at the end of the relevant accounting period.

▪ Accounting Standard

The Central Government specifies Accounting Standards 1 to 5, 7 and 9 to 29 as recommended by the ICAI which are specified in the Annexure to these Rules.

Every Company, other than companies on which Indian Accounting Standards (**Ind AS**) as notified under Companies (Ind AS) Rules, 2015 are applicable, and its auditor(s) should comply with the Accounting Standards in the manner specified in the Annexure.

▪ Exemption

An existing company, which was previously not a SMC and subsequently becomes a SMC, will not be qualified for exemption or relaxation in respect of Accounting Standards available to SMC until the company remains a SMC for 2 constitutive accounting periods.

Circulars

Clarification on spending CSR funds for setting up makeshift hospitals and temporary COVID care facilities

[Circular No.5/2021 dated 22nd April 2021](#)

The MCA has clarified that spending of Corporate Social Responsibility (CSR) funds for 'setting up makeshift hospitals and temporary COVID care facilities' is an eligible CSR activity under items of Schedule VII of the Companies Act, 2013 relating to promotion of health care, including preventive health care and disaster management

This is in continuation to [Circular No. 10/2020 dated 23rd March 2020](#) wherein it was clarified that spending of CSR funds for COVID-19 is an eligible CSR activity.

Clarification on spending CSR funds for 'creating health infrastructure for COVID care', 'establishment of medical oxygen generation and storage plants' etc.

[Circular No.9/2021 dated 5th May 2021](#)

The MCA has clarified that spending of CSR funds for 'creating health infrastructure for COVID care', 'establishment of medical oxygen generation and storage plants', 'manufacturing and supply of Oxygen concentrators, ventilators, cylinders and other medical equipment for countering COVID-19' or similar such activities are eligible CSR activities under item nos. (i) and (xii) of Schedule

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VII of the Companies Act, 2013 relating to promotion of health care, including preventive health care, and disaster management respectively.

Frequently Asked Question (FAQ) on Accounting for amounts to be incurred towards CSR pursuant to the Companies (CSR) Amendment Rules, 2021

[Dated 9th May 2021](#)

The ICAI has issued the above FAQ which clarifies that –

- CSR expenditure would be recognised as an expense in the Statement of Profit and Loss and when such expenditure is incurred on the CSR activities as per the Board approved CSR policy and CSR projects during the financial year (FYs).
- For the unspent amount”, a legal obligation arises to transfer to specified unspent CSR accounts depending upon the fact whether such unspent amount relates to ongoing projects or not. Therefore, liability needs to be recognised for such “unspent amount” as at the end of the FY as per para 17(a) of Ind AS 37

Further, as per Ind AS 34 *Interim Financial Statements*, CSR obligation will be recognised based on the principles for recognition of the same in annual FS.

Clarification on offsetting the excess CSR spent for FY 2019-21

[Circular dated 20th May 2021](#)

The MCA has clarified that that where a company has contributed any amount to ‘PM CARES Fund’ on 31st March 2020, which is over and above the minimum amount as prescribed under Section 135(5) of the Act for FY 2019-20 (i.e., 2% of the average net profit), and such excess amount or part thereof is offset against the mandatory CSR obligation for FY 2020-21 in terms of the MCA appeal, then the same will not be viewed as a violation subject to the conditions that-

- the amount offset as such should have factored

the unspent CSR amount for previous FY, if any;

- the Chief Financial Officer should certify that the contribution to “PM CARES Fund” was indeed made on 31st March 2020 in pursuance of the appeal and the same should also be so certified by the statutory auditor of the company; and
- the details of such contribution should be disclosed separately in the Annual Report on CSR as well as in the Board’s Report for FY 2020-21 in terms of section 134 (3) (o) of the Act

Relaxation on levy of additional fees in filing of certain Forms under the Companies Act, 2013 and LLP Act, 2008

[Circular No.06/2021 dated 3rd May 2021](#) and [Circular No.11/2021 dated 30th June 2021](#)

The MCA has granted additional time up to 31st August 2021 for companies/LLPs to file such forms (other than Form CHG-1 -Application for registration of creation, modification of charge (other than those related to debentures), Form CHG-4 -Form for filing particulars for satisfaction of charge thereof, and Form CHG-9 -Application for registration of creation or modification of charge for debentures or rectification of particulars filed in respect of creation or modification of charge for debentures) without any additional fees. Accordingly, no additional fees will be levied up to 31st August 2021 for the delayed filing of forms (other than charge related forms referred above) which were/would be due for filing during 1st April 2021 to 31st July 2021. For such delayed filings up to 31st August 2021 only normal fees will be payable.

Relaxation of time for filing Forms related to creation or modification of Charges under the Companies Act, 2013

[Circular No.7/2021 dated 3rd May 2021](#) and [Circular No. 12/2021 dated 30th June 2021](#)

The MCA has decided to allow relaxation of time and condone the delay in filing Forms related to

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creation/modification of Charges as per details given below-

▪ **Applicability**

It will be applicable in respect of filing of Form No. CHG-1 and Form No. CHG-9 by a company or a charge holder, where the date of creation/modification of charge-

- a) is before 1st April 2021, but the timeline for filing such form had not expired under Section 77 of the Act as on 1st April 2021, or
- b) falls between 1st April 2021 to 31st July 2021

▪ **Relaxation of time**

For (a) above, the 1st day after 31st March 2021 will be reckoned as 1st August 2021 for calculating the days under Section 77 of the Act. For (b) above, the 1st day after the date of creation/modification of charge will be reckoned as 1st August 2021 for calculating days under Section 77 of the Act.

▪ **Non- Applicability**

This Circular will not apply , in case-

- The forms i.e.CHG-1 and CHG-9 has already been filed before the date of issue of this Circular.
- The timeline for filing the form has already expired under Section 77 or Section 78 of the Act prior to 1st April 2021.
- The timeline for filing the form expires at a future date, despite exclusion of the time provided above.
- Filing of Form CHG-4 for satisfaction of charges

ICAI has also issued Frequently Asked Questions on the above Circular. [Read more](#)

Gap between two Board Meetings under Section 173 of the Companies Act, 2013

[Circular No. 8/2021 dated 3rd May 2021](#)

The MCA has extended the gap between two consecutive Board Meetings to 180 days (*earlier 120 days*) during the Quarters-April to June 2021 and July to September 2021.

Clarification on passing or ordinary and special resolutions by companies under the Act read with Rules made thereunder on account of COVID-19

[Circular No. 10 dated 23rd June 2021](#)

The MCA has permitted companies to conduct their Extra Ordinary General Meetings (EGMs) through VC or OAVM or transact items through the postal ballot up to 31st December 2021 (*earlier 30th June 2021*).

Securities and Exchange Board of India (SEBI)

SEBI (Listing Obligations and Disclosure Requirements (LODR)) Regulations, (2nd Amendment) Regulations, 2021

[Regulation dated 5th May 2021](#)

SEBI has amended the LODR Regulations, *inter alia*, the amendments include the following –

▪ **Secretarial Audit and Secretarial Compliance Report**

Every listed entity and its material unlisted subsidiaries incorporated in India is required to undertake secretarial audit and annex a Secretarial Audit Report given by a Company Secretary in practice with the Annual Report of the listed entity. This report has to be submitted to the stock exchange within 60 days from the end of each FY.

▪ **Disclosure of deviation or variations**

A listed company is required to submit to the stock exchange, a statement of deviation or variation from the monitoring agency within 45 days from the end of each quarter.

▪ **Disclosure of events or information**

In case of Board Meetings being held for more than one day, the financial results should be disclosed within 30 minutes of end of the meeting for the day on which it has been considered.

▪ **Annual Report**

Top 1,000 listed entities based on market capitalization, have to submit Business Responsibility and Sustainability Report (BRSR) which replaces the existing Business

Responsibility Report (BRR). It has been made mandatorily applicable from FY 2022-23 onwards and will be voluntary for FY 2021-22. (Also refer the Circular mentioned below)

The provisions of Amended LODR Regulations which becomes applicable to listed entities by market capitalisation will continue to apply even if they fall below such thresholds

SEBI Business Responsibility and Sustainability Reporting by listed entities

[Circular No. SEBI/HO/CFD/CMD-2/P/CIR/2021/562 dated 10th May 2021](#)

Pursuant to the decision taken at SEBI Board meeting dated 25th March 2021 on introducing new sustainability related reporting requirements, SEBI has issued a Circular containing the format of the BRSR. **With effect from the FY 2022-2023, filing of BRSR will be mandatory for the top 1,000 listed companies (by market capitalization) and will replace the existing BRR.** Filing of BRSR is voluntary for the FY 2021-22.

Format of Compliance Report on Corporate Governance by Listed Entities

[Circular No. SEBI/HO/CFD/CMD-2/P/CIR/2021/567 dated 31st May 2021](#)

In order to bring about transparency and to strengthen the disclosures around loans/guarantees/comfort letters/ security provided by the listed entity, directly or indirectly to promoter/promoter group entities or any other entity controlled by them, SEBI has decided to mandate such disclosures on a half yearly basis in the Compliance Report on Corporate Governance. The given revised format of disclosure will be **effective from FY 2021-22.**

SEBI Board Meeting

[PR No. 22/2021 dated 29th June 2021](#)

At the Board Meeting held on 29th June 2021, SEBI, *inter alia*, approved the amendments to SEBI LODR pertaining to regulatory provisions

related to Independent Directors (IDs), which, among others, includes the following-

- **Appointment /Re-appointment and Removal of ID**
 - Appointment/Re-appointment and Removal of IDs should be through a special resolution of shareholders for all listed entities.
 - Shareholder approval for appointment of all directors including IDs should be taken at the next General Meeting, or within 3 months of the appointment on the Board, whichever is earlier.
- The composition of Nomination and Remuneration Committee (NRC) has been modified to include 2/3rd IDs instead of existing requirement of majority of IDs
- **Eligibility requirement**
 - There should be a cooling off period of 3 years for Key Managerial Personnel (and their relatives) or employees of the promoter group companies, for appointment as an ID.
 - Relatives of employees of the company, its holding, subsidiary or associate company are permitted to become IDs, without the requirement of a cooling off period, in line with Companies Act, 2013.
- **Resignation of ID**
 - The entire resignation letter of an ID should be disclosed along with a list of her/his present directorships and membership in Board Committees.
 - A cooling-off period of 1 year has been introduced for an ID transitioning to a whole-time director in the same company/ holding/ subsidiary/ associate company or any company belonging to the promoter group
- **Audit Committee (AC)** -At least 2/3rd of the members of the AC should be ID and all related party transactions should be approved by only ID on the AC.

These amendments will be **applicable with effect from 1st January 2022.**

ICAI Releases

Technical Guide on Incorporation of Foreign Companies in India

Dated 3rd July 2021

This Guide provides detailed guidance on the procedural aspects relating to incorporation of foreign companies in India. Requisite procedural formalities along with relevant legal inputs have also been included. It provides insights into the various provisions under the Companies Act, 2013 that governs the foreign company incorporation in India. The publication *inter alia* covers the FAQs and important points to be taken care by foreign companies which will further assist them in complying with the legal and procedural responsibilities while incorporating a foreign business in India.

Guidance Note on Accounting for Derivative Contracts (Revised 2021)

Dated 6th July 2021

The objective of this Guidance Note (GN) is to provide guidance on recognition, measurement, presentation and disclosure for derivative contracts so as to bring uniformity in their accounting and presentation in the FS. It also provides accounting treatment for such derivatives where the hedged item is covered under notified Accounting Standards (AS), e.g., a commodity, an investment, etc., because except AS 11, no other notified AS prescribes any accounting treatment for derivative accounting. This GN, however, does not cover foreign exchange forward contracts which are within the scope of AS 11. This GN is an interim measure to provide recommendatory guidance on accounting for derivative contracts and hedging activities considering the lack of mandatory guidance in this regard with a view to bring about uniformity of practice in accounting for derivative contracts by various entities.

This GN will apply to all entities that do not apply Ind AS.

Ind AS

For development in Ind AS refer [CNK IFRS/Ind AS Update, July 2021](#)

KEY TAKE AWAY

- MCA's move to allow companies to attend Board Meetings virtually will ease the burden on companies to hold physical meetings even beyond the pandemic and will help ease of doing business.
- Increase in turnover and borrowing thresholds in the definition of SMC is a welcome step. It will help several companies and promote ease of doing business.
- Due to the resurgence of COVID-19, the extensions granted by the MCA for filing certain Forms will relieve some of the compliance burdens on Corporates and LLP's.
- The revised BRSR is expected to bring in greater transparency and enable market participants to identify and assess sustainability-related risks and opportunities.
- SEBI's move to overhaul the norms pertaining to appointment , removal and remuneration of ID are aimed at reducing the influence of promoters and giving more say to shareholders. It has also given more power to IDs since both NRC and AC will have 2/3rd IDs in its composition instead of simple majority.



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