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Chinki Singhal and Associates

+91 - 9050320565

www.csassociate.com

chinki.singhal@csassociate.com

DG-3/ 263 Vikaspuri Delhi - 110018

MCA UPDATES FOR THE MONTH OF NOVEMBER 2019

RULES

1. Companies Meeting of Board and its Powers Second Amendment Dated 18 Nov 2019 (November 18, 2019)

MCA has notified the Companies (Meetings of Board and its Powers) Second Amendment Rules, 2019 which shall come into force on the date of their publication in the Official Gazette i.e 18-11-2019. Amendments are carried out in Rule 15 (3) (a) of the Companies (Meetings of Board and its Powers) Rules, 2014 to ease down the requirements of obtaining approval of the shareholders for any related party transactions. Accordingly, the threshold limit for obtaining prior approval of members, whenever exceeding the limit entering any transaction with the related party as provided under Section 188 of the Companies Act, 2013 read with Rule 15 has been amended. Now the limit has been confined/limited to "10% of the turnover of the Company" only and no monetary ceiling of Rs. 100 cr/50 cr shall be required to be checked while making compliances of such provisions.

For More Information: -

http://www.mca.gov.in/Ministry/pdf/Comp2Amndt_18112019.pdf

2. National Company Law Tribunal (Salary Allowances and other Terms and Conditions of Service of President and other Members) Amendment Rules, 2019.
(November 28, 2019)

These rules may be called the National Company Law Tribunal (Salary, Allowances and other Terms and Conditions of Service of President and other Members) Amendment Rules, 2019. They shall come into force on the date of their publication in the Official Gazette i.e. November 28, 2019. In the National Company Law Tribunal (Salary, Allowances and other terms and conditions of service of President and other Members) Rules, 2015, after rule 15, the rule 15A is inserted

For More Information: -

http://www.mca.gov.in/Ministry/pdf/ActRules_28112019.pdf

CIRCULARS

1. General Circular 14/2019 **(November 27, 2019)**

MCA has notified the extension of the last date of filing of Form NFRA-2. The Ministry of Corporate Affairs has received several representations regarding extension of the last date of filing of Form NFRA-2, which is required to be filed under rule 5 of the National Financial Reporting Authority Rules, 2018. 2. MCA has decided to extend the time limit for filing Form NFRA-2 will be 90 days from the date of deployment of this form on the website of National Financial Reporting Authority (NFRA).

For More Information:-

http://www.mca.gov.in/Ministry/pdf/NFRA_27112019.pdf

2. General Circular 15/2019 **(November 28, 2019)**

MCA has notified the Relaxation for additional fees and extension of last date in filing of forms MGT-7 (Annual Return) and AOC-4 (Financial Statement) under the Companies Act, 2013- UT of J & K and UT of Ladakh. On the basis of the representations received from various stakeholders stating that due to disturbances in internet services and the normal work was affected in the UT of J&K and UT of Ladakh and sought an extension of time for filing of financial statements for the financial year ended 31.03.2019. MCA has decided to extend the due date for filing of e-forms AOC-4, AOC-4 (CFS) AOC-4 XBRL and e-form MGT-7 upto 31.01.2020, for companies having jurisdiction in the UT of J&K and UT of Ladakh without levy of additional fee.

For More Information:-

http://www.mca.gov.in/Ministry/pdf/MGTAnnualReturnAOC4FinancialStatement_28112019.pdf

3. General Circular 16/2019
(November 28, 2019)

MCA extends the last date of filing of Form PAS-6 (Reconciliation of Share Capital Audit Report – Half yearly) without additional fees for the half-year ended on 30.09.2019 will be sixty days from the date of deployment of this form on the website of the Ministry. The Ministry has received representations regarding extension of the last date of filing of Form PAS-6 under rule 9A(8) of the Companies (Prospectus and Allotment of Securities) Rules, 2014. Earlier this year MCA has notified that the first such report in Form PAS – 6 shall be filed for the half year ending on 30-09-2019 within 60 days i.e by 30-11-2019.

For More Information:-

http://www.mca.gov.in/Ministry/pdf/FormPAS6_28112019.pdf

NOTIFICATIONS

1. Corrigendum to Amendment of Schedule VII of the Companies Act, 2013
(November 19, 2019)

In the notification of the Government of India in the Ministry of Corporate Affairs number G.S.R. 776(E), dated the 11th October, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), dated the 11th October, 2019, at page 2, in line 14, for “Defence Research and Development Organisation (DRDO)”, read “Defence Research and Development Organisation (DRDO), Department of Biotechnology (DBT),”

For More Information:-

http://www.mca.gov.in/Ministry/pdf/Notification_28112019.pdf

General

1. The MCA has come out with an online Compliance Monitoring System (MCACMS Portal) for issuing show-cause notices and submitting replies from companies/directors for non-compliance under provisions of Companies Act, 2013.

MCACMS Portal has already started sending show cause notices for certain violations by email to the Company /Director / Company Secretary. The show-cause notice will carry a CMS reference Number such as F.No. D/RCXXX/XXX/2019/XX/YY-YY. The notice will also carry details of non-compliances under which section the notice is issued and the timelines for submitting the reply.

The Company is required to serve a copy of the said notice to the directors/KMPs and the notice will be treated as deemed to have been served upon every officer in default of the company in terms of the Companies Act, 2013. The recipient of showcase notice has to submit a reply at the portal referring to the CMS Reference Number within 15 days from the date the notice. If no reply is filed by the Company / Director, it will be presumed that the company has nothing to say in the matter and the Register of Companies shall initiate penal action for violation of sections referred to in the show-cause notice.

For filing reply, the concerned director is required to logon to the Portal at MCACMS Portal and link Reply for Show Cause Notice, and to input CMS reference Number in the required column. An OTP will be sent to the email where the notice is served. Reply or the aid notice can be submitted in not more than 500 words in the prescribed field and If the reply is more than 500 words, it is advisable to print the same on Company letterhead and authenticated by a Director / Company Secretary and attach the same to the portal as a separate file.

For More Information : -

[https://mcacms.gov.in/assets/How to file Reply.pdf](https://mcacms.gov.in/assets/How_to_file_Reply.pdf)

2. The Company Law Committee was constituted by the Ministry of Corporate Affairs in September, 2019, inter-alia, to further decriminalize the provisions of the Companies Act, 2013 based on their gravity and to take other concomitant measures to provide further Ease of Living for corporates in the country. **The report of the Committee was presented by Secretary, Ministry of corporate affairs to the Hon'ble Union Minister of Finance and Corporate Affairs on 18th November, 2019, upon which, the report has been placed on the website of the Ministry for public comments.** Comments on the recommendations of the Committee along with justifications in brief may be sent latest by 25.11.2019 through email at comments.clc2019@mca.gov.in, in the following format. In view of the time-bound nature of activities scheduled by the Ministry, stakeholders are requested to forward their comments positively by the said date.

RULES

1. The Insolvency and Bankruptcy (Application to Adjudicating Authority for Bankruptcy Process for Personal Guarantors to Corporate Guarantors) Rules, 2019

The Ministry of Corporate Affairs (MCA) has come up with specific rules extending the scope of IBC to personal guarantors of corporate Guarantors and accordingly notified the Insolvency and Bankruptcy (Application to Adjudicating Authority for Bankruptcy Process for Personal Guarantors to Corporate Guarantors) Rules, 2019 which shall be applicable from 01-12-2019. These rules would benefit both the banks and the personal guarantors, minimising litigation, will help bring much-needed borrowing discipline and propel a cultural change in banking relationships.

For More Information:-

https://www.ibbi.gov.in/webadmin/pdf/whatsnew/2019/Nov/213963-32-73_2019-11-16%2000:23:12.pdf

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

The Ministry of Corporate Affairs (MCA) has come up with specific rules extending the scope of IBC to personal guarantors of corporate debtors and accordingly notified the Insolvency and Bankruptcy (Application to Adjudicating Authority for insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 which shall be applicable from 01-12-2019. These rules would benefit both the banks and the personal guarantors, minimising litigation, will help bring much-needed borrowing discipline and propel a cultural change in banking relationships.

For More Information:

https://www.ibbi.gov.in/webadmin/pdf/whatsnew/2019/Nov/213963-1-31_2019-11-16%2000:23:02.pdf

3. *The Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019.*

MCA notifies Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial service providers and Application to Adjudicating Authority) Rules, 2019 which shall come into force on the date of their publication on the official gazette. Rules provide a generic framework for insolvency and liquidation proceedings of systemically important Financial Service Providers (FSPs) other than banks. The Rules shall apply to such FSPs or categories of FSPs, as will be notified by the Central Government under section 227 from time to time in consultation with appropriate regulators, for the purpose of their insolvency and liquidation proceedings. The Rules provide that the provisions of the Code relating to the Corporate Insolvency Resolution Process (CIRP), Liquidation Process and Voluntary Liquidation Process for a corporate debtor shall, mutatis mutandis, apply to a process for an FSP, subject to certain modifications such as The CIRP of an FSP shall be initiated only on an application by the appropriate regulator. On admission of the application, the Adjudicating Authority shall appoint the individual, who has been proposed by the appropriate regulator in the application for initiation of CIRP, as the Administrator. The FSP shall obtain the prior permission of the appropriate regulator for initiating voluntary liquidation proceedings. The Adjudicating Authority shall provide the appropriate regulator an opportunity of being heard before passing an order for liquidation or dissolution of the FSP

For More Information:

<https://www.ibbi.gov.in/uploads/legalframework/cb1d53c7fe47f8f22ab36a40f441db2c.pdf>

NOTIFICATIONS

1. Notification - For personal Guarantor to Corporate Debtor (November 15, 2019)

In exercise of the powers conferred by sub-section (3) of section 1 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Central Government hereby appoints the 1st day of December, 2019 as the date on which the following provisions of the said Code only in so far as they relate to personal guarantors to corporate debtors, shall come into force:—

- (1) clause (e) of section 2;
- (2) section 78 (except with regard to fresh start process) and section 79;
- (3) sections 94 to 187 [both inclusive];
- (4) clause (g) to clause (i) of sub-section (2) of section 239;
- (5) clause (m) to clause (zc) of sub-section (2) of section 239;
- (6) clause (zn) to clause (zs) of sub-section (2) of section 240; and
- (7) section 249.

For More Information:

http://www.mca.gov.in/Ministry/pdf/Notification_18112019.pdf

2. Notification of Categories of Financial Service Providers (November 18, 2019)

The MCA has issued a notification specifying the categories of financial service providers (FSPs) that can be taken up for resolution under the "generic framework" of the Insolvency and Bankruptcy Code. The introduction of the "generic framework" comes against the backdrop of the ongoing liquidity crisis in the non-banking financial companies (NBFCs) that has also sparked concerns about the overall stability of the financial sector. Non-banking finance companies (which include housing finance companies) with asset size of Rs 500 crore or more, as per last audited balance sheet, can be taken up for insolvency resolution and liquidation proceedings under the Code. The Reserve Bank can now seek resolution of non-banking financial companies having assets worth of at least Rs 500 crore under the insolvency law, a move that is likely to help in addressing woes in the NBFC sector. Section 227 of the Code enables the central government to notify, in consultation with the financial sector regulators, FSPs or categories of FSPs for the purpose of insolvency and liquidation proceedings.

For More Information:

http://www.mca.gov.in/Ministry/pdf/NotificationFSPs_18112019.pdf

General

1. **IBBI has issued discussion paper for the purpose of discussion on two issues relating to liquidation process under the Insolvency and Bankruptcy Code, 2016 (Code).** Issues highlighted includes Relinquishment of Security Interest in Corporate Liquidation Process and Applicability of section 29A of the Code to Compromise and Arrangement. The proposals are aiming to achieve the objectives of the Code by expediting the liquidation process and balancing the interest of all stakeholders. This is issued in pursuance to regulation 4 of the Insolvency and Bankruptcy Board of India (Mechanism for Issuing Regulations) Regulations, 2018. The Board accordingly solicits comments on the discussion paper; and any specific regulations in the draft Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2019 which is also placed for feedback.
2. **The Insolvency and Bankruptcy Board of India (IBBI) notified the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons)(Third Amendment) Regulations, 2019 which shall come into force on the date of their publication in the Official Gazette i.e 27th November, 2019.** The Insolvency and Bankruptcy Code, 2016 (Code) envisages corporate insolvency resolution process (CIRP) for reorganisation and insolvency resolution of corporate debtors. An insolvency professional conducts the CIRP and manages its operations during the CIRP. Keeping in view the responsibilities of the IPs and the importance of CIRP, the Code casts an obligation on the IBBI and the IPA to monitor performance of IPs, and to collect, maintain and disseminate information and records relating to insolvency process of corporate debtors. It also casts an obligation on IPs to forward/submit certain information and records relating to CIRP to the IPA and IBBI. In the interest of transparency and accountability in conduct of CIRPs and conduct of the IPs, and to facilitate the IBBI, the IPAs and the IPs to discharge of their statutory obligations, the Amendment Regulations require the IPs to file a set of Forms, covering the life cycle of a CIRP, online on an electronic platform hosted on the website of the IBBI.

Hope the information will assist you in your Professional endeavours. In case of any query / information, please do not hesitate to write back to us at E: pcschinki@gmail.com and M: +91 9050320565.

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Best Regards '



Chinki Singhal | Company Secretary

Reg. Off. | DG-3/263, Vikaspuri | Delhi 110018

M: +91-9050320565

E: chinki.singhal@csassociate.com | W: www.csassociate.com

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