

COMPANY LAW

INTRODUCTION

MCA has further amended the Exemptions notification no: G.S.R. 463(E), dated 5th June, 2015 related to Government Companies vide notification no: G.S.R. 151(E), dated 02nd March, 2020.

<u>Before Amendment (Earlier)</u>	<u>After Amendment (Now)</u>
<p>“Government Company” means any company in which not less than fifty one per cent of the paid-up share capital is held by;-</p> <p>(a) the Central Government, or</p> <p>(b) by any State Government or Governments, or</p> <p>(c) partly by the Central Government and partly by one or more State Governments, and includes a company which is a subsidiary company of such a Government company;</p>	<p>(i) With this amendment the following new explanation is inserted in the definition of Government Company as per Section 2(45) of the Companies Act, 2013:</p> <p><i>Explanation-</i> For the purposes of this clause, the "paid up share capital" shall be construed as "total voting power", where shares with differential voting rights have been issued.</p> <p>Impact</p> <p><i>With this insertion more clarity has been given to the definition of Government Company which has issued the Shares with the differential voting rights.</i></p> <p>(ii) The Serial Number 1 and entries relating thereto of notification number G.S.R.463 (E), dated 5th June, 2015, has been renumbered as Serial Number 1A.</p>

Notification No: G.S.R. 372(E)-The Companies (Share Capital and Debentures) Amendment Rules, 2020, dated 5th June, 2020

<u>Before Amendment (Earlier)</u>	<u>After Amendment (Now)</u>
	<p>(i) In Rule 8, in sub-rule (4), in the second proviso of the Companies (Share Capital and Debentures) Rules, 2014, MCA has substituted the old definition of startup-company which was issued by the Department of Industrial Policy and Promotion (DIPP) vide Notification No. G.S.R. 180(E) dated 17th February, 2016 with the new definition as issued by the Department for Promotion of Industry and Internal Trade (DPIIT) vide Notification No. G.S.R. 127(E) dated 19th February, 2019.</p> <p>(ii) In Rule 8(4) in the second proviso of the Companies (Share Capital and Debentures) Rules, 2014 for the words:</p> <p>"five years"</p> <p><i>The following shall be substituted</i></p> <p>"ten years"</p> <p>Post Amendment Second proviso to Rule 8(4) of the Companies (Share Capital and Debentures) Rules,</p>

	<p>2014 shall be read as under:</p> <p>A startup company as defined in notification number G.S.R. 127(E), dated the 19th February, 2019 issued by the Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, Government of India, may issue sweat equity shares not exceeding 50% of its paid-up capital upto 10 (ten) years from the date of its incorporation or registration. <i>(Earlier the time period was upto 5 (five) years from the date of incorporation or registration.)</i></p>
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DEPOSIT

MCA Notification No: G.S.R. 372(E)-The Companies (Share Capital and Debentures) Amendment Rules, 2020, dated 5th June, 2020

(iii) In Rule 18 (7), in clause (b), for sub-clause (v) of the Companies (Share Capital and Debentures) Rules, 2014, the following shall be substituted namely:

<u>Before Amendment (Earlier)</u>	<u>After Amendment (Now)</u>
	<p>"(v) In case a company is covered in item (A) of sub-clause (iii) of clause (b) or item (B) of subclause (iv) of clause (b), it shall on or before the 30th day of April in each year, in respect of debentures issued by such a company, invest or deposit, as the case may be, a sum which shall not be less than fifteen percent., of the amount of its debentures maturing during the year, ending on the 31st day of March of the next year in any one or more methods of investments or deposits as provided in sub-clause (vi)</p> <p>Provided that the amount remaining invested or deposited, as the case may be, shall not any time fall below fifteen percent. of the amount of the debentures maturing during the year ending on 31st day of March of that year."</p> <p>Impact</p> <p><i>The requirement of investment or deposit, of a sum by a company which shall not be less than fifteen percent., of the amount of its debentures maturing during the year, ending on the 31st day of March of the next year on or before the 30th day of April in each year, in respect of debentures issued by such a company, is not</i></p>

applicable on privately placed debentures by the Listed NBFCs and for Housing Finance Companies and other listed companies.

CORPORATE SOCIAL RESPONSIBILITY (CSR)

General Circular No.10/2020, Clarification on spending of CSR funds for COVID-19 dated 23rd March, 2020

<u>Before Amendment (Earlier)</u>	<u>After Amendment (Now)</u>
New Concept	<p>Ministry of Corporate Affairs has clarified, that spending of CSR funds for COVID-19 is eligible CSR activity.</p> <p>Funds may be spent for various activities related to COVID-19 under item nos. (i) and (xii) of Schedule VII relating to promotion of health care, including preventive health care and sanitation, and, disaster management. Further, as per General Circular No. 21/2014 dated 18th June, 2014, items in Schedule VII are broad based and may be interpreted liberally for this purpose.</p>

MCA vide Notification No: G.S.R. 313(E), dated 26th May, 2020 has made following Amendment in item no (viii) in the Schedule VII of the Companies Act,2013,

<u>Before Amendment (Earlier)</u>	<u>After Amendment (Now)</u>
	<p>In Schedule VII, item (viii), after the words “Prime Minister’s National Relief Fund”, the words “or Prime Minister’s Citizen Assistance and Relief in Emergency Situations Fund (PM CARES Fund)” shall be inserted.</p> <p>This notification shall be deemed to have come into force on 28th March, 2020.</p> <p>Impact</p> <p><i>The PM-CARES Fund has been set up to provide relief to those affected by any kind of emergency or distress situation. Accordingly, With this amendment any contribution made to the PM CARES Fund shall qualify as CSR expenditure under the Companies Act 2013 w.e.f. 28.03.2020.</i></p>

Notification No: G.S.R. 399(E) Amendment in Schedule VII of the Companies Act, 2013, dated 23rd June, 2020

<u>Before Amendment (Earlier)</u>	<u>After Amendment (Now)</u>
	MCA vide notification dated 23 rd , June 2020 made further amendment in Schedule VII in item no. (vi) included the measures for the benefit of Central Armed Police Forces (CAPF) and Central Para Military Forces (CPMF) veterans, and their dependents including widows , in the Corporate Social Responsibility activities under schedule VII of the Companies Act, 2013.

ACCOUNTS

MCA vide Notification no: G.S.R.13 (E)-The Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules 2020, dated 03rd January, 2020 has amended Rule 9(1) of the Companies (Appointment and Remuneration of Managerial Personnel) Rules 2014.

<u>Before Amendment (Earlier)</u>	<u>After Amendment (Now)</u>
	With this insertion in Rule 9(1) of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, now every company having outstanding loans or borrowings from banks or public financial institutions of one hundred crore rupees or more is also required to annex the Secretarial Audit report with its Boards Report. MCA has also clarified that for the purpose of this rule paid up share capital, turnover, or outstanding loans or borrowings as the case may be, existing on the last date of latest audited financial statement shall be taken into account.

The Companies (Auditor's Report) Order, 2020 dated 25th February 2020.

<u>Before Amendment (Earlier)</u>	<u>After Amendment (Now)</u>
	MCA vide notification dated 25 th February, 2020 has notified the Companies (Auditor's Report) Order, 2020. Vide this notification, the CARO Report, 2020 would have been

	<p>applicable from the financial year 2019-20. But due to outbreak of COVID-19, in order to ease the burden on companies & their auditors for the financial year 2019-20, the Government has decided that the Companies (Auditor's Report) Order, 2020 shall be made applicable from financial year 2020-21, instead of being applicable from the financial year 2019-20 as notified earlier.</p>
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AN OVERVIEW OF INTER-CORPORATE LOANS

MCA has Further Amended the Exemptions notification no: G.S.R. 463(E), dated 5th June, 2015 related to Government Companies vide notification no: G.S.R. 151(E), dated 02nd March, 2020.

For serial number 26 relating to Chapter XII, first and second proviso to Section 188 (1) and the entries relating thereto of exemption notification number G.S.R.463(E), dated 5th June, 2015, the following entries has been substituted as under:

<u>Before Amendment (Earlier)</u>	<u>After Amendment (Now)</u>
	<p>First and Second proviso to Section 188 (1) shall not apply to –</p> <p>(a) A Government company in respect of contracts or arrangements entered into by it with any other Government company, or with Central Government or any State Government or any combination thereof;</p> <p>(b) A Government company, other than a listed company, in respect of contracts or arrangements other than those referred to in clause (a), in case such company obtains approval of the Ministry or Department of the Central Government which is administratively in charge of the company, or, as the case may be, the State Government before entering into such contract or arrangement.</p> <p>Impact <i>Before this amendment the contracts or arrangements with any other Government Company is only exempted, with this amendment the exemption is also extended to the contracts or arrangements with the Central Government or any State Government or any combination thereof.</i></p>

WINDING-UP OF COMPANIES

Notification no: G.S.R. 46(E) - The Companies (Winding Up) Rules 2020, dated 24th January, 2020 (effective from 1st day of April, 2020).

<u>Before Amendment (Earlier)</u>	<u>After Amendment (Now)</u>
	<p>MCA vide its notification dated 24th day of January 2020 published Companies (Winding-Up) Rules, 2020 laying down procedures for winding up by the Tribunal under Chapter XX of the Companies Act, 2013 which will be effective from 1st day of April 2020.</p> <p>The Companies (Winding Up) Rules 2020 provides rules for Winding up by Tribunal, Winding up by Tribunal (other than summary winding up) Debts and Claims against Company. The Winding up rules has also provided the Summary Procedure for Liquidation of Companies, Filing and Audit of Company Liquidator's Account etc.</p>

MCA vide Notification No: G.S.R. 79(E)-The Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2020, dated 03rd February, 2020 has amended the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

<u>Before Amendment (Earlier)</u>	<u>After Amendment (Now)</u>
	<p>MCA vide notification dated 3rd February, 2020, has introduced the Companies (Compromises, Arrangements, and Amalgamation) Amendment Rule, 2020 for further amending the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 wherein the norms for filing the application for arrangement is specified :</p> <p>As per the amended rules new sub-rule (5) has been inserted after sub-rule (4) in Rule 3, accordingly, a member of a company making an application for the arrangement pertaining to the takeover offer in terms of Section 230 (11) must fulfill two conditions namely:</p> <ul style="list-style-type: none"> • such member along with any other member shall hold not less than three-fourths of the shares in the company, and

	<ul style="list-style-type: none"> • such application has been filed for the purpose of acquiring any part of the remaining shares of the company. <p>Further, the amendment also provides for the norms pertaining to the contents of the application. An application of arrangement for takeover offer shall contain:-</p> <p>The report of a registered valuer disclosing the details of the valuation of the shares proposed to be acquired by the member after taking into account the following factors:—</p> <p>(i) the highest price paid by any person or group of persons for acquisition of shares during last twelve months;</p> <p>(ii) the fair price of shares of the company to be determined by the registered valuer after taking into account valuation parameters including return on net worth, book value of shares, earning per share, price earning multiple vis-à-vis the industry average, and such other parameters as are customary for valuation of shares of such companies</p> <p>The application filed by a member must contain the details of a bank account, to be opened separately, by the member wherein a sum of amount not less than one-half of total consideration of the takeover offer is deposited.</p>
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Commencement Notification of Section 230 (11) & (12) of the Companies Act, 2013, 3rd February, 2020

<u>Before Amendment (Earlier)</u>	<u>After Amendment (Now)</u>
	<p>In exercise of the powers conferred by sub-section (3) of section 1 of the Companies Act, 2013 (18 of 2013), the Central Government hereby appoints the 03rd February, 2020 as the date on which the provisions of sub-sections (11) and (12) of section 230 of the Companies Act, 2013 shall come into force.</p>

AN INTRODUCTION TO MCA 21 AND FILING IN XBRL

Notification No: G.S.R.60(E)-The Companies (Accounts) Amendment Rules, 2020, dated 30th January, 2020

<u>Before Amendment (Earlier)</u>	<u>After Amendment (Now)</u>
	<p>In the Companies (Accounts) Rules, 2014 in rule 12, after sub-rule (1), the following subrule shall be inserted, namely:—</p> <p>(1A) Every Non-Banking Financial Company (NBFC) that is required to comply with Indian Accounting Standards (Ind AS) shall file the financial statements with Registrar together with Form AOC-4 NBFC (Ind AS) and the consolidated financial statement, if any, with Form AOC-4 CFS NBFC (Ind AS).</p>

Notification no: G.S.R. 81(E) NIDHI (Amendment) Rules 2020, dated 3rd February, 2020 (effective from 10th February, 2020).

<u>Before Amendment (Earlier)</u>	<u>After Amendment (Now)</u>
<p>NDH-1 NDH-2 NDH-3</p>	<p>New Forms were notified in place of existing NDH-1, NDH-2 & NDH-3.</p> <p>(a) FORM NO. NDH-I: Return of Statutory Compliances</p> <p>(b) FORM NO. NDH-2: Application for extension of time</p> <p>(c) FORM NO. NDH-3: Return of Nidhi Company for the half year ended</p>

Notification No: G.S.R.114(E)-NIDHI (Second Amendment) Rules, 2020, dated 14th February, 2020.

<u>Before Amendment (Earlier)</u>	<u>After Amendment (Now)</u>
<p>In the Nidhi Rules, 2014, in rule 23A, apply period was 3 months.</p>	<p>In the Nidhi Rules, 2014, in rule 23A, for the words “six months” the words “nine months” shall be substituted.</p> <p>Impact</p> <p><i>As per the amended rule 23A- every company referred to in clause (b) of Rule 2 of Nidhi Rules and every Nidhi incorporated under the Act, before the commencement of Nidhi (Amendment) Rules, 2019 i.e.15.08.2019, shall also get itself declared as Nidhi in accordance with rule 3A of Nidhi Rules,2014 within a period of one year from the date of its incorporation or within a period of nine months from the date of commencement of Nidhi (Amendment) Rules, 2019 i.e. 15.08.2019, whichever is</i></p>

	<p><i>later.</i> <i>(The period was initially 6 months from commencement of Nidhi (Amendment) Rules, 2019 which is hereby extended for another 3 months.)</i></p>
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Sensitization of Nidhi Companies towards compliance of provisions of Section 406 of Companies Act, 2013 and Nidhi Rules, 2014 as amended vide Nidhi (Amendment) Rules, 2019 w.e.f 15.08.2019 and general public to invest in genuine and compliant Nidhis only.

<u>Before Amendment (Earlier)</u>	<u>After Amendment (Now)</u>
	<p>In order to make regulatory regime for Nidhi Companies more effective and also to accomplish the objectives of transparency & investor friendliness in corporate environment of the country, the Central Government has recently amended the provisions related to NIDHI under the Companies Act, 2013 and the Rules (effective from 15.08.2019).</p> <p>Under Nidhi Rules, 2014, Nidhi is a company which has been incorporated as a Nidhi with the object of cultivating the habit of thrift and saving amongst its members, receiving deposits from, and lending to, its members only, for their mutual benefit.</p> <p>The amended provisions of the Companies Act (Section 406) and Nidhi rules (as amended w.e.f. 15.08.2019) require that the Nidhi companies have to apply to the Central government for updation of their status/declaration as Nidhi Company in Form NDH-4.</p> <p>The time-frame for applying to Central Government in form NDH-4 is as under:-</p> <p>(I) Companies incorporated as Nidhi before Nidhi Amendment Rules, 2019 i.e. 15.08.2019 have to apply within a period of one year from the date of its incorporation or within 9 months of the Nidhi Amendment Rules i.e. 15.08.2019 whichever is later.</p> <p>(II) Companies incorporated as Nidhi on or after Nidhi Amendment Rules, 2019 i.e. 15.08.2019 have to apply within 60 days of expiry of one year from the date of incorporation or extended period (as granted by concerned Regional Director).</p> <p>1) In case a company does not comply with the</p>

	<p>above requirements, it shall not be allowed to file Form No. SH-7 (Notice to Registrar for any alteration of share capital) and Form PAS-3 (Return of Allotment).</p> <p>2) Such companies are required to ensure strict adherence to provision of Companies Act, 1956/2013 and Nidhi Rules, 2014 as amended. In case of contravention of the provisions of these Rules, the company and every officer of the company who is in default shall initially be punishable with fine which may extend to five thousand rupees and further fine in case of continuous violations.</p> <p>3) Investors are advised to verify the status of Nidhi company from the notification issued by Central Government in official gazette before making any investment or deposit.</p>
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Notification Number G.S.R. 127(E)-The Companies (Registration Offices and Fees) Amendment Rules, 2020, dated: 18th February, 2020.

<u>Before Amendment (Earlier)</u>	<u>After Amendment (Now)</u>
	As per the Amendment Rules, Form No- GNL-2 [Pursuant to rule 12(2) of the Companies (Registration Offices and Fees) Rules, 2014] i.e. Form for submission of documents with the Registrar shall be substituted. New Form notified in place of existing GNL-2

Notification Number G.S.R. 128(E)-The Companies (Incorporation) Amendment Rules, 2020 (Effective from 23rd February, 2020)

<u>Before Amendment (Earlier)</u>	<u>After Amendment (Now)</u>
	<p>In the Companies (Incorporation) Rules, 2014, for rule 9, <i>The following rule shall be substituted, namely:-</i> Rule 9 of the Companies (Incorporation) Rules, 2014 -Reservation of name or change of name An application for reservation of name shall be made through the web service available at www.mca.gov.in by using web service SPICe+ (Simplified Proforma for Incorporating Company Electronically Plus: INC-32) and for</p>

change of existing name by using web service RUN (Reserve Unique Name) along with fee as provided in the Companies (Registration Offices and Fees) Rules, 2014, which may either be approved or rejected, as the case may be, by the Registrar, Central Registration Centre after allowing re-submission of such web form within fifteen days for rectification of the defects, if any, with effect from the 23rd February, 2020.

In rules 10, 12, sub-rule (1) of rule 19, sub-rules (1), (2), (3), (4), (7) and (9) of rule 38 of the Companies (Incorporation) Rules, 2014, for the words, “Form No INC-32 (SPICe), wherever they occur, the following words **“SPICe+ (Simplified Proforma for Incorporating Company Electronically Plus: INC -32)”** shall be substituted with effect from the 23rd February, 2020.

In Rule 38 of the Companies (Incorporation) Rules, 2014

In the marginal heading, for the word, **“Electronically (SPICE)”**, the words, **“Electronically Plus (SPICE +)”** shall be substituted with effect from the 23rd February, 2020.

In rule 38A of the Companies (Incorporation) Rules, 2014 –

(i) In the marginal heading for the words, **'and Employees' Provident Fund Organisation (EPFO) Registration** the following words, **“Employees' Provident Fund Organisation (EPFO) Registration and Profession Tax Registration and Opening of Bank Account”** shall be substituted.

(ii) for the letters “AGILE”, the letters “AGILE - PRO”, shall be substituted;

(iii) after clause (c), *the following clauses shall be inserted, namely: -*

“(c) Profession Tax Registration with effect from the 23rd February, 2020

(d) Opening of Bank Account with effect from 23rd February, 2020.”

Impact

As part of Government of India's Ease of Doing Business (EODB) initiatives, the

	<p><i>Ministry of Corporate Affairs has introduced a new Web Form 'SPICe+' w.e.f. 23rd February, 2020 replacing the existing SPICe form. SPICe+ is an integrated Web form offering multiple services viz.name reservation, incorporation, DIN allotment (Maximum 3 DIN), mandatory issue of PAN, TAN, EPFO registration, ESIC registration, Profession Tax registration (Maharashtra) and Mandatory opening of Bank Account for the Company. It also facilitates allotment of GSTIN wherever so applied for by the Stakeholders. After introduction of SPICe+ web form RUN is applicable only for the change of name of the existing companies.</i></p>
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Notification No: G.S.R. 170(E)-The Companies (Registration Offices and Fees) Second Amendment Rules, 2020, dated 12th March, 2020.

<u>Before Amendment (Earlier)</u>	<u>After Amendment (Now)</u>
	<p>In the Companies (Registration Offices and Fees) Rules, 2014, in the Annexure, in Form No. GNL-2.</p> <p>(i) in serial number 3, after item number "Form 159 of the Companies (Court) Rules,1959" <i>the following item shall be inserted, namely.-</i> "Filing under Insolvency and Bankruptcy Code, 2016".</p> <p>(ii) after the first verification column, the following shall be inserted, namely.- "Particulars of the person signing and submitting the form"</p> <p>Name <input style="width: 150px; height: 15px;" type="text"/></p> <p>Capacity <input style="width: 150px; height: 15px;" type="text"/></p>

Notification Number G.S.R.-169(E) - The Companies (Incorporation) Second Amendment Rules, 2020, dated 12th March, 2020.

<u>Before Amendment (Earlier)</u>	<u>After Amendment (Now)</u>
	<p>In the Companies (Incorporation) Rules, 2014, in the Annexure, in Form No.INC-28, in serial number 5, in clause (a) after sub-clause (ii), the following sub-clause shall be inserted, namely- "(iii) Section of Insolvency and Bankruptcy</p>

DIRECTORS

General Circular No. 1/2020-Clarification on prosecutions filed or internal adjudication proceedings initiated against Independent Directors, Non-Promoters and Non-KMP Non-Executive Directors, dated 02nd March, 2020.

<u>Before Amendment (Earlier)</u>	<u>After Amendment (Now)</u>
	<p>This circular clearly shows the ministry's resolve and intent to give protection to independent directors and other non-executive directors from prosecution for both civil and criminal offenses, unless there is strong evidence against them being party to any fraud committed by the company.</p> <p>Section 149(12) of the Companies Act, 2013 is a non-obstante clause which provides that an independent director and a non-executive director not being promoter or key managerial personnel shall be held liable, only in respect of such acts of omission or commission by a company which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he had not acted diligently.</p> <p>In view of this expressed provision of Section 149(12) of the Companies Act, 2013, Independent Directors and Non-Executive Directors (not being promoter or KMP) should not be arrayed in any criminal or civil proceedings under the Act, unless the above mentioned criterion is met.</p> <p>MCA has clarified that at the time of serving notices to the company during inquiry, inspection, investigation or adjudication proceedings etc, necessary documents may be sought so as to ascertain the involvement of concerned officers of the Companies and due care must be taken to ensure that unnecessarily any civil or criminal proceedings is not initiated against the Independent directors or Non-Executive Directors unless sufficient evidence exists against them.</p>

	<p>The records available in the office of the Registrar, including e-forms DIR-11 or DIR-12, along with the copies of Annual Returns or financial statements should also be examined, so as to ascertain whether a particular director or the KMP was serving in the company as on the date of default.</p> <p>In case of any doubt, with regard to the liability of any person, for any proceedings required to be initiated by the Registrar, guidance may be sought from the Ministry of Corporate Affairs through the office of Director General of Corporate Affairs. Consequently any such proceedings must be initiated after due sanction from the Ministry. Further, with respect to cases where prosecution may have been already filed but does not meet the above mentioned criteria, then such cases may be submitted to the ministry for necessary examination and further direction.</p> <p>The Ministry of Corporate Affairs has directed all Registrars of Companies to immediately and scrupulously follow the above Standard Operating Procedure with respect to all ongoing cases.</p>
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MCA vide notification no: G.S.R.145(E) notified the Companies (Appointment and Qualification of Directors) Amendment Rules, 2020, dated 28th February, 2020

<u>Before Amendment (Earlier)</u>	<u>After Amendment (Now)</u>
	<p>(i) In Rule 6 (1), in clause (a) of the Companies (Appointment and Qualification of Directors) Rules, 2014, MCA has extended the date of registration of details of Independent Directors in Independent Director Databank by 2 months from initial “three months” to “five months” from the commencement of the Companies (Appointment and Qualification of Directors) Fifth Amendment Rules, 2019.</p> <p><i>However, MCA has further extended the date of registration vide the Companies (Appointment and Qualification of Directors) Second Amendment Rules, 2020 dated 29th April, 2020 by another 2 months from five</i></p>

to seven months.

Furthermore, MCA vide the Companies (Appointment and Qualification of Directors) Third Amendment Rules, 2020, dated 23rd June, 2020 has further extended the period of registration of details of Independent Directors in Independent Director Databank under Rule 6(1)(a) from seven to ten months.

After all the amendments, revised rule 6(1) clause (a) of the Companies (Appointment and Qualification of Directors) Rules, 2014 shall be read as under:

Compliances required by a person eligible and willing to be appointed as an independent director.

(1) Every individual –

(a) who has been appointed as an independent director in a company, on the date of commencement of the Companies (Appointment and Qualification of Directors) Fifth Amendment Rules, 2019, shall within a period of **ten months** from such commencement; or

(b) who intends to get appointed as an independent director in a company after such commencement, shall before such appointment, apply online to the institute for inclusion of his name in the data bank for a period of one year or five years or for his lifetime, and from time to time take steps as specified in Rule 6(2) of the Companies (Appointment and Qualification of Directors) Rules, 2014, till he continues to hold the office of an independent director in any company.

(ii) MCA has exempted the experienced Key Managerial Personnel and Directors from online proficiency self-assessment test for the appointment of Independent Directors.

MCA has amended the first proviso to Rule 6(4) of the Companies (Appointment and Qualification of Directors) Rules, 2014, vide the Companies (Appointment and Qualification of Directors) Amendment Rules, 2020, dated 28th February, 2020 as follows:

An individual shall not be required to pass the

	<p>online proficiency self-assessment test, when he has served as director or KMP, for a total period of not less than 10 years as on the date of inclusion of his name in the databank in one or more following companies:</p> <p>(a) Listed public company; or (b) Unlisted public company having a paid-up share capital of rupees ten crore or more; or (c) Body corporate listed on a recognized stock exchange.</p> <p>(iii) Second proviso to Rule 6(4) of The Companies (Appointment and Qualification of Directors) Rules, 2014 for the word ‘companies’ the words “companies or bodies corporate” shall be substituted.</p> <p><i>Post Amendment, Second proviso to Rule 6(4) of The Companies (Appointment and Qualification of Directors) Rules, 2014, shall be read as under:</i></p> <p>Provided further that for the purpose of calculation of the period of ten years referred to in the first proviso, any period during which an individual was acting as a director or as a key managerial personnel in two or more companies or bodies corporate at the same time shall be counted only once.</p>
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APPOINTMENT AND REMUNERATION OF KEY MANAGERIAL PERSONNEL

MCA vide notification no: G.S.R.13(E)-The Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules 2020, dated 03rd January, 2020 has amended Rule 8A of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 as follows.

<u>Before Amendment (Earlier)</u>	<u>After Amendment (Now)</u>
	<p>“Rule 8A. Every private company which has a paid up share capital of ten crore rupees or more shall have a whole-time Company Secretary.”</p> <p>Impact: <i>With this amendment in rule 8A of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, MCA has</i></p>

	<i>clarified that every private company which has paid-up capital of 10 crore rupees or more need to appoint whole time Company Secretary.</i>
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OTHER IMPORTANT UPDATES

Notification No: G.S.R. 59(E)-Application of Provisions of Companies Act, 2013 to a Limited Liability Partnership, dated 30th January, 2020

<u>Before Amendment (Earlier)</u>	<u>After Amendment (Now)</u>
	After this notification the provisions of section 460 of the Companies Act, 2013 relating to Condonation of delay in certain cases were also be applicable to a limited liability partnership from the date of publication of this notification i.e. 30 th January, 2020.

Notification no: G.S.R.80(E)- The National Company Law Tribunal (Amendment) Rules, 2020, dated 3rd February, 2020.

<u>Before Amendment (Earlier)</u>	<u>After Amendment (Now)</u>				
	<p>1)A new rule 80A has been inserted after Rule 80 of the National Company Law Tribunal Rules, 2016 Rule 80A. Application under section 230. – An application under Section 230 (12) may be made in Form NCLT-1 and shall be accompanied with such documents as are mentioned in Annexure B.”</p> <p>2)In the National Company Law Tribunal Rules, 2016, under the SCHEDULE OF FEES, after S.No.22 and the entries relating thereto, the following shall be inserted, namely:-</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 10%; text-align: center;">22A</td> <td style="width: 15%;">Section 230(12)</td> <td style="width: 55%;">Application in cases of takeover offer of companies which are not listed.</td> <td style="width: 20%; text-align: center;">Rs. 5,000”</td> </tr> </table> <p>3)In the National Company Law Tribunal Rules, 2016, in Annexure-A, under the heading Form No. NCLT.1, after the figure '80', the figure and letter “80A” shall be inserted.</p> <p>4)In the National Company Law Tribunal Rules, 2016,, in Annexure-B i.e. (List of</p>	22A	Section 230(12)	Application in cases of takeover offer of companies which are not listed.	Rs. 5,000”
22A	Section 230(12)	Application in cases of takeover offer of companies which are not listed.	Rs. 5,000”		

Documents to be Attached with A Petition or Application) after S.No.12 and the entries relating thereto, the following S.No. shall be inserted, namely:-			
12A	Sec 230(12)	Application in cases of takeover offer of companies which are not listed.	<ol style="list-style-type: none"> 1. Affidavit verifying the petition 2. Memorandum of appearance with copy of the Board's Resolution or the Executed vakalatnama, as the case may be. 3. Documents in support of the grievance against the takeover. 4. Any other relevant document.”
<i>A new rule has been inserted as rule 80A in the NCLT Rules enabling an aggrieved party to make an application to the NCLT in the event of any grievances with respect to the takeover offer of companies other than listed companies in Form NCLT- 1 with a fees of 5000 rupees and shall be accompanied with an Affidavit verifying the petition, Memorandum of appearance with copy of the Board's Resolution or the executed vakalatnama, as the case may be, Documents in support of the grievance against the takeover and any other relevant document.</i>			

The Companies (Removal of Names of Companies from the Register of Companies) Amendment Rules, 2020, dated 29th June, 2020

<u>Before Amendment (Earlier)</u>	<u>After Amendment (Now)</u>
	<p>MCA vide Notification dated 29th June, 2020, introduced the Companies (Removal of Names of Companies from the Register of Companies) Amendment Rules, 2020 to further amend the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016.</p> <p>In Rule 4(3), in clause (i) of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016</p>

the following proviso shall be inserted, namely:-

1) "Provided that in case of a –

(a) Government company in which the entire paid up share capital is held by the Central Government, or by any State Government or Governments or by the Central Government and one or more State Governments; or

(b) subsidiary of a Government company, referred to in clause (a), in which the entire paid up share capital is held by that Government company, a duly not arised indemnity bond in Form STK-3A shall be given by an authorised representative, not below the rank of Under Secretary or its equivalent, in the administrative Ministry or Department of the Government of India or the State Government, as the case may be, on behalf of the company;".

2) In the said rules, in Form STK 2, in the list of attachments, in serial number 4, at the end, the words "or by an authorised representative of administrative Ministry /Department in Form No. STK- 3A" shall be inserted.

3) In the said rules, after Form STK-3, the Form STK-3A shall be inserted.

Impact:

MCA has notified that while filing Form STK-2 i.e. application for removal of the name from the register of Companies, in case of a company wholly owned by the government or wholly owned subsidiary of that government company, a duly notarised indemnity bond in Form STK-3A shall be given by an authorized representative, not below the rank of Under Secretary or its equivalent, in the administrative Ministry or Department of the Government of India or the State Government, as the case may be, on behalf of the company.