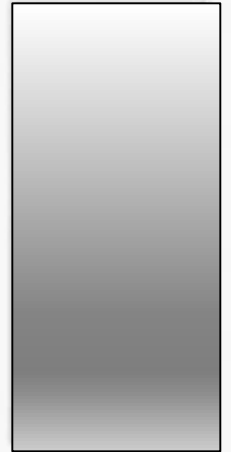


# **LEGALITE** ADVISORS

**IMPORTANT LEGAL UPDATES FOR OCTOBER 2019**



# Companies Act

- **The Ministry of Corporate Affairs (“MCA”) – notification no. G.S.R. .... (E) (yet to be published in official gazette) on the Companies (Meetings of Board and its Powers) Amendment Rules, 2019 (“Amendment Rules”) dated October 11, 2019 (“Notification”).**
  - The MCA, *vide* the Notification, has amended the Companies (Meetings of Board and its Powers) Rules, 2014 (“**Principal Rules**”) which shall come into force from the date of publication in the official gazette.
  - The Notification amends rule 11(2) of the Principal Rules by substituting the words “business of financing of companies” with “business of financing industrial enterprises” thereby restricting exemption under section 186 of the Companies Act, 2013 (“**Act**”), except section 186(1) of the Act, *inter alia*, to companies established with the object of and engaged in the business of financing industrial enterprises. This has thus, expanded the horizons of the exemptions available for companies engaged in the business of financing.
  - **Link of the Notification:**  
<http://www.mca.gov.in/Ministry/pdf/MeetingsBoardPowersAmendtRules11102019.pdf>

## Companies Act (Contd...)

- ❑ **The Ministry of Corporate Affairs (“MCA”) – notification no. G.S.R. 776 (E) which further amends schedule VII (the “Schedule”) of the Companies Act, 2013 (“Act”) issued on October 11, 2019 (“Notification”).**
  - MCA, *vide* the Notification, has further amended the said Schedule of the Act, which shall come into force from the date of publication in the official gazette.
  - In the Schedule, for item (ix) and the entries relating thereto, the following shall be substituted:  
“(ix) Contribution to incubators funded by Central Government or State Government or any agency or Public Sector Undertaking of Central Government or State Government, and contributions to public funded Universities, Indian Institute of Technology (IITs), National Laboratories and Autonomous Bodies (established under the auspices of Indian Council of Agricultural Research (ICAR), Indian Council of Medical Research (ICMR), Council of Scientific and Industrial Research (CSIR), Department of Atomic Energy (DAE), Defence Research and Development Organisation (DRDO), Department of Science and Technology (DST), Ministry of Electronics and Information Technology) engaged in conducting research in science, technology, engineering and medicine aimed at promoting Sustainable Development Goals (SDGs);”
  - Pursuant to the aforesaid amendment to the Schedule, contribution by a company towards any of the institute or agency of the State or the Central Government shall now constitute as a contribution towards corporate social responsibility of that company.
  - **Link of the Notification:**  
[http://www.mca.gov.in/Ministry/pdf/Notification\\_18102019.pdf](http://www.mca.gov.in/Ministry/pdf/Notification_18102019.pdf)

## Companies Act (Contd...)

- ❑ **The Ministry of Corporate Affairs (“MCA”) – notification no. G.S.R 793(E) on the Companies (Incorporation) Eight Amendment Rules, 2019 (“Amendment Rules”) dated October 16, 2019 (“Notification”).**
  - MCA, *vide* the Notification has amended the Companies (Incorporation) Rules, 2014 (“**Principal Rules**”) which shall come into force from the date of publication in the official gazette, i.e. October 16, 2019.
  - Pursuant to rule 8A(1)(b) of the Principal Rules, which now stands modified by virtue of the Amendment Rules, consent to use the registered trademark shall now be availed only from the owner of the trademark and not the applicant for registering the said trademark, proposed to be used by the applicant for reserving name of the company;
  - Further, pursuant to changes in rule 25A of the Principal Rules, e-form DIR-12 can now be filed by a company, even in case where the company has not filed e-form ACTIVE, in any of the following cases:
    - ✓ cessation of any director;
    - ✓ appointment of directors in such company where the total number of directors are less than the minimum number provided in section 149(1)(a) on account of disqualification of all or any of the director under section 164 of the Act;

## Companies Act (Contd...)

- ✓ Appointment of any director in such company where DINs of all or any its director(s) have been deactivated; or
- ✓ appointment of director(s) for implementation of the order passed by the Court or Tribunal or Appellate Tribunal under the provisions of the Act or under the Insolvency and Bankruptcy Code, 2016.
- In rule 28 of the Principal Rules, after sub-rule (1), the following sub-rules (2) and (3) shall be inserted:
  - ✓ (2) The Regional Director shall examine the application referred to in sub-rule (1) and the application may be put up for orders without hearing and the order either approving or rejecting the application shall be passed within fifteen days of the receipt of application complete in all respects.
  - ✓ (3) The certified copy of order of the Regional Director, approving the alteration of memorandum for transfer of registered office company within the same State, shall be filed in Form No. INC-28 along with fee with the Registrar of State within thirty days from the date of receipt of certified copy of the order.
- **Link of the Notification:**  
[http://www.mca.gov.in/Ministry/pdf/CompIncEighthAmndtRules\\_18102019.pdf](http://www.mca.gov.in/Ministry/pdf/CompIncEighthAmndtRules_18102019.pdf)

## Companies Act (Contd...)

- **The Ministry of Corporate Affairs (“MCA”) – notification no. S.O. 3791(E). on notifying the Indian Institute of Corporate Affairs (“IICA”) to maintain a data bank of Independent Directors, dated October 22, 2019 (“Notification”).**
  - The Central Government, *vide* the Notification, has notified IICA at Manesar (Haryana), as an institute to create and maintain a data bank containing names, addresses and qualifications of persons who are eligible and willing to act as independent directors, for the use of the company appointing such directors.
  - This Notification shall be effective from December 01, 2019.
  - **Link of the Notification:**  
[http://www.mca.gov.in/Ministry/pdf/NotificationIICA\\_22102019.pdf](http://www.mca.gov.in/Ministry/pdf/NotificationIICA_22102019.pdf)

## Companies Act (Contd...)

- ❑ **The Ministry of Corporate Affairs (“MCA”) – notification no. G.S.R. 805(E). on framing of Companies (Creation and Maintenance of databank of Independent Directors) Rules, 2019 (the “Rules”), dated October 22, 2019 (“Notification”).**
  - The Central Government, *vide* the Notification, has formulated the Rules, pursuant to which a data bank of persons willing and eligible to be appointed as independent directors will be created and maintained, and such databank shall be an online databank which shall be placed on the website of Indian Institute of Corporate Affairs (the “**Institute**”), which will *inter alia* state the name, DIN, PAN, date of birth etc. of such eligible persons.
  - The said details will be made available only to the companies required to appoint independent director after paying fees to the Institute.
  - The Institute shall conduct an online proficiency self-assessment test covering various topics relevant to the functioning of an individual acting as an independent director.
  - Institute to have a panel of not exceeding 10 (ten) members nominated by the Central Government, for the purpose of approving the outline of the courses and study material for the independent directors, which *inter alia* shall consist of Secretary, MCA or his nominee, director general and Chief Executive Officer of the institute or his nominee, representatives from Government and other regulatory institutes etc.
  - **Link of the Notification:**  
[http://www.mca.gov.in/Ministry/pdf/CmpInpdtDirectorsRules\\_22102019.pdf](http://www.mca.gov.in/Ministry/pdf/CmpInpdtDirectorsRules_22102019.pdf)

## Companies Act (Contd...)

- ❑ **The Ministry of Corporate Affairs (“MCA”) – notification no. G.S.R. 804(E). on Companies (Appointment and Qualification of Directors) fifth Amendment Rules, 2019 (“Amendment Rules”), dated October 22, 2019 (“Notification”).**
  - MCA, *vide* the Notification, has amended the Companies (Appointment and Qualification of Directors) Rules, 2014 (“**Principal Rules**”) and the said Notification shall be effective from December 01, 2019.
  - Rule 6 of the Principal Rules which is now substituted, states that.
    - ✓ Sub- rule (1) and (2) - every individual who has been appointed as an independent director (“ID”), shall within 3 (three) months from the date of commencement of the Amendment Rules, or intends to be appointed as an ID at any time before such appointment; shall apply online to the Indian Institute of Corporate Affairs (the “**Institute**”), for inclusion of his name in the data bank for a period of 1 (one) year or 5 (five) years or for his life-time. Provided that such individual shall file an application for renewal for a further period of 1 (one) year or 5 (five) years or for his life-time, within a period of 30 (thirty) days from the date of expiry of the period upto which the name of the individual was applied for inclusion in the data bank. In case where renewal is not made by the individual, his name shall stand removed from the data bank of the Institute;
    - ✓ Sub-rule (3) - Alongwith declaration under section 149(7) of the Act, the ID is required to give a declaration for complying with the sub rules (1) and (2) as aforesaid;



## Companies Act (Contd...)

- ✓ Every individual whose name is included in the data bank as aforesaid shall be required to pass an online proficiency self-assessment test conducted by the Institute within a period of 1 (one) year from the date of inclusion of his name in the data bank, failing which, his name shall stand removed from the databank of the institute, unless where the individual who has served for a period of not less than 10 (ten) years as on the date of inclusion of his name in the databank as director or key managerial personnel in a listed public company or in an unlisted public company having a paid-up share capital of rupees 10 (ten) crore or more, in which case, the individual will not be required to pass the online proficiency self-assessment test.
  - ✓ For the purpose of calculation of the period of 10 (ten) years referred hereinabove, any period during which an individual was acting as a director or as a key managerial personnel in 2 (two) or more companies at the same time shall be reckoned only once.
  - ✓ There shall be no limit on the number of attempts to be taken by an individual for passing the online proficiency self-assessment test and only an individual who has obtained a score of not less than 60 (sixty) percent in aggregate in the online proficiency self-assessment test shall be deemed to have passed such test;
- **Link of the Notification:**  
[http://www.mca.gov.in/Ministry/pdf/CmpFifthAmndtRules\\_22102019.pdf](http://www.mca.gov.in/Ministry/pdf/CmpFifthAmndtRules_22102019.pdf)

## Companies Act (Contd...)

□ **The Ministry of Corporate Affairs (“MCA”) – notification no. G.S.R. 803(E). on Companies (Accounts) Amendment Rules, 2019 (“Amendment Rules”), dated October 22, 2019 (“Notification”).**

▪ MCA, *vide* the Notification, has amended the Companies (Accounts) Rules, 2014 (“**Principal Rules**”) and the said Notification shall be effective from December 01, 2019.

▪ Pursuant to the Amendment Rules, in rule 8 (5) after sub-rule (iii) of the Principal Rules, the following clause shall be inserted:

(iiia) a statement regarding opinion of the Board with regard to integrity, expertise and experience (including the proficiency) of the independent directors appointed during the year.

*Explanation* — For the purposes of this clause, the expression “proficiency” means the proficiency of the independent director as ascertained from the online proficiency self-assessment test conducted by the Indian Institute of Corporate Affairs

▪ **Link of the Notification:**

[http://www.mca.gov.in/Ministry/pdf/CmpAccAmndtRules\\_22102019.pdf](http://www.mca.gov.in/Ministry/pdf/CmpAccAmndtRules_22102019.pdf)

## Companies Act (Contd...)

- **The Ministry of Corporate Affairs (“MCA”) – general circular no. 13/2019 on relaxation of additional fees and extension of last date in filing of annual filing forms under Companies Act, 2013 (“Circular”), dated October 29, 2019.**
  - MCA, *vide* the Circular, on account of various factors, has extended the time for filing of financial statements for the financial year ended March 31, 2019, in e-form AOC-4, AOC-4 (CFS), AOC-4 XBRL upto November 30, 2019 and e-form MGT-7 upto December 31, 2019, without levy of additional fees.
  - **Link of the Circular:**  
[http://www.mca.gov.in/Ministry/pdf/GeneralCircular\\_29102019.pdf](http://www.mca.gov.in/Ministry/pdf/GeneralCircular_29102019.pdf)

## Companies Act (Contd...)

- **The Ministry of Corporate Affairs (“MCA”) – important update wrt disqualification of directors (“Update”).**
  - MCA, *vide* the Update, has intimated that Registrars of Companies (ROCs) are in the process of identification of disqualified directors under section 164(2)(a) of the Companies Act, 2013 (“Act”) for their default of non-filing of financial statement or annual return for continuous period of 3 (three) financial years i.e. 2015-16, 2016-17 and 2017-18.
  - In this regard, MCA has cautioned all the defaulting directors to file the pending statutory returns and do necessary compliance as per the provisions of the Act to avoid action under section 164 of the Act.
  - **Link of the Update:**  
[http://www.mca.gov.in/Ministry/pdf/Upload\\_31102019.pdf](http://www.mca.gov.in/Ministry/pdf/Upload_31102019.pdf)

# Reserve Bank of India

- **The Ministry of Finance (“Ministry”) – notification no. FEMA S.O. 3732(E) on notification of ‘Foreign Exchange Management (Non-Debt Instruments) Rules, 2019, (‘NDI Rules’) dated October 17, 2019; notification no. FEMA 396/2019-RB on notification of Foreign Exchange Management (Debt Instruments) Regulations, 2019 (“DI Regulations”) and notification no. FEMA. 395/2019-RB on notification of Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) Regulations, 2019 (“ND Regulations”) (“Notifications”)**
  - The Ministry, *vide* the Notification, has promulgated the NDI Rules, in supersession of the Foreign Exchange Management (Transfer and Issue of Security by a Person Resident outside India) Regulations, 2017 (“**FEMA 20**”) and the Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2018 (“**IP Regulations**”).
  - While the IP Regulations have been included in the NDI Rules, there are no substantial amendments to the IP Regulations.
  - Further, the Ministry has promulgated the DI Regulations, which also an outcome of replacement of the FEMA 20.
  - Lastly, the RBI has also promulgated the Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) Regulations, 2019 (“**ND Regulations**”) to lay down the mode of payment and attendant conditions for making payments in respect of subscription to the non-debt instruments.

## Reserve Bank of India (Contd...)

- The comprehensive analysis of the Notifications shall be rolled out separately.
- **Link of the Notifications:**

**NDI Rules:**

<http://egazette.nic.in/WriteReadData/2019/213332.pdf>

**DI Regulations:**

<http://egazette.nic.in/WriteReadData/2019/213316.pdf>

**ND Regulations:**

[https://www.greengazette.in/documents/government-gazette-621-2019-ii3i-e\\_20191017-231-00621.pdf](https://www.greengazette.in/documents/government-gazette-621-2019-ii3i-e_20191017-231-00621.pdf)

# Securities Law

- ❑ **The Securities and Exchange Board of India (“SEBI”) – circular number CIR/CFD/CMD1/114/2019 on resignation of statutory auditors from listed entities and their material subsidiaries dated October 18, 2019 (“Circular”).**
  - SEBI, vide the Circular, has laid down the conditions to be adhered by the statutory auditor upon resignation from a listed entity, its material subsidiary w.r.t. performing limited review/audit report as per SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“**SEBI LODR Regulations**”).
  - The major highlights of the Circular are as under:
    - ✓ The conditions to be complied with, by all the listed entities/ its material subsidiaries, as and when the situation may arise, while appointing/re-appointing an auditor are as under:

<u>S.No.</u>	<u>Conditions</u>	<u>Obligation</u>
1.	If auditor resigns within 45 (Forty Five) days from the end of a quarter of a financial year.	The auditor shall, before such resignation, issue the limited review/ audit report for such quarter

## Securities Law (Contd...)

<u>S.No.</u>	<u>Conditions</u>	<u>Obligation</u>
2.	If the auditor resigns after 45 (Forty Five) days from the end of a quarter of a financial year.	The auditor shall, before such resignation, issue the limited review/ audit report for such quarter as well as the next quarter.
3.	Notwithstanding the above point No. 1 and 2, if the auditor has signed the limited review/ audit report for the first three quarters of a financial year, then	The auditor shall, before such resignation. issue the limited review/ audit report for the last quarter of such financial year as well as the audit report for such financial year

- ✓ The Circular has laid down other conditions relating to resignation as under:
  - **Reporting of concerns with respect to the listed entity/its material subsidiary to the Audit Committee:**
    - In cases of non-availability of information / non-cooperation by the management, the auditor shall approach the Chairman of the Audit Committee of the listed entity and the Audit Committee shall receive such concern directly and immediately without specifically waiting for the quarterly Audit Committee meetings.



## Securities Law (Contd...)

- If the auditor proposes to resign, all the concerns with respect to the proposed resignation, along with relevant documents shall be brought to the notice of the Audit Committee and if the proposed resignation is due to non-receipt of information/explanation from the company, the auditor shall inform the Audit Committee of the details of information/ explanation sought and not provided by the management, as applicable.
- Once the information is received from the auditor relating to the proposal to resign , the Audit Committee / board of directors, as the case may be, shall deliberate on the matter and communicate its views to the management and the auditor.
- **Disclaimer in case of non-receipt of information:**
  - Once In case of non-receipt of information from the listed entity/its material subsidiary, the auditor shall provide an appropriate disclaimer in the audit report, which may be in accordance with the Standards of Auditing as specified by ICAI/NFRA.
  - At the time of appointing/re-appointing the auditor, the listed entity/ material subsidiary shall ensure that the conditions as mentioned hereinabove, are included in the terms of appointment of the statutory auditor. In case the auditor has already been appointed, the terms of appointment modified to give effect to the conditions mentioned hereinabove.

## Securities Law (Contd...)

- The practicing company secretary shall ensure that a listed entity has complied with the conditions mentioned hereinabove, in the annual secretarial compliance report issued in terms of SEBI Circular no. CIR/CFD/CMD1/27/2019 dated February 08, 2019.
- **Obligations of the listed entity and its material subsidiary:**
  - SEBI *vide* the Circular has provided a format of information to be obtained from the statutory auditor upon resignation in Annexure A as enclosed to the Circular. The listed entity shall ensure disclosure of the same under Sub-clause (7A) of Clause A in Part A of Schedule III under Regulation 30(2) of SEBI LODR Regulations.
  - The listed entity and its material subsidiaries shall co-operate with the auditor and continue to provide all such documents/information as may be necessary for the audit / limited review, during the period from when the auditor proposes to resign till the auditor submits the report.
  - On resignation of the auditor, the Audit Committee shall disclose its view to the Stock Exchanges as soon as possible, but not later than the date of the next Audit Committee meeting and communicate its views to the management.
  - The listed entity shall ensure the disclosure of the Audit Committee's views to the stock exchanges as soon as possible but not later than twenty-four hours after the date of such Audit Committee meeting.

## Securities Law (Contd...)

- ✓ the board of directors of the entity shall ensure compliance of the Circular, wherein constitution of an Audit Committee is not mandatory;
- ✓ The provisions of the Circular shall not apply, in case the auditor is rendered disqualified due to operation of any condition mentioned in Section 141 of the Companies Act, 2013.
- ✓ The Circular shall come into force with immediate effect i.e. from October 18, 2019.
- **Link of the Circular:**  
[https://www.sebi.gov.in/legal/circulars/oct-2019/resignation-of-statutory-auditors-from-listed-entities-and-their-material-subsiidiaries\\_44703.html](https://www.sebi.gov.in/legal/circulars/oct-2019/resignation-of-statutory-auditors-from-listed-entities-and-their-material-subsiidiaries_44703.html)

## Deets / Disclaimer

### ❑ Deets.

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**Thank You**



***There is no wealth like knowledge and no poverty like ignorance - Buddha***