

Some Important Updates on Companies Act 2013 and Insolvency and Bankruptcy Code 2016

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Identification and flagging of Disqualified Directors

Click on Link : http://www.mca.gov.in/Ministry/pdf/Upload_31102019.pdf

Please note that the Registrar of Companies (ROCs) are in process of **identification and flagging of Directors** disqualified under section 164(2)(a) of the Companies Act, 2013 for their default of non-filing of financial statements or annual return for continuous period of three financial years i.e. 2015-16, 2016-17, 2017-18. In this regard all the defaulting directors are hereby cautioned to find the pending statutory returns and do necessary compliance as per provisions of law, otherwise actions will be initiated under section 164 of the Companies Act, 2013 and Rules made thereunder. The DIN of such Directors **are not allowed to be used for filing any e-forms on MCA21 portal.**” (emphasis supplied)

The disqualification may arise when the company has defaulted in filing of the financial statements or annual return for a **continuous period of Three financial years** (i.e. 2015-16, 2016-17, 2017-18).

It appears that the RoC after identification and flagging off would not allow the DIN to be used for filing of any e-forms on the MCA portal

Kindly advise clients to ensure compliance in this regard as it appears that there would potentially result in the Directors DIN not being usable for any other companies where there are no such defaults also. This would mean that all financial statements that have not been filed till date should be completed and filed at the earliest

Extension of Time for Filing NFRA 2

Click on Link : http://www.mca.gov.in/Ministry/pdf/NFRA_27112019.pdf

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. The matter has been examined and it is stated that 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 the categories of Companies and auditors for which this rule is applicable, click on link for Rule 3 of the National Financial Reporting Authority Rules 2018 <http://ebook.mca.gov.in/Default.aspx?page=rules> . For Rule 5 which prescribes the Annual Return to be filed in NFRA 2 , click on link for the Amendment Rules 2019 at <http://ebook.mca.gov.in/Default.aspx?page=rules>

Insolvency Resolution Process for Personal Guarantors to Corporate Debtors

Click on Link : http://www.mca.gov.in/Ministry/pdf/Notification_18112019.pdf

http://www.mca.gov.in/Ministry/pdf/ResolutionandBankruptcy%20Rules_19112019.pdf

<p>The Government has notified that the Insolvency Resolution Process for Personal Guarantors to Corporate debtors shall come into force on December 1, 2019 and notified the rules for the same</p>	<p>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</p> <ol style="list-style-type: none">(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.
<p>The Government has also notified the rules in this regard by the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019</p>	<p>These rules stipulate the manner of filing of applications before the Adjudicating Authority and till such time, rules of procedure for conduct of proceedings under the Code are notified, the applications under rules 6 and 7 shall be filed and dealt with by the Adjudicating Authority in accordance with</p> <ol style="list-style-type: none">(a) rules 20, 21, 22, 23, 24 and 26 of Part III of the National Company Law Tribunal Rules, 2016 made under section 469 of the Companies Act, 2013 (18 of 2013); or(b) rule 3 of the Debt Recovery Tribunal (Procedure) Rules, 1993 made under section 36 of the Recovery of Debts and Bankruptcy Act, 1993 (51 of 1993) and regulations 3, 4, 5 and 11 of the Debt Recovery Tribunal Regulations, 2015 made under section 22 of the Recovery of Debts and Bankruptcy Act, 1993, as the case may be