Updates on the Corporate Laws  
1-10-2019 to 31-10-2019

INDEX

Due Date Compliance Calendar for the Month of October, 2019

1. Important Update on ‘Identification and flagging of Disqualified Directors u/s 164(2) (a) of the Companies Act, 2013.

2. Jurisdiction of RD, New Delhi - UT of JK and UT of Ladakh

3. ROC Jammu - Jurisdiction of Adjudication of Penalties - UT of JK and UT of Ladakh

4. Section 396 dt 30.10.2019 for ROC Jammu - Jurisdiction of UT of JK and UT of Ladakh

5. Forms NDH-1, NDH-2 and NDH-3 notified vide the Nidhi Rules 2014 shall be available for filing as e-Forms w.e.f 1st November 2019.

6. Relaxation of additional fees and extension of last date of filing of form MGT-7 (Annual Return) and AOC-4 (Financial Statements) under the Companies Act, 2013 reg

7. Relaxation of additional fees and extension of last date of filing of CRA-4 (Cost Audit Report) for FY 2018-19 under the Companies Act, 2013 reg

8. Relaxation of additional fees and extension of last date of filing of form IEPFA-1A and form IEPF-2 reg

9. Data Bank Notification relating to IICA

10. Companies (Accounts) Amendment Rules 2019

11. Companies (Creation and Maintenance of Databank of Independent Directors) Rules, 2019
12. **Companies (Appointment and Qualification of Directors) Fifth Amendment Rules, 2019**

13. **Companies Incorporation Eighth Amendment Rules, 2019**

14. **Companies (Cost Records and Audit) Amendment Rules, 2019**

15. **Companies (Filing of Documents and forms in Extensible Business Report Language) Amendment Rules, 2019**

16. **Companies (Meetings of Board and its Powers) Amendment Rules 2019**

17. **SEBI imposed certain obligations on the Statutory Auditors, listed entities and the material subsidiaries w.r.t. Resignation of Statutory Auditors.**

18. **Notification for Delegation of powers to Tribunal -Section 458 read with Section 418 of the Companies Act 2013**
**The Companies Act, 2013/ LLP ACT 2008**

**Forthcoming Due Date of Compliances**

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Form name</th>
<th>Due Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual filing forms</td>
<td>AOC-4</td>
<td>By 30&lt;sup&gt;th&lt;/sup&gt; November 2019</td>
</tr>
<tr>
<td></td>
<td>MGT-7</td>
<td>By 30&lt;sup&gt;th&lt;/sup&gt; December 2019</td>
</tr>
<tr>
<td></td>
<td>CRA-4</td>
<td>By 30&lt;sup&gt;th&lt;/sup&gt; December 2019</td>
</tr>
<tr>
<td>Return to the Registrar in respect of declaration under section 90</td>
<td>BEN-2</td>
<td>31.12.2019</td>
</tr>
<tr>
<td>CONTENT</td>
<td>UPDATED ON</td>
<td></td>
</tr>
<tr>
<td>------------------------------------------------------------------------</td>
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<td></td>
</tr>
<tr>
<td><strong>UPDATE</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Identification and flagging of Disqualified Directors u/s 164(2) (a)</td>
<td>31.10.2019</td>
<td></td>
</tr>
<tr>
<td>of the Companies Act, 2013</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>RULES</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Companies (Accounts) Amendment Rules 2019</td>
<td>22.10.2019</td>
<td></td>
</tr>
<tr>
<td>Companies (Creation and Maintenance of Databank of Independent Directors) Rules, 2019</td>
<td>22.10.2019</td>
<td></td>
</tr>
<tr>
<td>Companies Incorporation Eighth Amendment Rules, 2019</td>
<td>18.10.2019</td>
<td></td>
</tr>
<tr>
<td>Companies (Cost Records and Audit) Amendment Rules, 2019</td>
<td>15.10.2019</td>
<td></td>
</tr>
<tr>
<td>Companies (Filing of Documents and forms in Extensible Business Report Language) Amendment Rules, 2019</td>
<td>15.10.2019</td>
<td></td>
</tr>
<tr>
<td>Companies (Meetings of Board and its Powers) Amendment Rules 2019</td>
<td>11.10.2019</td>
<td></td>
</tr>
<tr>
<td>Circular</td>
<td>Date</td>
<td></td>
</tr>
<tr>
<td>-------------------------------------------------------------------------</td>
<td>------------</td>
<td></td>
</tr>
<tr>
<td>Relaxation of additional fee AOC-4 and MGT-7</td>
<td>29.10.2019</td>
<td></td>
</tr>
<tr>
<td>Relaxation of additional fees and extension of last date of filing of CRA-4 (cost audit report) for FY 2018-19 under the Companies Act, 2013</td>
<td>29.10.2019</td>
<td></td>
</tr>
<tr>
<td>Relaxation of Additional Fee and Extension Of Last Date of Filing Form of IEPFA-1A and IEPF-2</td>
<td>25.10.2019</td>
<td></td>
</tr>
<tr>
<td>SEBI imposed certain obligations on the Statutory Auditors, listed entities and the material subsidiaries w.r.t. Resignation of Statutory Auditors.</td>
<td>18.10.2019</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>NOTIFICATIONS</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jurisdiction of RD, New Delhi -UT of JK and UT of Ladakh</td>
<td>30.10.2019</td>
</tr>
<tr>
<td>ROC Jammu- Jurisdiction of Adjudication of Penalties-UT of JK and UT of Ladakh</td>
<td>30.10.2019</td>
</tr>
<tr>
<td>Section 396 for ROC Jammu -Jurisdiction of UT of JK and UT of Ladakh</td>
<td>30.10.2019</td>
</tr>
</tbody>
</table>
Forms NDH-1, NDH-2 and NDH-3 notified vide the Nidhi Rules 2014 shall be available for filing as eForms w.e.f 1st November 2019.

**Data Bank Notification Relating to IICA**

**Delegation of powers to Tribunal - Section 458 read with section 418 of the Companies Act 2013**

<table>
<thead>
<tr>
<th>Date</th>
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</thead>
<tbody>
<tr>
<td>30.10.2019</td>
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<td>22.10.2019</td>
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<tr>
<td>14.10.2019</td>
</tr>
</tbody>
</table>
IMPORTANT UPDATE

Identification and flagging of Disqualified Directors u/s 164(2) (a) of the Companies Act, 2013

The Ministry of Corporate Affairs has uploaded an important update which mentions that the Registrars of Companies (ROCs) are in the process of Identification and flagging of Disqualified Directors u/s 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 year i.e. 2015-16, 2016-17 and 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 action will be initiated under section 164 of the Companies Act, 2013 and Rules made thereunder.

Further, the DINs of such directors will not be allowed to be used for filing any e-forms on MCA21 portal.

Details available at:

RULES :-


The Indian Institute of Corporate Affairs’ notified under sub-section (1) of section 150 of the Companies Act, 2013 shall create and maintain a databank of persons willing and eligible to be appointed as independent directors, and such databank shall be an online databank which shall be placed on the website of the institute.

The data bank shall contain certain details in respect of each person included in the data bank who are eligible and willing to be appointed as independent director. The information available in the data bank shall be provided by the Institute only to the companies required to appoint independent directors. However, necessary due diligence has to be carried out by the Company before appointment of any such independent director. A person whose name appears in the data bank may restrict his personal information to the institute, to be disclosed in the data bank and may change his particulars within 30 days from the date of any change through a web based mechanism as shall be made available by the Institute.
The institute, shall with the prior approval of the Central government, fix a reasonable fee to be charged from:

(i) individuals for inclusion of their names in the data bank of independent directors; and

(ii) companies for providing the information on independent directors available on the data bank.

The institute shall –

(a) conduct an online proficiency self-assessment test covering companies law, securities law, basic accountancy, and such other areas relevant to the functioning of an individual acting as an independent director;

(b) prepare a basic study material, online lessons, including audio-visuals for easy reference of individuals taking the online proficiency self-assessment test;

(c) provide an option for individuals to take advanced tests in the areas specified in clause (a) and prepare the necessary advanced study material in this respect.

No separate fees shall be charged by the institute in respect of clause (a), (b) and (c).

Details are available at:

Companies (Accounts) Amendment Rules 2019

In accordance with the amendment brought by the Ministry of Corporate Affairs, the Report of the Board as per section 134 of the Act, shall also contain a statement regarding opinion of the Board with regard to integrity, expertise and experience (including the proficiency as shall be ascertained from the online proficiency self-assessment test conducted by the Institute) of the independent directors appointed during the year.

Details are available at:

Companies (Appointment and Qualification of Directors) Fifth Amendment Rules, 2019.

The Ministry of Corporate Affairs has issued that in exercise of the powers conferred by section 149 read with section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby amends the Companies (Appointment and Qualification of Directors) Rules, 2014, which may be called the Companies (Appointment and Qualification of
Directors) Fifth Amendment Rules, 2019 and shall come into force with effect from the 
1st day of December, 2019.

It mentioned that every individual,

– who has been appointed as an Independent Director in a Company shall within a 
period of 3 (three) months from the commencement of the said Rules, or

– an individual who intends to get appointed as an Independent Director in a company 
after 01/12/2019 shall before such appointment,

Shall apply with such fees, as shall be prescribed, to the ‘Indian Institute of Corporate 
Affairs at Manesar’ ("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 lifetime.

Further, every person whose name has been so included in the data bank for 1 year or 5 
years shall file an application for renewal, with such fees as shall be prescribed by the 
Institute, for a further period of 1 year or 5 years or for his lifetime within a period of 30 
days from the date of expiry of the period upto which his name was included in the data 
bank failing which the name of such individual shall be removed from the data bank.

In this regard, every individual whose name is so included in the data bank shall pass an 
online proficiency self-assessment test conducted by the institute within a period of 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.

However, an individual who has served for a period of not less than 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 ten crore or more shall not be required to pass the online proficiency self- 
assessment test.

(For the purpose of calculation of the period of ten years, any period during which an 
individual was acting as a director or as a key managerial personnel in two or more 
companies at the same time shall be counted once.)

Details are available at: 
Companies (Incorporation) Eighth Amendment Rules, 2019

The Ministry of Corporate Affairs has issued Companies (Incorporation) Eighth Amendment Rules, 2019. They shall come into force on the date of their publication in the Official Gazette.

<table>
<thead>
<tr>
<th>Companies (Incorporation) Rules 2014</th>
<th>BEFORE AMENDMENT</th>
<th>AFTER AMENDMENT</th>
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<tbody>
<tr>
<td>Rule 8A</td>
<td>The name shall be considered undesirable, if- (b) save as provided in Sections 35 of the Trade Marks Act, 1999(47 of 1999), the name includes a trade mark registered the Trade Marks Act, 1999 and the rules framed thereunder in the same class of goods or services in which the activity of the company is being carried out or is proposed to be carried out, unless the consent of the owner or applicant for registration, of the trademark, as the case may be, has been obtained and produced by the promoters;</td>
<td>The name shall be considered undesirable, if- (b) save as provided in Sections 35 of the Trade Marks Act, 1999(47 of 1999), the name includes a trade mark registered the Trade Marks Act, 1999 and the rules framed thereunder in the same class of goods or services in which the activity of the company is being carried out or is proposed to be carried out, unless the consent of the owner, of the trademark, as the case may be, has been obtained and produced by the promoters;</td>
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| Rule 25A                              | In rule 25A- in sub-rule (1), in the fourth proviso, for the item (iii) DIR-12 (Changes in Director except cessation) | In rule 25A- in sub-rule (1), in the fourth proviso, for the item (iii), the following shall be substituted, namely. -(iii) DIR-12 (changes in Director except in case of: (a) cessation of any director or (b) appointment of directors in such company where the total number of directors are less than the minimum number |
provided in clause (a) of sub-section (1) of section 149 on account of disqualification of all or any of the director under section 164.
(c) appointment of any director in such company where DINs of all or any its director(s) have been deactivated
(d) appointment of director(s) for implementation of the order passed by the Court or Tribunal or Appellate Tribunal under the provisions of this Act or under the Insolvency and Bankruptcy Code, 2016).

<table>
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<tr>
<th>Rule 28</th>
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| In rule 28, after sub-rule (1), the following rules shall be inserted, namely-

"(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 alternation 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. |

**Companies (Cost Records and Audit) Amendment Rules, 2019**

The Ministry of Corporate Affairs has issued that in exercise of the powers conferred by sub-sections (1) and (2) of section 469 and section 148 of the Companies Act, 2013 (18 of 2013) (hereinafter referred as the Act), the Central Government hereby makes the following rules further to amend the Companies (cost records and audit) Rules, 2014, namely Companies (cost records and audit) Amendment Rules, 2019.

These rules shall be deemed to come into force on the 1st day of April, 2018.

The companies who have already filed their Cost Audit Report in form CRA-4 for the financial year 2018-19 with the Central Government before the publication of this notification are not required to file their Cost Audit Report for the said financial year.

In the Companies (cost records and audit) Rules, 2014, in the Annexure-

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Amendments</th>
</tr>
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<tbody>
<tr>
<td><strong>Form CRA -1</strong></td>
<td><em>in paragraph 7 related to Overheads, for sub-paragraphs (m), (q), (r) and (s), shall respectively be substituted</em></td>
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<td><em>Paragraph 8 related to Administrative Overheads, shall be omitted;</em></td>
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<td><em>Paragraph 9 related to Transportation Cost, for sub-paragraph (k), the following shall be substituted</em></td>
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<td><em>Paragraph 28 related to Cost Statements, for sub-paragraphs (a) and (c), the following shall respectively be substituted,</em></td>
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<tr>
<td><strong>In form CRA -3</strong></td>
<td>Amendments have been made in Cost Audit Report</td>
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</tbody>
</table>

Companies (Filing of Documents and forms in Extensible Business Report Language) Amendment Rules, 2019

The Ministry of Corporate Affairs has issued Companies (Filing of Documents and Forms in Extensible Business Reporting Language), Amendment Rules, 2019. They shall come into force from the date of their publication in the Official Gazette.

In the Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Rules, 2015, for Annexure-III, the Annexure shall be substituted;


Companies (Meetings of Board and its Powers) Amendment Rules 2019

The Ministry of Corporate Affairs has issued Companies (Meetings of Board and its Powers) Amendment Rules 2019 that in exercise of the powers conferred by sections 173, 177, 178 and section 186 read with section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the rules further to amend the Companies (Meetings of Board and its Powers) Rules, 2014, namely Companies (Meetings of Board and its Powers) Amendment Rules, 2019. They shall come into force on the date of their publication in the Official Gazette.

<table>
<thead>
<tr>
<th>Before Amendment</th>
<th>After Amendment</th>
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<tr>
<td>For the purposes of clause (a) of sub-section (11) of section 186, the expression “business of financing of companies” shall include, with regard to a Non-Banking Financial Company registered with the Reserve Bank of India, “business of giving of any loan to a person or providing any guaranty or security for due repayment of any loan availed by any person in the ordinary course of its business.</td>
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<tr>
<td>For the purposes of clause (a) of sub-section (11) of section 186, the expression “business of financing industrial enterprises” shall include, with regard to a Non-Banking Financial Company registered with the Reserve Bank of India, “business of giving of any loan to a person or providing any guaranty or security for due repayment of any loan availed by any person in the ordinary course of its business.</td>
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Circulars

Relaxation of additional fees and extension of last date of filing of form MGT-7 (Annual Return) and AOC-4 (Financial Statements) under the Companies Act, 2013 reg

Keeping in view the requests received from various stakeholders seeking extension of time for filing of financial statements for the financial year ended 31.03.2019 on account of various factors, the Ministry of Corporate Affairs has extended the last date for filing e-forms AOC-4, AOC (CFS) AOC-4 XBRL upto 30.11.2019 and e-form MGT-7 upto 31.12.2019, by companies without levy of additional fee.

Details are available at: http://www.mca.gov.in/Ministry/pdf/GeneralCircular_29102019.pdf

Relaxation of additional fees and extension of last date of filing of CRA-4 (Cost Audit Report) for FY 2018-19 under the Companies Act, 2013 reg

In order to cater to the annual filing of CRA-4 (Cost Audit Report) for FY 2018-19, Costing Taxonomy 2019 is under development. The Companies which are required to file CRA-4 for FY 2018-19 are required to use Costing Taxonomy 2019 only. Those who have already filed CRA-4 using the existing Costing Taxonomy 2015 for FY 2018-19 are not required to file afresh. However, Companies which are yet to file the CRA-4 are requested to wait the deployment of Costing Taxonomy 2019 on MCA portal. In view of the above and the difficulties expressed by various stakeholders for extending the last date of filing of CRA-4, it has been decided to extend the date for all eligible companies for FY 2018-19, without payment of an additional fee till 31st December, 2019.

Details are available at: http://www.mca.gov.in/Ministry/pdf/GeneralCircular_25102019.pdf

Relaxation of additional fees and extension of last date of filing of form IEPFA-1A and form IEPF-2 reg.

Keeping in view the requests received from various stakeholders seeking extension of time on account of various factors for filing form IEPF-1A and form IEPF-2, the Ministry of Corporate Affairs has extended the last date for filing the forms to relax the additional fee payable by companies on filing form IEPF-1A upto 31.12.2019 and form IEPF-2 (for
the purpose of filing Statement of unclaimed and unpaid amounts) upto 30.11.2019. After expiry of due date, the additional fee shall be payable.

Details are available at:
http://www.mca.gov.in/Ministry/pdf/GeneralCircular1_25102019.pdf

**SEBI imposed certain obligations on the Statutory Auditors, listed entities and the material subsidiaries w.r.t., Resignation of Statutory Auditors.**

An obligation is cast on the part of the Resigning Auditor to issue Limited Review Report (LRR)/ Audit Report (AR) when Auditor resigns within 45 days from the end of Quarter, then Auditor shall issue LRR/ AR for such a quarter. If Auditor resigns after 45 days from the end of the Quarter, then Auditor shall issue LRR/ AR for such a quarter along with the next quarter.

Further, if Auditor resigns after issuing LRR/AR for 3 Qtrs of the financial year, the Auditor shall issue AR for such financial year. SEBI has put in place stricter norms for auditors, including prompt disclosures about reasons for their resignation and requirement to approach chairman of audit committee directly in case of any concerns with the management of the firm concerned.

The norms have been issued against the backdrop of rising instances of auditors quitting companies as well as those of auditors coming under the scanner in connection with alleged financial irregularities at firms.

An auditor has to approach the chairman of the audit committee in case of concern with the management of the firm such as non-availability of information or non-cooperation by the management that may hamper the audit process.

The audit committee shall receive such concern directly and immediately without specifically waiting for the quarterly audit committee meetings. Further, SEBI has issued the format for information to be obtained from the auditor upon resignation and has asked the firms to cooperate with the auditor and provide information necessary for the audit review.

SEBI requires listed firms to disclose reasons for resignation of the companies' auditor as soon as possible but not later than 24 hours of receipt of such reasons.

**Notifications**

**Jurisdiction of Regional Director, New Delhi - UT of JK and UT of Ladakh**

The Ministry of Corporate Affairs notifies revised Jurisdiction of Regional Director, North Region Directorate, Headquarter at New Delhi to States of Haryana, Punjab, Himachal Pradesh, Uttar Pradesh, Uttarakhand and Union territories of Chandigarh, Jammu and Kashmir, Ladakh and National Capital territory of Delhi.

This notification shall come into force with effect from 31st October, 2019.


**ROC Jammu-Jurisdiction of Adjudication of Penalties-UT of JK and UT of Ladakh**

The Ministry of Corporate Affairs has issued that in exercise of the powers conferred by section 454 of the Companies Act, 2013 (18 of 2013) read with the Companies (Adjudication of Penalties) Rules, 2014, the Central Government hereby makes the following further amendment in the notification of the Government of India in the Ministry of Corporate Affairs, published vide number S.O.831 (E), dated the 24th March, 2015, namely:-

In the said notification, in the Table, against serial number 5 for the entries, the following entries shall be substituted, namely,-

| Registrar of Companies-cum-Official Liquidator, Jammu | Union territory of Jammu and Kashmir and Union territory of Ladakh” |

This notification shall come into force with effect from 31st October, 2019.

Details are available at: http://www.mca.gov.in/Ministry/pdf/JKAjdNotification_30102019.pdf
**Section 396 for ROC Jammu -Jurisdiction of UT of JK and UT of Ladakh**

The Ministry of Corporate Affairs has issued that in exercise of the powers conferred by sub-sections (1) and (4) of section 396 of the Companies Act, 2013 (18 of 2013), the Registrar of Companies have a jurisdiction in respect of Union territory of Jammu and Kashmir and Union territory of Ladakh, for the purpose of registration of companies and discharging the functions under the aforesaid Act.

This notification shall come into force with effect from 31st October, 2019.

Details are available at:

**Forms NDH-1, NDH-2 and NDH-3 notified vide the Nidhi Rules 2014 shall be available for filing as eForms w.e.f 1st November 2019.**Please note that these forms were hitherto filed as attachments to forms GNL-2 and RD-1. However, with the introduction of the eForms, these forms shall now be filed independently. Stakeholders may please take note and plan accordingly.

**Data Bank Notification Relating to IICA**

The Ministry of Corporate Affairs has issued that in exercise of the powers conferred by sub-section (1) of section 150 of the Companies Act, 2013 (18 of 2013), the Central Government hereby notifies the Indian Institute of Corporate Affairs 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 making the appointment of such directors.

This notification shall come into force with effect from the 1st day of December, 2019.

Details are available at:
http://www.mca.gov.in/Ministry/pdf/NotificationIICA_22102019.pdf
Delegation of powers to Tribunal - Section 458 read with section 418 of the Companies Act 2013

The Ministry of Corporate Affairs has issued that in exercise of the powers conferred by sub-section (1) of section 458 of the Companies Act, 2013 (18 of 2013), the Central Government hereby delegates its powers and functions under sub-section (1) of section 418 of the said Act (hereinafter referred to as the said sub-section) to provide officers and other employees to the Tribunal and the Appellate Tribunal referred to in the said sub-section to the President and Chairperson of the said Tribunal and the Appellate Tribunal, as the case may be, subject to conditions as specified in the recruitment rules of the respective posts as approved and notified by the Central Government.

Details are available at: