

**ONLINE PROFICIENCY TEST FOR INDEPENDENT DIRECTORS AND INCLUSION OF THEIR NAME IN DATA BANK**

Ministry of Corporate Affairs has amended the Companies (Appointment and Qualification of Directors) Rules, 2014 vide its notification dated October 22, 2019, which inter-alia effective date and compliances with respect to these amended rules have been briefed below:

**EFFECTIVE DATE**

They shall come into force with effect from December 1<sup>st</sup>, 2019.

**AMENDMENTS IN THE COMPANIES (APPOINTMENT AND QUALIFICATION OF DIRECTORS) RULES, 2014**

(i) Rule 6 of said rule was substituted and elaborated below:

By way of amendment in the rule 6 of above said rules Ministry of Corporate Affairs (“MCA”) has introduced the proficiency examination test for the Independent Directors with the intent to improve corporate literacy and to make the Independent Directors aware of their roles, duties and responsibilities.

Requirements of this rule shall be fulfilled by every individual who:

<b>S.No</b>	<b>Applicability</b>	<b>Time Period of Compliance</b>
1.	Has been already appointed Independent Directors on the date of the Commencement of these rules	within a period of three months from such commencement shall 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 life-time
2.	Intends to get appointed as an independent director in a company after commencement of these rules	before such appointment shall 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 life-time

- Individuals whose name is 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. Removal of the name of independent director from the database impacts, directly or indirectly, on the appointment or re-appointment of the said director.

➤ **Exemption from the Online Proficiency Test:**

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 the below mentioned company(s)

- (i) Listed public company or;
- (ii) Unlisted public company having a paid-up share capital of rupees ten crore or more

However the status of the company as listed public company or paid-up share capital of Rs. 10 crore or more in the said unlisted public Company shall not deviate at any point of time.

**For Example:**

- (i) Mr. A 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 Independent Director in XYZ Ltd, a listed public company and he is taking the exemption on this basis then the status of the company as listed public company shall be at both the times. i.e at the time of appointment and as on date of inclusion of his name in the database/ date of resignation also.

(ii) Mr. B 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 Whole-time Director in ABC Ltd, an Unlisted Public Company and he is taking the exemption on this basis then the paid-up share capital of this unlisted public company shall be of Rs.10 crore or more at both the times. i.e at the time of appointment and as on date of inclusion of his name/ date of resignation also.

**Note:** For the purpose of calculation of the period of ten years as referred above, any period during which an individual was acting as a director or as a KMP in two or more companies at the same time shall be counted only once.

- If an Individual fails to renew the Information shared at Databank before the expiry of the time period up to which the name was included in the data bank, but he/ she has passed the online proficiency self-assessment test conducted by the institute, then he/ she is only required to apply to the institute for the inclusion of his/ her name in the data bank and not required to re-appear for the exam again.
- Independent directors shall submit a declaration of compliance of sub-rule (1) and sub-rule (2) of rule 6 of Companies (Appointment and Qualification of Directors) Rules 2014 to the Board that the director has applied for the inclusion of his name in the data bank and cleared the proficiency test, each time he submits the declaration required under sub-section (7) of section 149 of the Act.
- It is suggested that declaration taken from Independent Director should also specify about the “duration upto which he/ she has applied to the institute for the inclusion of his/her name in the data bank and year of passing the exam”. Further the declaration should be taken from the already appointed Independent Directors on or before 28th February, 2020.
- Board Report shall include 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. However, the same is effective from 1st December, 2019 and required to be complied for financial year 2019-20. It suggested to include the above statement for the existing Independent Directors also.

# the expression “institute” means the ‘Indian Institute of Corporate Affairs at Manesar’ notified under sub-section (1) of section 150 of the Companies Act, 2013 as the institute for the creation and maintenance of data bank of Independent Directors;

For the detailed reading of original notification you may click on the below given hyperlink:  
[http://www.mca.gov.in/Ministry/pdf/CmpFifthAmndtRules\\_22102019.pdf](http://www.mca.gov.in/Ministry/pdf/CmpFifthAmndtRules_22102019.pdf)

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