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COMPANY SECRETARIES

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**Some important changes happened in the Corporate and Legal world in the month of December, 2019:**

**1. Extension of last date of filing of Form CRA-4.**

- ~ The Ministry has received representation regarding extension for the last date filing of Form CRA-4 (cost audit report) for all eligible companies for the financial year 2018-19.
- ~ The time limit for filing Form CRA-4 without payment of additional fees has been further extended till 29.02.2020.

**Impact:** The extension granted for filing Form CRA-4 is a relief for the stakeholders.

**2. Article: Whether a company can accept loan or commence business before filing form INC20A**

- ~ Every company incorporated after 2<sup>nd</sup> November, 2018 shall file Form INC-20A within 180 days from date of incorporation of company with Registrar of Companies (ROC).
- ~ Section 10A of Companies (Amendment) Ordinance, 2018 states that company can't exercise borrowing power before filing of declaration in form INC-20A.
- ~ Section 10A specifically restricts commencement of business before filing of Form INC-20A.
- ~ However, if any company accepts any loan or commences business before filing of 20A then company is liable for following penalty:
  - **Penalty on Company:** Company shall be liable to a penalty of Fifty Thousand Rupees.
  - **Penalty on Officer in Default:** Every officer who is in default shall be liable to a penalty of One Thousand Rupees for each day during which such default continues but not exceeding an amount of One Lakh Rupees.

**Impact:** Therefore a company cannot accept any loan or commence any business before filing form INC-20A.



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### 3. Article: Is Non-Executive Director liable for day to day activities of the Company

- ~ Section 149 of the Companies Act, 2013 provides immunity to non-executive director. The provision says "The 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."
- ~ Non-Executive Director is not bound to give continuous attention to the affairs of his company. His duties are of an intermittent nature to be performed at periodical board and committee meetings. He is not bound to attend all such meetings. On contrary, an Executive Director needs to give constant attention and take active interest in the affairs of the Company.

**Impact:** Therefore Non-Executive Director shall not be liable for day to day activities of the Company unless he is aware of the omission by the company and it is done by his consent.

### 4. Case details: Cyrus Mistry Vs Tata

After more than three years of dramatic boardroom sacking of Mr. Cyrus Pallonji Mistry, on 18<sup>th</sup> December 2019, Mr. Cyrus Pallonji Mistry won the case against Tata and was reinstated as the executive chairman of the Tata group.

Gist of entire case law is attached to this mail for your ready reference and understanding.

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We suggest readers to draw their conclusions after taking into consideration various other relevant sections, rules to be notified from time to time and applicable Secretarial Standards, Accounting Standards and Guidance notes and other notifications, circulars and amendments notified from time to time.



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