

# Monthly Newsletter

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**Shri Rajesh Verma**  
Secretary, MCA

## Secretary's Desk

The Corporate sector's role in a country's growth and economic development cannot be overstated. Corporates impact the growth of a country by the way of employment generation, capital formation, building competitiveness and driving innovation. A company's corporate governance structure is critical for its success, as it provides a framework for balancing the interests and expectations of the many stakeholders including Board of Directors, shareholders, employees, suppliers, financial

institutions and the community. The positive effect of efficient corporate governance on different stakeholders is an indication of a strengthened economy.

The need of a strong framework for corporate governance in the functioning of the company induced the concept of Independent Directors. In 2013, the legislature identified the need to incorporate the provisions for the appointment of Independent Directors (IDs) in Indian Corporate Law. Independent Directors serve the purpose of keeping checks and maintaining balance in a company and further ensuring transparency in the corporate regime. Section 149(4) of the Companies Act, 2013 highlights the roles and duties of Independent Directors. An ID is a member of the Board who does not have any material relationship with the company; is not a part of company's executive team and is not involved in the day-to-day operations of the company. Owing to the absence of material relationship with the company, the IDs are not subject to any undue influence from the company's management. Thus, they possess the ability to bring an element of objectivity to Board discussions in the general interest of the company and thereby to the benefit of minority shareholders.

The existence of independent Board of Directors in an organisation can make a meaningful difference to the long-term trajectory of businesses. Owing to the perspectives and insights that IDs can bring to the company far outweigh the time and cost related constraints, a growing number of companies have opted to have Independent Directors on their company's Board.

Currently, Independent Directors are governed by the Companies Act, 2013 and the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015. As per the Act, in case of a listed company, where the chairperson of the Board of Directors is a non-executive director, at least one-third of the Board of Directors shall comprise of IDs. However, if the listed entity doesn't have a regular non-executive Chairperson, at least half of the Board of Directors shall comprise of IDs. The primary role of an ID is improving credibility and governance standards by working as a watchdog and help in managing the company's risk.

In addition, the IDs are required to abide by a Code of Independent Directors that provides a set of guidelines for the IDs required to adhere to during their appointment. An ID should also undertake appropriate induction and timely upgradation of their skills and knowledge. An ID is required to report concerns about unethical behaviour, actual or suspected fraud of the company's code of conduct or ethics policy and pay sufficient attention while approving related party transactions in line with the interest of the company. An added duty of these governance-guardians of the Board is to guarantee that their companies put in place suitable guidelines and policies to protect the stakeholders of the company.

Although the Companies Act, 2013 defines the roles and responsibilities of Independent Directors, various concerns have been raised over their real independence. A major issue with regard to IDs is that their appointment and payment is made by the promoters, whose excesses they are supposed to guard against. This would result in failed expectation of the IDs delivering governance. To strengthen the institution of IDs, MCA amended the provisions related to

appointment and qualifications of IDs (Companies Amendment Rules, 2017) and also the code for IDs (Amendment to Schedule IV, Companies Act 2013).

Individuals commit frauds, while companies are just the vehicles, thus, individuals and not companies should be punished for fraud. There is a need to significantly enhance surveillance and build software-driven early warning system in context of both the companies and the individuals. Understanding the need to build comprehensive database for each company and for all promoters, directors and key management persons, the Ministry has been regularly taking steps to promote corporate governance and removing corruption.

The recent initiative of the Ministry requires the Board of Directors to provide the details of IDs for a data bank. The Indian Institute of Corporate Affairs (IICA) is maintaining a databank of persons willing and eligible to be appointed as IDs. The databank is a comprehensive repository of both existing IDs as well as individuals eligible and willing to be appointed as IDs. MCA introduced an online proficiency self-assessment test which is conducted by IICA for inclusion of name in databank. MCA is also having a separate registry for Independent Directors in order to have high-quality people in that position. As on 11th January, 2021, 23,697 IDs were registered in the Independent Directors' Databank under IICA and 6,758 passed the online proficiency test.

The countrywide lockdown owing to the Covid-19 pandemic has disturbed normal living conditions, most notably by their impact on businesses around the world. This unprecedented disruption has revised the customary role of an ID as watchdog of listed and public companies. At a point in time when the financial market and mutual funds are swerving under unforeseen economic pressure, IDs have to guarantee that public stake in the company that they represent is protected while the company itself takes measure to ensure flawless continuity. In order to ease out the burden and to ensure a smooth operation post the nationwide lockdown, MCA has relaxed various compliances:

- i. Since April, 2020, IDs have been allowed to conduct virtual meetings in the current year;
- ii. As per circular issued by MCA on 18th December, 2020, the Ministry has relaxed timelines and increased exemptions for the online proficiency test for IDs. The existing directors will have two year's time as against the earlier stipulated period of one year to take the online test;
- iii. Any director with 3 years (earlier 10 years) of experiences as key managerial personnel (KMP) in a listed company or an unlisted company with the paid up capital of over Rs 10 crore has been exempted from appearing for the online proficiency test.

Gender diversity on boards is another matter under discussion. Despite the challenges related to society, leadership and middle-level management, the representation of women on corporate boards is improving in India. In India, the top 500 companies have 17% women directors, of which 71% are IDs. Addressing the issues of gender diversity at leadership levels would automatically resolve the issues at board level also. Having gender diversity on board enables balanced decision making, thereby helping both the companies as well as the society to grow and gain. As on 11th January, 2021, 4,290 women IDs were registered in IICAs database, which is nearly 18% of the overall IDs registered till date.

In the revised agenda of the post-COVID market scenario, IDs will need to revitalize their role to safeguard their company from the foreseen economic distress. The IDs ought to be pro-active in directing companies in a profitable, socially responsible and environmentally sustainable manner. IDs hold a crucial position to achieve the organisation's objective and aptly raise concerns to shun incidents of fraud and governance lapses. To ensure effectiveness, the expertise of IDs must be combined with commitment to ethics, foresight and the courage to raise concerns and even make tough decisions. To conclude, Independent Directors are integral to the company's Board and leave a lasting impact on the overall integrity of the business.

## Review of Corporate Sector:

A. As on 31.12.2020, the number of companies registered under the Companies Act was 21,08,614. Of these, 7,53,091 companies were closed, 6,841 companies were under liquidation, 39,913 companies are in the process of being struck-off from the register and 2,247 companies have so far obtained the "dormant" status according to Section 455 of the Companies Act, 2013. There are 13,06,522 active

companies, including 2,04,470 companies, which were incorporated within the preceding eighteen months (not due for Annual Statutory Filings).

B. A total of 14,358 companies, including 776 One Person Companies (OPCs), were registered under the Companies Act, 2013 during December, 2020 with authorized capital of Rs. 3503.46 crore. The breakup of the newly incorporated companies by type is as follows:

Type of Company	No. of Companies registered in December, 2020	Total Authorized Capital (Rs. in Crore)
1)	2)	3)
Company limited by shares	14,281	3,503.33
Of which,		
(a) Private	13,956	1,453.11
Of which,		
One Person Companies	776	28.44
(b) Public	325	2,050.22
Company limited by Guarantee	77	0.13
Of which,		
(a) Private	77	0.13
(b) Public	0	0.00
Unlimited Company	-	0.00
<b>Grand Total</b>	<b>14,358</b>	<b>3,503.46</b>

C. During the Month of December 2020, Maharashtra had maximum number of company registrations (2,885) followed by Delhi (1,298) and Uttar Pradesh (1,280). "Business Services" topped the economic activity-wise classification (4,114) of newly registered companies.

D. During December 2020, 14,281 (out of 14,358) companies were registered as companies limited by shares with authorized capital of Rs.3503.33 crores. For more statistical details about the growth of the corporate sector, the reader is invited to the 'Monthly Information Bulletin on Corporate Sector', at URL: [mca.gov.in/MinistryV2/InformationBulletin.html](http://mca.gov.in/MinistryV2/InformationBulletin.html).

## MONTHLY MIS REPORT FROM COMPETITION COMMISSION OF INDIA

(as of December, 2020)

S. No.	Sections	Cases pending as on last day of previous month (A)	Cases received during the month (B)	Total Cases (A+B)	Net Cases pending with CCI for final disposal	Remarks
1.	19	19(1)	39	-	39	] @
2.		19(1)(a)	101	07	108	
3.		19(1)(b)	11	1	12	
	<b>Sub Total</b>	<b>151</b>	<b>8</b>	<b>159</b>	<b>154</b>	
4.	6(2)& 6(5)	10	14	24	14	*
4(a)	20(1)	-	-	-	-	
<b>TOTAL</b>		<b>161</b>	<b>22</b>	<b>183</b>	<b>168</b>	

## Cases remanded by Appellate Authority

5.	Remanded	11	-	11	11	
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## Cases regarding contravention of orders of Commission

6.	Causing fresh inquiry	02	-	02	02
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### Notes and references:

1. Kindly refer to Annexure-1 for 3 oldest pending anti-trust cases.
2. Out of 154 pending anti-trust cases, 72 cases are pending with DG and 82 cases (31 cases are at prima facie stage and 51 cases for hearing) are pending with CCI.

### MAJOR EVENTS:

1. Chairperson, CCI addressed the 5th Meeting of High Level Representatives of Asia-Pacific Competition Authorities – Competition Policy and Recovery, organised by OECD on 16th December 2020. Chairperson, CCI addressed virtually the experience of CCI on enforcement during COVID times in the meeting.
- 2- Chairperson, CCI delivered Opening Address at 3rd EU-India Competition Week organised virtually during 10th, 11th and 14th December, 2020.
- 3- CCI carried out Competition Assessment of 9 Model Concession Agreements (MCAs) of NITI Aayog under Public-Private-Partnership (PPP) framework in various infrastructure and public service delivery sectors for submission to the NITI Aayog.
- 4- The Forum of Indian Regulators Centre, IICA organized a webinar on the "Interface of Blockchain and Energy Sector" on December 02, 2020. Dr Jemma Green, Executive Chairman & Co-founder of Power Ledger, highlighted the potential areas for the application of blockchain technology in the energy sector.
- 5- Centre for MSME, IICA conducted a virtual training program on "Global Economics, Digital Money and Corporate Governance Transformation", through Intensive Webinar series on digital platform under CDM Project during 8-17 December, 2020.

### NOTIFICATIONS

- i. Vide notification dated 30.12.2020, the Companies (Meetings of Board and its Powers) Rules, 2014, have been amended to allow companies an additional period of six months i.e. upto 30.06.2021, to conduct Board Meetings through Video Conference (VC) or other audio visual means for passing resolutions in respect of matters which were earlier required to be passed in meetings with physical presence of directors. (Notification No.G.S.R. 806(E)).
- ii. Vide notification dated 17.12.2020, the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 have been amended by inserting rule 26 A which provides for purchase of minority shareholding held in demat form. (Notification No. G.S.R. 773(E)).
- iii. Vide notification dated 18.12.2020, the Companies (Appointment and qualification of Directors) Rules, 2014 have been amended. The term period within which an individual has to pass the online proficiency self-assessment test conducted by the institute has been raised to two years. The qualifying criteria for individuals who shall not be required to pass the online proficiency self-assessment test has also been amended. The minimum percentage required for passing the

online proficiency self-assessment test has been reduced from sixty to fifty percent. (Notification No. G.S.R. 774(E)).

- iv. Vide notification dated 21.12.2020, 45 sections out of the total 65 sections of the Companies (Amendment) Act, 2020 were brought into force. (Notification No. S.O. 4646(E)).
- v. Vide notification dated 24.12.2020, the Companies (Incorporation) Rules, 2014 have been amended by inserting a new rule 9A which provides that the Registrar shall extend the period of a name reserved under rule 9 by using web service SPICe+ (Simplified Proforma for Incorporating Company Electronically Plus: INC-32) up to 40 days to 60 days from the date of approval under rule 9 on payment of fees of rupees one thousand or two thousand or three thousand as the case may be. The Part-A of SPICe+ (Simplified Proforma for Incorporating Company Electronically Plus FORM NO. INC-32) has also been substituted. (Notification No. G.S.R. 795(E)).
- vi. Vide notification dated 24.12.2020, the Companies (Share Capital and Debentures) Rules, 2014 have been amended to substitute eform SH-7 (Notice to Registrar of any alteration of share capital) which may now be used for the purpose of filing the information with respect to Cancellation of unissued shares of one class and increase in shares of another class. (Notification No. G.S.R. 794(E)).

### CIRCULARS

- (i) A General Circular has been issued on 01.12.2020, in continuation to this Ministry's General Circular No. 29/2020 dated 10.09.2020. Through the said circular, the last date of submission of cost audit report for Financial Year 2019-20 by the cost auditors to the management has been extended upto 31.12.2020. (General Circular No.38/2020, dated 01.12.2020).
- (ii) A General Circular has been issued on 31.12.2020, in continuation to this Ministry's General Circulars No.14/2020 dated 8th April, 2020, No.17/2020 dated 13th April, 2020, No.22/2020 dated 15.06.2020 and No.33/2020 dated 28.09.2020. Through the said circular, the companies have been allowed to conduct their EGMs through VC or OAVM or transact items through postal ballot in accordance with the framework provided in the aforesaid Circulars upto 30th June, 2021. (General Circular No.39/2020, dated 31.12.2020).

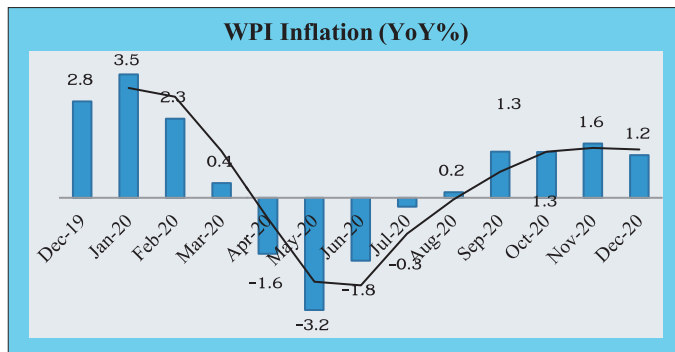
### Orders

- 1- Vide order dated 17.12.2020, the Companies (Auditor's Report) Order, 2020 has been amended to extend the applicability of CARO, 2020 and made it applicable for the audit of financial statements of financial year 2021-22 and onwards. (Order No. S.O. 4588(E)).

## Some Macro Indicators

### Wholesale Price Index (WPI)

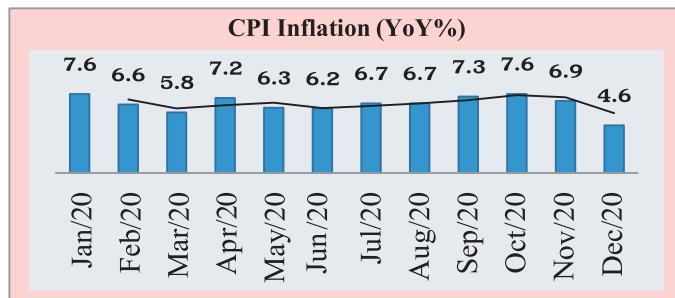
The annual rate of inflation, based on monthly WPI, stood at 1.22% (provisional) for the month of December, 2020 (over December, 2019) as compared to 2.76% during the corresponding month of the previous year.



Source: DPIIT

### Consumer Price Index (CPI)

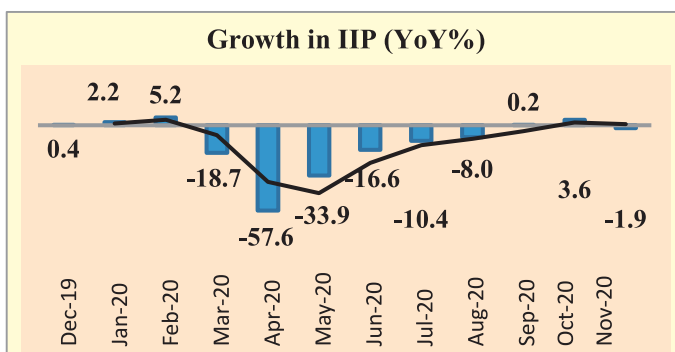
The CPI (Combined) on Base 2012, all India Inflation rates (on point to point basis i.e., December, 2020 over December, 2019) stood at 4.59%.



Source: MOSPI

### Index of Industrial Production

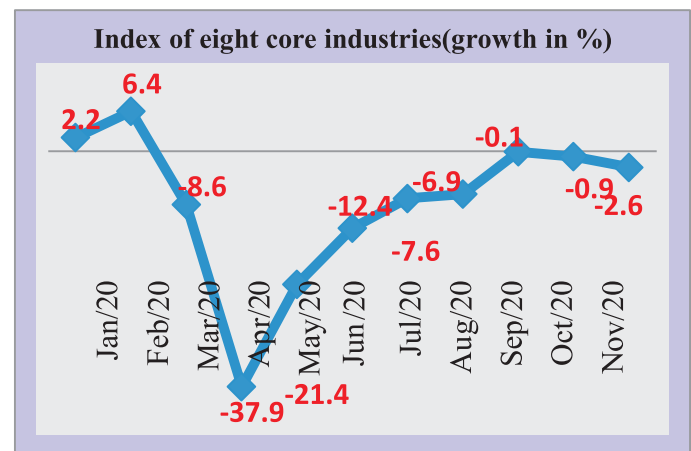
The quick estimates of Index of Industrial Production (IIP) with base 2011-12 for the month of November, 2020 stands at 126.3 which is 1.9% lower as compared to November, 2019.



Source: MOSPI

## Index of Eight Core Industries

The combined Index of Eight Core Industries stood at 125.9 in November, 2020, which declined by 2.6% as compared to the Index of November, 2019.



Source: DPIIT

## Performance of Selected indicators of Listed Non-Government Non-financial Companies (in Percent)

Trends in the selected corporate performance indicators published by RBI of a sample of non-government non-financial listed companies for second quarter of FY 2020-21 is as below:

Performance of Listed Non-Government Non-Financial Companies (Y-o-Y Growth%)			
Indicator	Q2:2019-20	Q1:2020-21	Q2:2020-21
No. of Companies	2,696	2,536	2,637
Sales	-4.5	-37	-6.2
Value of Production	-6	-39	-7.1
Expenditure	-3	-38.7	-12.9
Operating Profits	-22.6	-40.5	33.2
EBITDA	-17.7	-32.4	24.7
Depreciation	20.7	1.9	1
Gross Profits (EBIT)	-26.7	-43.7	35.6
Interest	11.5	5.9	4.3
Tax Provision	-44.6	-51.3	30.4
Net Profits	-54.3	-103.5	-

Source:RBI