

ASSURANCE INSIGHTS

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We are pleased to present the May issue of SKP Assurance Insights – our newsletter that aims at providing insights into company law, accounting and assurance related developments in India.

This month we discuss Business continuity Planning (BCP) which is a framework for identifying an organisation's risk of exposure to internal and external threats. The goal of BCP is to provide the organisation with the ability to effectively respond to threats such as natural disasters or data breaches and protect the business interests of the organisation. BCP includes disaster recovery, business recovery, crisis management, incident management, emergency management and contingency planning.

We also discuss key highlights of the Companies (Auditor's Report) Order, 2016 vis-à-vis the Companies (Auditor's Report) Order, 2015. Some of these amendment and changes might have significant implications on the reporting requirements of the auditors. Companies will have to assess these changes in order to ensure compliance with the reporting requirements.

Lastly, under Corporate Updates we cover the latest developments in regulatory policy.

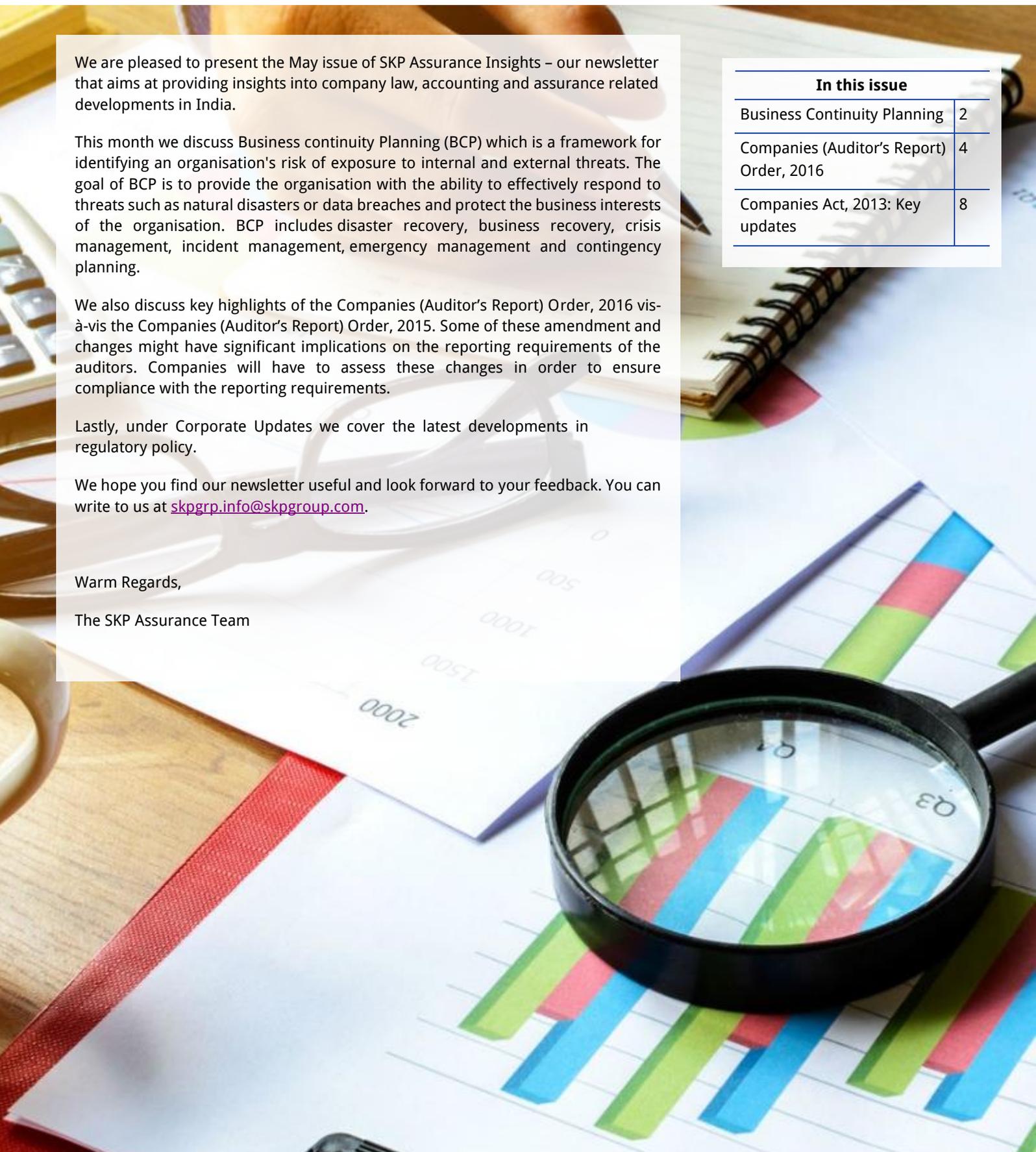
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Warm Regards,

The SKP Assurance Team

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Business Continuity Planning

Introduction

Business Continuity Planning (BCP) as a term itself indicates the process of planning and developing a system for the prevention and recovery of critical business processes from any potential threats and risks to the company. BCP is a preventive activity which is developed within an organisation to ensure that in situations of unavoidable, unforeseen calamities, the business operations are performed as usual with minimal or nominal impact on business operations.

The BCP programme would involve a creation and validation processes in which the enterprise will recover and restore the identified critical functions or processes of the business within a predetermined time.

According to **ISO 22301**, a business continuity management system emphasises the importance of:

- Understanding the continuity and preparedness needs as well as the necessity for establishing the business continuity management policy and objectives.
- Implementing and operating controls and measures for managing an organisation's overall continuity risks.
- Monitoring and reviewing the performance and effectiveness of the business continuity management system.
- Continual improvement based on objective measurements.

Designing the BCP programme

To effectively design a BCP programme, the following points needs to be considered:

- Organisation's objectives for developing BCP
- Identification of the critical business activities, processes and systems
- Understanding the entity's risks and vulnerabilities
- Risk evaluation systems and controls in place
- Business Impact Analysis (BIA) for various potential threats and risks
- Defining the crisis communication hierarchy and response timelines
- Coordination with internal and external agencies

Some of the basic parameters to look for while framing a BCP programme are:

Business Impact Analysis

BIA is an important factor for BCP development. In BIA, all critical business processes and functions are identified, whereupon any disruption of these processes or functions could lead to a significant economic impact on the organisation and thereby impact the survival and continuity of the organisation as a whole. A snapshot of details to be captured for BIA analysis is given below.

Critical activity	Activity description	Areas of impact	Impact H/M/L	Recovery time	Recovery priority	Risk mitigation	Mitigation owner

Threat and risk analysis

In this analysis, the development team carries out a security assessment in different environments including personal practice, physical security, operating procedure, backup and contingency planning, system development and maintenance. The security assessment will enable the BCP development team to improve any existing emergency plan and disaster prevention measure and to implement the emergency and disaster prevention plan if it does not exist.

Impact scenario

Once the threat and risks to the business are identified, the BCP development team should consider its impact on the critical processes and functions identified. The impact scenario analysis would help the BCP team determine the impact in case of any potential threat and risk related to each scenario and accordingly develop the BCP programme.

Recovery requirement

After the impact scenario analysis, the BCP development team should identify business and technical recovery requirements. Technical requirements include desks, applications, data, computers and peripherals and business requirements include production, distribution and warehousing, etc.

Once the recovery requirements are laid out, the organisation can think of developing plans to set up a 'hot site' and 'cold site' to support the processes as determined.

Implementation and testing of the BCP programme

The BCP programme, once developed, should be placed before the risk management committee or the Board for their approval. After this, the same should be implemented across the organisation as planned.

For implementing the BCP programme, the organisation has to define roles and responsibilities within the incident management and crisis management team for effective response at the time of disasters. The plan has to be developed in such a manner that at the time of disruption to a

business, the respective BCP teams start performing and supporting the disrupted critical activities and bring them back to normal.

In order to ensure the BCP programme functions as designed, it has to put to test to check the operational efficiency of the programme and resolve any issues faced during the testing.

Testing should be done on specific or multiple aspects of the BCP programme in a virtual environment and the results must later be analysed by the team to ensure the outcome is as planned. If not, they will amend the programme or processes to get the desired outcome.

Conclusion

Business continuity is a proactive plan to avoid and mitigate risks associated with the disruption of operations. It details steps to be taken before, during and after an event to maintain the financial viability of an organisation.

Disaster recovery is a reactive plan for responding to an event. It deals with the safety and restoration of critical personnel, locations, and operational procedures after a disaster and is a part of the business continuity planning.

It considers threats (natural/human/technical) to the organisations and its possible impact to build resilience and to ensure that the organisation can respond immediately and effectively to a major incident.

Organisations across the globe understand the importance, significance of having a BCP plan in place and intermittently test these plans to assure the stakeholders about the sustainability and readiness of the organisation to operate in case of any potential disasters or calamities, thereby having minimal impact on the business survival.



Companies (Auditor's Report) Order, 2016

The central government published in the Gazette of India: Extraordinary dated 29 March 2016, the Companies (Auditor's Report) Order, 2016 (CARO, 2016).

According to this order, the statutory auditor is required to include the specified matters in his auditor report under section 143 of the Companies Act, 2013 (the Act) relating to the financial years commencing on or after 1 April 2015. This Order supersedes the Companies (Auditor's Report) Order, 2015 (CARO, 2015) which was published in April 2015.

Exemption criteria

The table below compares CARO, 2015 and CARO, 2016 as far as exemptions to private companies are concerned.

Exemption criteria	CARO, 2015	CARO, 2016
Type of company	Private limited company.	Private limited company, which is not a subsidiary or holding company of a public company.
Paid-up share capital and reserves and surplus	Not exceeding INR 5 million at any point of time during the financial year.	Not exceeding INR 10 million as on balance sheet date.
Loans from any bank or financial institution	Loan outstanding not exceeding INR 2.5 million at any point of time during the financial year.	Total borrowings not exceeding INR 10 million at any point of time during the financial year.

Turnover	Turnover not exceeding INR 50 million at any point of time during the financial year.	Total revenue not exceeding INR 100 million during financial year as per the financial statement.
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Note: A private limited company needs to satisfy all the aforementioned criteria to get an exemption from CARO, 2016.

Changes in the key terms in CARO, 2016

- The term 'loan outstanding' is replaced with 'total borrowing'. Though both are not defined in the Act, according to the Guidance Note on CARO, 2016 (Guidance Note), the term 'total borrowing' is more comprehensive and includes term loans, cash credit and overdraft facility, bills purchased and discounted, bank guarantees and letter of credit (to the extent they are invoked and devolved respectively).
- The term 'turnover' is replaced with 'total revenue'. Turnover is defined under the Act to include only the revenue from operations. However, the total revenue represents both, revenue from operations and other income (including revenue from discontinued operations) as disclosed in financial statement as per Schedule III.

Consolidated financial statements: It has been specifically mentioned that CARO, 2016 is not applicable

to the auditor's report on consolidated financial statements.

Matters to be included in the auditor's report

A brief comparison between the clauses of CARO, 2015 and CARO, 2016 is given below, in terms of amendment, addition and deletion of clauses.

Amendments in the existing clauses

Fixed assets: Clause (i)

According to the newly inserted sub-clause (c), the auditor is also required to report on whether title deeds of immovable properties, classified under fixed assets, are held in the name of the company. If not, their details should be provided. According to the Guidance Note, the following documents mainly constitute title deeds:

- a. Own Properties: Registered Sale Deed/Transfer Deed/ Conveyance Deed
- b. Lease-hold properties: Lease Agreement duly registered

Inventory: Clause (ii)

Formerly, there were three sub-clauses which are now merged into one. Accordingly, the auditor is now required to report on only two aspects:

- Whether physical verification has been conducted by management at reasonable interval
- Whether any material discrepancies were noticed and if so, whether they have been properly dealt with in the books of accounts.

Also, according to CARO, 2015, the auditor was required to comment if the physical verification procedures of the management were reasonable and adequate in relation to the size of company and the nature of business. This requirement has now been removed.

Loans granted by the company: Clause (iii)

The applicability of this clause is now extended to the reporting of loans given to limited liability partnerships (LLPs).

Earlier, the auditor was required to report only on whether the repayments are regular. As per CARO, 2016 the additional requirements include:

- Whether the terms and conditions of the loans are not prejudicial to the company's interest.
- Whether repayment schedule has been stipulated.

Previously, if the overdue amount was more than INR 100,000, the auditor had to comment if reasonable steps were taken for the recovery of principal and interest. This limit has now been removed. Such reporting is now required for all amounts overdue for more than 90 days. Furthermore, in such cases, the total overdue amount should be reported.

As per the Guidance Note, the terms and conditions would primarily include the rate of interest, security, terms and period of repayment and restrictive covenants, etc. In arriving at the amounts overdue for more than 90 days, the repayment schedule and actual repayments shall be compared and verified.

Payment of statutory dues: Clause (vii)

According to the former sub-clause (c), the auditor was required to report whether the amount transferrable to Investor Education and Protection Fund was made within the prescribed time. This sub-clause has now been removed.

Default in payment of dues: Clause (viii)

According to CARO, 2015 the auditor was required to report whether there are defaults in the repayment of loans to banks, financial institution or dues to debenture holders and if so, the period and amount of default must be reported.

According to CARO, 2016, in addition to the above, for defaults in repayment of loans to government, the period and amount of default must be reported. In addition, lender-wise details shall be reported in cases of defaults to banks, financial institutions, government or dues to debenture holders.

Money raised for specific purposes: Clause (ix)

According to CARO, 2015, the only reporting requirement was to state if term loans were applied for the purpose for which they were obtained.

CARO, 2016 has expanded this requirement to include the money raised by way of a public offer (including debt instruments) are applied for the purpose for which they were raised. Furthermore, if it has not been applied, the auditor has to furnish their details along with delays or default with subsequent rectification, if any.

According to the Guidance Note, currently, there is no legal requirement under the Act to disclose the end-use in the financial statements. However, this clause envisages that the company should make disclosures by way of notes and the auditor shall verify the same.

Addition to existing clauses

Section 185 and section 186: Clause (iv)

Section 185 restricts all kinds of loans, guarantees and security given to directors and their related persons. Similarly, section 186 restricts both loans and investments in a body corporate or any other person. This newly inserted clause requires the auditor to report on whether the provisions of section 185 and 186 have been complied with in respect of loans, investments, guarantees and security. If not, the details of non-compliance shall be reported.

This clause augments the auditor's responsibility in case of any sort of non-compliances under these sections.

Managerial remuneration: Clause (xi)

Section 197 read with Schedule V to the Act prescribes the maximum ceiling for the payment of managerial remuneration.

According to the new clause, the auditor is required to report/opine on whether requisite approval mandated by the Act has been complied with. If not, he has to report the excess remuneration paid and to comment on the steps taken by the company securing the refund of that amount.

Nidhi company: Clause (xii)

According to the new clause, the auditor is required to assess if a company is registered as a Nidhi company under the provisions of section 406 of the Act. If it has been registered, then whether the net owned funds to deposit ratio is more than 1:20 to meet the liability as on the date of balance sheet.

The auditor will also have to assess if the Nidhi company is maintaining 10% unencumbered term deposits as specified in the Nidhi Rules, 2014 to meet the liability.

Related party transactions: Clause (xiii)

In case of related party transactions,

- Section 188 of the Act vests the right of approval with the Board of Directors and the shareholders, as the case may be.
- Section 177 (4) of the Act requires an additional approval of the audit committee for listed and other specified companies.
- AS 18 (Related Party Disclosures) mandates the manner of disclosure in the financial statements.

This new clause requires the auditor to comment on whether these sections of the Act are complied with wherever applicable and whether the disclosures in the

financial statements are as per the requirement of the Accounting Standards (AS).

Private placement/preferential allotment of shares and convertible debentures: Clause (xiv)

According to this clause, the auditor has to report on the following aspects:

- a. Whether the company has made any preferential allotment or private allotment of shares or issued any convertible debentures during the year. If so, the requirements of section 42 of the Act are complied with.
- b. Whether amounts are applied for the specified end-use. If not, the nature of non-compliance and the amount involved must be reported.

It must be noted that section 42 of the Act deals only with private placement and preferential allotment is not defined under the Act. According to the Guidance Note, the auditor must examine the compliance of requirements mentioned in the section.

Non-cash transactions: Clause (xv)

Section 192 of the Act lays restrictions on non-cash transactions by the company with the directors (including directors of the holding, subsidiary or associate company) and persons associated with them. Such transactions can be entered into only with prior approval in the general meeting.

According to this clause of CARO, 2016, the auditor is required to report on:

- Whether the company has entered into these non-cash transactions during the year.
- If so, whether the provisions of section 192 have been complied with.

RBI registration: Clause (xvi)

This is applicable only to NBFCs. Section 45-IA of the RBI Act, 1934 stipulates that these companies shall commence business only after obtaining a certificate of registration from the RBI.

Accordingly, as per CARO, 2016, the auditor must report on whether the company is required to be registered under this section and if so, whether registration has been obtained or not.

Deleted clauses

Internal control system: Clause (iv) as per CARO, 2015

CARO, 2016 has removed the requirement to comment on the adequacy of internal control systems for the purchase of fixed assets and inventory and the sale of goods and services.

Accumulated losses: Clause (viii) as per CARO, 2015

According to CARO, 2015, for companies existing for five years or more, the auditor must report if its accumulated

losses are not less than 50% of its net worth and if there are any cash losses during the year and the immediately preceding financial year. This clause has now been removed.

Guarantees given by company: Clause (x) as per CARO, 2015

Formerly, for any guarantees given by the company to banks or financial institutions for loans taken by third-parties (other than subsidiaries), the auditor must report whether they are prejudicial to the interest of the company. This clause has now been removed.





Companies Act, 2013: Key updates

Clarification to the Companies (Accounting Standards) Amendment Rules, 2016

There has been a lot of speculation in the corporate world with regards to the applicability of the Companies (Accounting Standards) Amendment Rules, 2016. The Ministry of Corporate Affairs (MCA) vide General Circular No. 04/2016 clarified that the amended Accounting Standards should be used for preparing the accounts for accounting periods commencing on or after the date of notification. The Companies (Accounting Standards) Amendment Rules 2016 has been notified in 'The Gazette of India: Extraordinary' on 30 March 2016.

[Source: Clarification on amended Accounting Standards](#)

Clarification with regard to Corporate Social Responsibility (CSR)

On 12 January 2016, the MCA released Frequently Asked Questions (FAQ's) with regard to CSR and stated that the board of eligible companies are empowered to appraise and approve their CSR policy including CSR projects or programmes or activities to be undertaken. The MCA vide General Circular No. 05/2016 has further clarified that companies undertaking CSR activities under the provisions of the Companies Act, 2013 shall not contravene any other prevailing laws of the land including the Cigarettes and Other Tobacco Products Act (COTPA), 2003.

[Source: Clarification on CSR](#)

Relaxation of additional fees and extension of last date of filing various e-forms

Earlier, the MCA vide General Circular No. 03/2016 relaxed the additional fee payable on e-forms which were due for filing by companies between 25 March 2016 and 30 April 2016, such exemptions could be availed only till 10 May 2016. Now, the MCA vide General Circular No. 06/2016 has extended the period for which a one time waiver of additional fees is applicable to all e-forms which are due for filing by companies between 25 March 2016 to 31 May 2016. Also, the MCA has extended the last date of filing such documents till 10 June 2016.

[Source: Relaxation of additional fees and extension for filing e-forms](#)

The Companies (Registration Offices and Fees) Amendment Rules, 2016

The MCA has issued the Companies (Registration Offices and Fees) Amendment Rules, 2016. These rules will amend the Companies (Registration Offices and Fees) Rules, 2014. Form No. GNL-1 (Form for filing an application with the Registrar of Companies) and Form No. GNL-4 (Form for filing addendum for rectification of defects or incompleteness) have been substituted in the Amended Rules.

[Source: The Companies \(Registration Offices and Fees\) Amendment Rules, 2016](#)

Note: These Rules shall come into force from the date of their publication in the Official Gazette.

About SKP

SKP is a long established and rapidly growing professional services group located in seven major cities across India. We specialise in providing sound business and tax guidance and accounting services to international companies that are currently conducting or initiating business in India as well as those expanding overseas. We serve over 1,200 clients including multinational companies, companies listed on exchanges, privately held firms and family-owned businesses from more than 45 countries.

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