

Regulatory updates



MCA amends provision relating to resignation of independent directors

Background

The Companies Act, 2013 (2013 Act) became largely effective from 1 April 2014. The Ministry of Corporate Affairs (MCA) has been issuing various amendments and clarifications to the 2013 Act and to the corresponding Rules to do away with practical challenges faced by companies while implementing certain provisions of the 2013 Act.

Recently, on 3 January 2018, the Companies (Amendment) Act, 2017 (Amendment Act, 2017) received the assent of the President of India. The Amendment Act, 2017 makes significant changes to the 2013 Act which are aimed at ease of doing business, better corporate governance and enforcement of stringent penal provisions for defaulting companies.

New development

With an aim to ease difficulty and to ensure better corporate governance, MCA through its notification dated 21 February 2018 issued Companies (Removal of Difficulties) Order, 2018 (difficulty order). The difficulty order issued an amendment to Section 169(1) of the 2013 Act to ensure better corporate governance in companies and balancing of powers of the board of the company.

The amended provision provides that an independent director who is appointed for the second term i.e. reappointed under Section 149(10) would be removed from the board of directors of the company only through a special resolution and after giving him/her a reasonable opportunity of being heard.

The amendments would be effective from the date of its publication in the Official Gazette i.e. 22 February 2018.

(Source: Companies (Removal of Difficulties) Order, 2018 issued by MCA dated 21 February 2018)

The MCA has issued the Companies (Accounts) Amendment Rules, 2018

The MCA through its notification dated 27 February 2018 issued Companies (Accounts) Amendment Rules, 2018 which has amended the existing Rule 10 of the Companies (Accounts) Rules, 2014. The rules provide a format in which entities are required to input details of their financial statements. Currently the rules provide form AOC-3 which includes the format for filing financial statements under current Indian GAAP i.e. Accounting Standards (AS).

The amended rules provide a new form i.e. Form AOC-3A for entities which are required to comply with the Companies (Indian Accounting Standards) Rules, 2015 to file their financial statements in the format of abridged financial statements and cash flow statement.

The amended rules are applicable from date of its publication in the Official Gazette i.e. 28 February 2018.

(Source: MCA notification GSR 191(E) dated 27 February 2018)

The MCA issues relaxations for government companies

The MCA on 5 June 2015 issued a notifications which provided exceptions/modifications/adaptations to some of the provisions of the 2013 Act for government companies. The exemption provided to government companies included exemption from the provisions of AS 17, *Segment Reporting* for the companies engaged in defence production.

Recently, the MCA through its notification dated 23 February 2018, amended the erstwhile notification dated 5 June 2015 to provide that the companies engaged in defence production are exempt from the provision on segment reporting under the applicable Accounting Standard i.e. current IGAAP (AS) or Ind AS, whichever is applicable to the entity.

(Source: MCA notification 802(E) dated 23 February 2018)

MCA notifies section relating to constitution of NFRA

The MCA through its notification dated 21 March 2018 notified following provisions relating to constitution of the National Financial Reporting Authority (NFRA) with effect from 21 March 2018.

- Section 132(3) of the 2013 Act provides that NFRA should consist of a chairperson, who should be a person of eminence and having expertise in accountancy, auditing, finance or law to be appointed by the central government and such other members not exceeding 15 consisting of part-time and full-time members as may be prescribed. Further, the chairperson and members should make a declaration to the central government in the prescribed manner regarding no conflict of interest or lack of independence in respect of his or their appointment.

Additionally, the chairperson and members, who are in full-time employment with NFRA should not be associated with any audit firm (including related consultancy firms) during the course of their appointment and two years after ceasing to hold such appointment.

- Section 132(11) provides that the central government may appoint a secretary and such other employees as it may consider necessary for the efficient performance of functions by NFRA under the 2013 Act and the terms and conditions of service of the secretary and employees should be such as may be prescribed.

Additionally, MCA issued the NFRA (Manner of appointment and other terms and conditions of service of chairperson and members) Rules, 2018. The Rules, inter-alia, provides guidance with respect to the following:

- Composition of NFRA
- Manner of appointment of the chairperson and members of NFRA
- Norms for removal of chairperson or member
- Procedure for enquiry of misbehaviour or incapacity of the chairperson or a member.

The rules came into force from the date of their publication in the Official Gazette i.e. 22 March 2018.

(Source: MCA notification dated 21 March 2018 and NFRA (Manner of appointment and other terms and conditions of service of chairperson and members) Rules, 2018)

SEBI recommended additional methods for MPS requirements

Background

Rule 19A of the Securities Contracts (Regulations) Rules, 1957 (SCRR) provides that every listed company is required to maintain a public shareholding of at least 25 per cent. Additionally, Regulation 38 of Securities and Exchange Board of India (SEBI) (Listing Obligations and Disclosure Requirements) Regulations, 2015 (Listing Regulations) provides that the listed entity shall comply with Minimum Public Shareholding (MPS) requirements in the manner as specified by SEBI.

The SEBI through its circular CIR/CFD/CMD/14/2015 dated 30 November 2015 provided for following methods that may be used by a listed entity to achieve compliance with MPS requirements mandated under Rules 19(2)(b) and 19A of SCRR and Regulation 38 of Listing Regulations.

- a. Issuance of shares to public through prospectus
- b. Offer for sale to public through prospectus

- c. Sale of shares held by promoters through secondary market in terms of SEBI circular CIR/MRD/DP/05/2012 dated 1 February 2012
- d. Institutional placement programme
- e. Rights issue to public shareholders
- f. Bonus shares to public shareholders
- g. Any other method as may be approved by SEBI on a case to case basis.

In this regard, listed public sector companies have been provided additional time till 21 August 2018 to comply with the requirements. Accordingly, listed entities that have a public shareholding of less than 25 per cent are required to adopt any of the certain methods to comply with the MPS requirements.

New development

The SEBI through its circular (SEBI/HO/CFD/CMD/ CIR/P/43/2018) dated 22 February 2018 introduced two additional methods for listed entities to comply with the MPS requirement i.e.

- **Open market sale:** Sale of shares up to 2 per cent of the total paid up equity share capital held by promoters/promoter group in open market subject to certain conditions as mentioned in the circular.
- **Qualified Institutions Placement (QIP):** Allotment of eligible securities through QIP in terms of Chapter VIII of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009.

Further, SEBI requires a listed entity to give an undertaking to the recognised stock exchange(s) obtained from the persons belonging to the promoter and promoter group that they would not buy any shares in the open market on the dates on which the shares are being sold by promoter(s)/promoter group as stated above.

(Source: SEBI circular number SEBI/HO/CFD/CMD/ CIR/P/43/2018 dated 22 February 2018)



