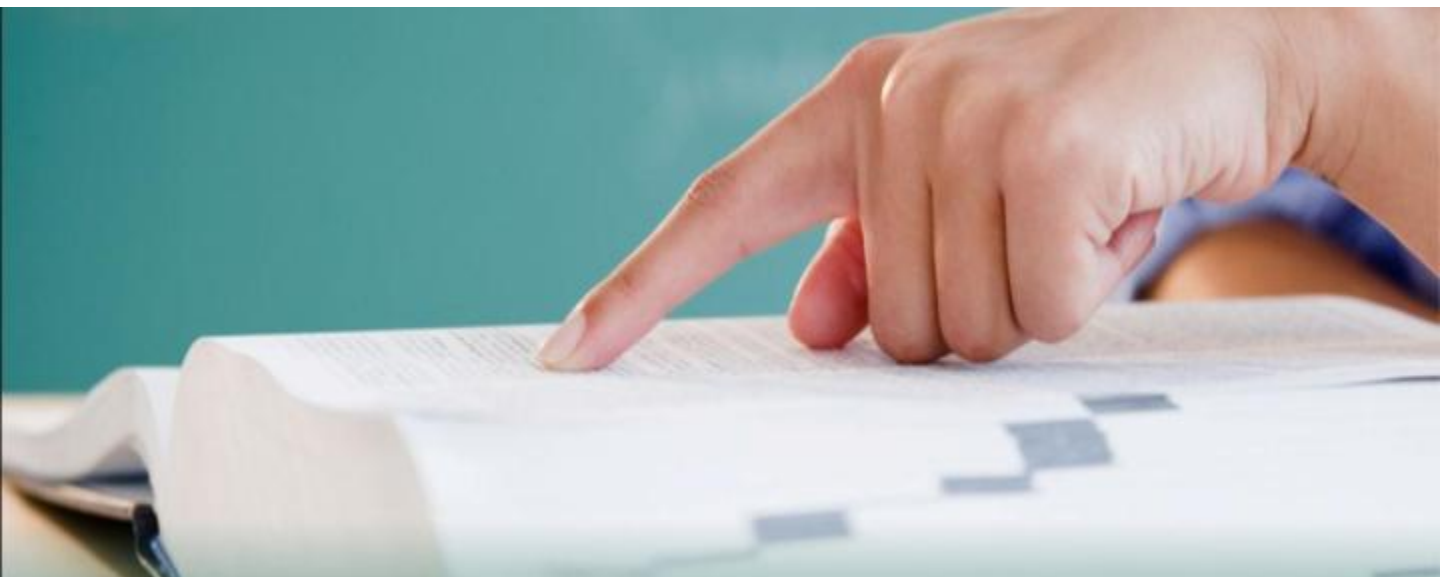


## The MCA amends the Companies Act, 2013

2 June 2015



### First Notes on:

Financial Reporting

**Corporate law updates**

Regulatory and other information

Disclosures

### Sector:

**All**

Banking and Insurance

Information, Communication, Entertainment

Consumer and Industrial Markets

Infrastructure and Government

### Relevant to:

**All**

Audit committee

CFO

Others

### Transition:

**Immediately**

Within the next 3 months

Post 3 months but within 6 months

Post 6 months

### Background

The Union Cabinet on 2 December 2014 introduced an amendment bill in the Parliament proposing certain amendments to the Companies Act, 2013 (2013 Act). Subsequently, on 29 April 2015 certain additions were made in the amendment bill. Post approval from the Lok Sabha and the Rajya Sabha, the amendment bill was finally assented by the President of India on 25 May 2015. These amendments are called as the Companies (Amendment) Act, 2015 (Amendment Act, 2015) and have been published in the Official Gazette on 26 May 2015.

The Central Government can appoint different dates for the provisions of the Amendment Act, 2015 and any reference in any provision to the commencement of the Amendment Act, 2015 shall be construed as a reference to the coming into force of that provision. Consequently, the Central Government has appointed 29 May 2015 as the date on which Section 1 to 12 and 15 to 23 of the Amendment Act, 2015 would come into force.

Additionally, on 29 May 2015, the Ministry of Corporate Affairs (MCA) has issued certain amendments to some of the provisions contained in:

- Companies (Registration Offices and Fees) Rules, 2014
- Companies (Share Capital and Debentures) Rules, 2014
- Companies (Declaration and Payment of Dividend) Rules, 2014, and
- Companies (Incorporation) Rules, 2014.

The amendments to the Rules would be effective from the date of its publication in the Official Gazette.

This issue of First Notes provides an overview of key amendments made in the 2013 Act and to the aforesaid Rules.

## Norms for related party transactions eased

### Current requirements under 2013 Act and relevant Rules

Currently, Clause 49 of the Equity Listing Agreement issued by the Securities and Exchange Board of India provides that an audit committee may grant an omnibus approval for a related party transaction proposed to be entered into by the company, subject to certain conditions. Such omnibus approval would be valid for period not exceeding one year and will require fresh approvals after the expiry of one year.

### Amendment

Now, to align with the Equity Listing Agreement a proviso to Section 177(4)(iv) to the 2013 Act has been inserted to permit omnibus approval for proposed related party transactions subject to such conditions as would be prescribed.

### Current requirements under 2013 Act and relevant Rules

Under Section 188 of the 2013 Act, a company is able to approve certain related party transactions through a special resolution.

### Amendments

- Section 188 of the 2013 Act has been amended to provide that a company would now approve certain related party transactions through a resolution instead of a special resolution.
- Section 188 of the 2013 Act has been further amended to exempt related party transactions between a holding company and its wholly-owned subsidiary from the requirement of approval by non-related shareholders provided the accounts of the wholly-owned subsidiary is consolidated with the holding company and is placed before the shareholders at the general meeting for approval (similar to Clause 49 of the Equity Listing Agreement).

## Threshold prescribed for reporting of frauds by the auditors

### Current requirements under 2013 Act and relevant Rules

- Under Section 143(12) of the 2013 Act, if an auditor of a company, in the course of the performance of his duties as an auditor, has reason to believe that an offence involving fraud is being or has been committed against the company by officers or employees of the company, he shall immediately report the matter to the Central Government within the prescribed time and by the prescribed manner as given in the relevant Rules.

In absence on any specific reporting threshold, the auditor was obligated to report insignificant amounts to the Central Government.

## Amendments

- Section 143(12) of the 2013 Act has now been amended to provide as follows:
    - Reporting to the Central Government by auditors would be required only if the amount involved exceeds the threshold that would be prescribed
    - In case of a fraud involving lesser than the specified amount, the auditor is required to report the matter to the audit committee (if constituted) or to the Board within such time and in such manner as may be prescribed
    - The companies whose auditors have reported frauds to the audit committee or to the Board but the company has not reported to the Central Government, should disclose the details about such frauds in the Board's report in such manner that would be prescribed.
- Due to the above amendment, consequential amendment has been made in Section 134(3)(c) of the 2013 Act which deals with the Board's report.

## Definition of private/public company amended

### Current requirements under 2013 Act and relevant Rules

- Section 2(68) and Section 2(71) of the 2013 Act, *inter alia*, requires a private company to have a minimum paid-up share capital of INR1 lakh and a public company is required to have a minimum paid-up share capital of INR5 lakh respectively.

### Amendment

- Through the Amendment Act, 2015, the minimum paid-up share capital requirement for a private or a public company have now been omitted. Therefore, there is no minimum paid-up capital requirement any more.

## Severe punishment prescribed for contravention of deposit acceptance norms

### Current requirements under 2013 Act and relevant Rules

- No specific punishment was prescribed under the 2013 Act in case a company accepts deposits in contravention of provisions related to acceptance of deposits or where the company fails to repay the deposit/interest due within the due date.

### Amendments

- This lacuna has now been corrected by inserting Section 76A in the 2013 Act which provides that
  - (a) where a company accepts or invites or allows or causes any other person to accept or invite on its behalf any deposit in contravention of the manner or the conditions prescribed under Section 73 or Section 76 of the 2013 Act or Rules made thereunder or
  - (b) fails to repay the deposit or part thereof or any interest due thereon within the time specified

under Section 73 or Section 76 of the 2013 Act or Rules made thereunder or such further time as may be allowed by the National Company Law Tribunal under Section 73 of the 2013 Act.

- The consequences of the above non-compliances are as follows:
  - the company would, in addition to the payment of the amount of deposit or part thereof and the interest due, be punishable with a fine which would not be less than INR1 crore but which may extend to INR10 crore, and
  - every officer of the company who is in default would be punishable with imprisonment which may extend to 7 years or with a fine which should not be less than INR25 lakh but which may extend to INR2 crore, or with both.

Where it is proved that the officer of the company who is in default, has contravened such provisions knowingly or wilfully with the intention to deceive the company or its shareholders or depositors or creditors or tax authorities, he would be liable for action under Section 447 of the 2013 Act which deals with punishment for fraud.

### Strategic business decisions protected

#### *Current requirements under 2013 Act and relevant Rules*

As per Section 179(3) of the 2013 Act, Board of Directors are permitted to exercise certain powers by means of a resolution passed at Board meetings e.g. approval for borrowings, diversification of business, amalgamation, merger or reconstruction.

Under Section 117(3)(g) of the 2013 Act, resolutions passed above are required to be filed with the Registrar of Companies (RoC) within the prescribed time period.

Section 399 of the 2013 Act *inter alia* permits any person to inspect any documents by electronic means kept by the RoC in accordance with the prescribed Rules.

Concerns were raised by corporate India as key decisions were being made publically available.

#### *Amendments*

- In order to protect strategic business decisions, Section 117(3)(g) of the 2013 Act has now been amended to provide that no person will be entitled under Section 399 to inspect or obtain copies of resolutions passed under Section 179(3) of the 2013 Act.
- Proviso to Rule 15 of the Companies (Registration Offices and Fees) Rules, 2014 has been inserted to provide that no person should be entitled to inspect

or obtain copies of resolutions referred to in Section 117(3)(g) of the 2013 Act.

### Amendments to rectify overreach by Rules over the 2013 Act

#### *Current requirements under 2013 Act and relevant Rules*

The Companies (Declaration and Payment of Dividend) Rules, 2014 (as amended) requires a company to set-off carried over previous losses and depreciation not provided in previous years against the profit of the current year, in order to declare dividend.

#### *Amendment*

The above requirement has now been included as a fourth proviso to Section 123(1) of the 2013 Act and consequently Rule (3)(5) of the Companies (Declaration and Payment of Dividend) Rules, 2014 has been omitted by the Amendment Act, 2015.

#### *Current requirements under 2013 Act and relevant Rules*

- Rule 10 of the Companies (Meetings of Board and its Powers) Rules, 2014 requires that the following transactions are exempted from the requirements of Section 185 of the 2013 Act provided that loans made are utilised by the subsidiary company for its principal business activities:
  - loan made by a holding company to its wholly-owned subsidiary company or any guarantee given or security provided by a holding company in respect of any loan made to its wholly-owned subsidiary company, and
  - guarantee given or security provided by a holding company in respect of loan made by any bank or financial institution to its subsidiary company.

#### *Amendment*

The above requirement of the Rules has now been included as a proviso to Section 185(1) of the 2013 Act after replacing the 'and' condition with 'or'.

### Transfer of shares to Investor Education and Protection Fund

#### *Amendment*

Section 124(6) of the 2013 Act has been amended to rectify the requirement of transferring shares for which unclaimed/unpaid dividend has been transferred to the Investor Education and Protection Fund even though the dividend has been claimed.

## Other amendments

- Currently, under Section 11 of the 2013 Act, a company having a share capital is not permitted to commence any business or exercise any borrowing powers unless:
  - a declaration has been filed by a director in such form and verified in such manner as may be prescribed, with the RoC that every subscriber to the memorandum has paid the value of the shares agreed to be taken by him/her and the paid-up share capital of the company is not less than INR5 lakh in case of a public company and not less than INR1 lakh in case of a private company on the date of making the declaration and
  - the company has filed with the RoC a verification of its registered office as provided in Section 12(2) of the 2013 Act.

Through the Amendment Act, 2015, Section 11 of the 2013 Act has now been omitted.

- The Companies (Incorporation) Rules, 2014 has been amended as follows:
  - A proviso has been inserted after Rule 12 which states that in case pursuing of any of the objects of a company requires registration or approval from sectoral regulators such as the Reserve Bank of India, the Securities and Exchange Board of India, registration or approval, as the case may be, from such regulator should be obtained by the company before pursuing such objects and a declaration in this behalf should be submitted at the stage of incorporation of the company.
  - Rule 24 regarding declaration to be filed by directors at the commencement of business in Form INC 21 has been deleted and new forms INC 13 and INC 16 have been introduced replacing the old ones.
- Under Section 248(1)(b) of the 2013 Act, the RoC is required to send a notice to the company/ directors of his intention to remove the name of the company from the register of companies if the subscribers to the memorandum have not paid

the subscription which they had undertaken to pay and a declaration under Section 11(1) of the 2013 Act to this effect has not been filed within a period of 182 days from the date of incorporation of the company.

Through the Amendment Act, 2015 the above requirement has now been omitted. Therefore, going forward there will be no obligation on RoC to send the notice.

- The Amendment Act, 2015 has removed the requirement of having a common seal by companies by virtue of amendment in Section 9, Section 12(3)(b), Section 22(2) and (3), Section 46(1) of the 2013 Act and Section 223(4)(a) of the 2013 Act. The 2013 Act now provides that:
  - in case a company does not have a common seal, the authorisation under Section 22(2) (which deals with execution of bills of exchange) and Section 46(1) (which deals with certificate of shares) of the 2013 Act would be made by two directors or by a director and the company secretary (where appointed).
- Rule 5(3)(b) of the Companies (Incorporation) Rules, 2014 (relating to shares which are not in demat form) has been amended as follows:
  - Proviso to Rule 5(3)(b) has been amended to provide that in case a company does not have a common seal, the share certificate shall be signed by two directors or by a director and the company secretary, wherever, the company has appointed a company secretary.
  - Additionally, in case of one person company which does not have a common seal, it is provided that the share certificate should be signed by the persons in the presence of whom the seal is required to be affixed.

## Our comments

- The amendments signify that the MCA is continuing to re-look at some of the crucial aspects of the 2013 Act. The amendments with regard to fraud reporting, shareholders' approval for related party transactions and prohibition of public inspection of board resolutions filed with the RoC are substantive and welcome. The amendments, are expected to contribute to the effective implementation of the 2013 Act.
- The proposal for replacing the requirement to obtain special resolution with an ordinary resolution may not impact listed companies as Clause 49 of the Equity Listing Agreement requires approval of shareholders through a special resolution for material related party transactions.

## The bottom line

There are several other areas where companies may still face challenges while applying the 2013 Act. They would hope that there could be a more thorough post implementation review of the 2013 Act to address these challenges.

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## Introducing KPMG in India IFRS Institute



KPMG in India is pleased to re-launch IFRS Institute - a web-based platform, which seeks to act as a wide-ranging site for information and updates on IFRS implementation in India.

The website provides information and resources to help board and audit committee members, executives, management, stakeholders and government representatives gain insight and access to thought leadership publications that are based on the evolving global financial reporting framework.

## IFRS Notes



### The IASB issues a formal proposal to defer the effective date of the new revenue standard

On 19 May 2015, the IASB published an ED of proposed amendments to IFRS 15 to change the effective date of IFRS 15. It proposes that IFRS 15 would apply for annual reporting periods beginning on or after 1 January 2018. Earlier application would continue to be permitted. Entities would also continue to be permitted to choose between applying the standard either retrospectively to each prior reporting period presented or retrospectively with the cumulative effect of initially applying the standard recognised at the date of initial application.

The IASB also received a number of unsolicited comment letters from stakeholders, e.g. telecommunication and software industries, supporting a deferral of the effective date of IFRS 15. In their view, a one-year deferral would improve the quality of implementation, particularly in the light of the availability (or lack thereof) of information technology systems. Therefore, the IASB holds a view that a one-year deferral would be sufficient in terms of providing additional time to implement IFRS 15

## Missed an issue of Accounting and Auditing Update or First Notes?



### May 2015

The May 2015 edition of the Accounting and Auditing Update captures the recent issue of the application guide on the provisions of Schedule II to the Companies Act, 2013. This month we cover an overview of the Real Estate Investment Trust (REIT) Regulations issued by the Securities and Exchange Board of India (SEBI) and also discuss the relevant accounting requirements for an investment property under Ind AS. We also highlight the requirements of the Companies Act, 2013 with respect to the share application money and bring out key differences vis-à-vis Companies Act, 1956. The Institute of Chartered Accountants of India (ICAI) recently issued a guidance note on accounting for rate regulated activities. We have provided an overview of the requirements of the guidance note in this issue. In addition, we cast our lens on the recently issued ICAI's Expert Advisory Committee's opinion on accounting of discounts by a company. We also provide a perspective as per Ind AS 115, *Revenue from Contracts with Customers*, on the accounting treatment of discounts.

Finally, in addition to our regular round up of regulatory updates, we have also provided an update on the proposed amendment on accounting for income taxes on intercompany transfers and balance sheet classification of deferred tax asset and liability including transition guidance under the U.S. GAAP.



### The ICAI issues a guidance note on accounting for expenditure on corporate social responsibility (CSR) activities

The Companies Act, 2013 (2013 Act) lays down a framework for all companies meeting the prescribed criteria to contribute two per cent of their profits for a CSR purpose. The CSR Rules (Rules) state that every company including its holding or subsidiary, as well as foreign companies having a project office/branch in India, meeting certain criteria (i.e. equaling or exceeding net worth of INR500 crore, or net profit of INR5 crore, or turnover of INR1,000 crore) during any financial year, is required to comply with the CSR provisions.

The Institute of Chartered Accountants of India (ICAI) on 15 May 2015 issued a guidance note on accounting for expenditure on CSR activities (guidance note) which provides guidance on the recognition, measurement, presentation and disclosure of expenditure on activities relating to CSR activities. Our issue of First Notes summarises the key aspects of the guidance note issued by the ICAI.



### KPMG in India is pleased to present Voices on Reporting – a monthly series of knowledge sharing calls to discuss current and emerging issues relating to financial reporting.

On 20 May 2015, we covered following topics :

- (1) salient features of Indian Accounting Standard (Ind AS) 16, *Property, Plant and Equipment*, and Ind AS 38, *Intangible Assets*, along with key differences from AS 10, *Accounting for Fixed Assets* and AS 26, *Intangible Assets*
- (2) the key aspects of the application guide on the provisions of Schedule II to the Companies Act, 2013 issued by the Institute of Chartered Accountants of India (ICAI).

Feedback/queries can be sent to [aaupdate@kpmg.com](mailto:aaupdate@kpmg.com)

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