

In brief

- Notification of Sections of the Companies (Amendment) Act, 2017 and amendment to the Rules in the line of Notification.
- Companies (Amendment) Act 2017 is nearly fully operational as out of 93 sections, 91 sections are notified till date.



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The Companies (Amendment) Act, 2017

The Companies (Amendment) Bill, 2017, got assent from the Honourable President of India on **3rd January 2018** and was **notified in the Official Gazette of the same date** to be called as the **Companies (Amendment) Act, 2017 (Amendment Act)**. This Act is an amendment to the **Companies Act, 2013. (2013 Act)**
http://www.mca.gov.in/Ministry/pdf/CAAct2017_05012018.pdf

Commencement of the Amendment Act

Different dates have been appointed for commencement of different provisions of the Amendment Act.

Date of coming into force	Sections notified
26 th January 2018	Section 1 and Section 4
9 th February 2018	43 provisions
7 th May 2018	28 provisions
13 th June 2018	6 provisions
5 th July 2018	Section 20
27 th July 2018 @	Section 5 and Section 6
31 st July 2018	Section 36
7 th August 2018#	Section 10

Date of coming into force	Sections notified
15 th August 2018	4 provisions
12 th September 2018*	5 provisions
19 th September 2018**	Section 37

For particulars of notification of various Sections of the Companies Act, 2017 refer **Annexure I**

- @** In the line of aforesaid Notification, the MCA has notified Companies (Incorporation) 3rd Amendment Rules, 2018
- #** In the line of aforesaid Notification, the MCA has notified Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2018
- *** In line of the aforesaid Notification, the MCA has notified amendment to Schedule V & Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2018
- **** In line of the aforesaid Notification, the MCA has notified Companies (Corporate Social Responsibility Policy) Amendment Rules, 2018

Notified Sections of the Companies (Amendment) Act, 2017

Sections of the Amendment Act	Corresponding Sections of the 2013 Act	Nomenclature of Sections of 2013 Act	Effective Date
1		Short title and commencement	26 th January 2018
2	2	Definitions	9 th February 2018
[except clause (i) and (xiii)]			
2 clause (i)	2(6)	Definition of Associate Company	7 th May 2018
2 clause(xiii)	2(87)	Definition of Subsidiary Company	7 th May 2018
3	3A	Members severally liable in certain cases (New Section inserted)	9 th February 2018
4	4	Memorandum	26 th January 2018
5	7	Incorporation of Company	27 th July 2018
6	12	Registered Office of Company	27 th July 2018
7	21	Authentication of documents, proceedings and contracts	9 th February 2018
8	26	Matters to be stated in the prospectus	7 th May 2018
9	35	Civil liability for misstatements in prospectus	9 th February 2018
10	42	Issue of shares on private placement basis (Substituted)	7 th August 2018
11	47	Voting rights	9 th February 2018
12	53	Prohibition on issue of shares at discount	9 th February 2018
13	54	Issue of sweat equity shares	7 th May 2018
14	62	Further issue of share capital	9 th February 2018
15	73	Prohibition on Acceptance of Deposits from Public	15 th August 2018
16	74	Repayment of Deposits etc. accepted before the Commencement of this Act	15 th August 2018
17	76A	Punishment for Contravention of Section 73 or Section 76	9 th February 2018
18	77	Duty to register charges, etc.	7 th May 2018
19	78	Application for registration of charge	7 th May 2018
20	82	Company to report satisfaction of charge	5 th July 2018
21 clause (i) and (ii)	89	Declaration in respect of beneficial interest in any share	7 th May 2018
21 clause (iii)	89	Declaration in respect of beneficial interest in any share	13 th June 2018
22	90	Register of significant beneficial owners in a company	13 th June 2018
23 clause(iii) and (iv)	92	Annual Return	7 th May 2018
24	93	Return to be Filed with Registrar in Case Promoters' Stake Changes (Omitted)	13 th June 2018

Sections of the Amendment Act	Corresponding Sections of the 2013 Act	Nomenclature of Sections of 2013 Act	Effective Date
25	94	Place of keeping and Inspection of Registers, Returns, etc.	13th June 2018
26	96	Annual General Meeting	13th June 2018
27	100	Calling of Extraordinary General Meeting	9th February 2018
28	101	Notice of meeting	9th February 2018
29	110	Postal Ballot	9th February 2018
30	117	Resolutions and agreements to be filed.	7th May 2018
31	121	Report on AGM	7th May 2018
32	123	Declaration of dividend	9th February 2018
33	129	Financial Statement (FS)	7th May 2018
34	130	Re-opening of accounts on court's or tribunal's orders	9th February 2018
35	132	Constitution of National Financial Reporting Authority	9th February 2018
36	134	FSs, Board Report etc.	31st July 2018
37	135	Corporate Social Responsibility	19th September 2018
38	136	Right of member to copies of audited FS	9th February 2018
39	137	Copy of FS to be filed with Registrar	7th May 2018
40	139	Appointment of auditors	7th May 2018
41	140	Removal, Resignation of Auditor and giving of special notice	9th February 2018
42	141	Eligibility, Qualification and Disqualifications of Auditors	9th February 2018
43	143	Powers and duties of auditors and auditing standards	9th February 2018
44	147	Punishment for contravention	9th February 2018
45	148	CG to specify audit of items of Cost in respect of Certain Companies	9th February 2018
46	149	Company to have Board of Directors	7th May 2018
47	152	Appointment of Directors	9th February 2018
48	153	Application for allotment of Director Identification Number	9th February 2018
49	157	Company to inform Directors	7th May 2018
50	160	Right of persons other than retiring Directors to stand for Directorship	9th February 2018
51	161	Appointment of Additional Director, Alternate Director and Nominee Director	9th February 2018
52	164	Disqualifications for appointment of Director	7th May 2018
53	165	Number of Directorship	9th February 2018
54	167	Vacation of office of Director	7th May 2018

Sections of the Amendment Act	Corresponding Sections of the 2013 Act	Nomenclature of Sections of 2013 Act	Effective Date
55	168	Resignation of Director	7 th May 2018
56	173	Meeting of Board	7 th May 2018
57	177	Audit Committee	7 th May 2018
58	178	Nomination and remuneration committee and stakeholders relationship committee	7 th May 2018
59	180	Restrictions on powers of Board	9 th February 2018
60	184	Disclosure of interest by Directors	9 th February 2018
61	185	Loan to Directors etc.	7 th May 2018
62	186	Loan and Investment by company	7 th May 2018
63	188	Related Party Transactions	9 th February 2018
64	194	Prohibition on Forward dealings in securities of company by Director or Key Managerial Personnel (Omitted)	9 th February 2018
65	195	Prohibition on Insider trading of securities (Omitted)	9 th February 2018
66	196	Appointment of Managing Director, Whole-time Director or Manager	12 th September 2018
67	197	Overall Maximum Managerial Remuneration and Managerial Remuneration in case of absence or inadequacy of profits	12 th September 2018
68	198	Calculation of profits	12 th September 2018
69	200	CG or company to fix limit with regard to remuneration	12 th September 2018
70	201	Forms of, and procedure in relation to certain applications	12 th September 2018
71	216	Investigation of Ownership of Company	13 th June 2018
72	223	Inspector's report	9 th February 2018
73	236	Purchase of Minority Shareholding	9 th February 2018
74	247	Valuation by Registered Valuers	9 th February 2018
75	366	Companies capable of being registered	15 th August 2018
76	374	Obligations of companies registering under this Part	15 th August 2018
77	379	Application of Act to foreign companies	9 th February 2018
78	384	Debentures, Annual Return, Registration of charges, books of account and their Inspection	9 th February 2018
79	391	Application of Sections 34 to 36 and Chapter XX	9 th February 2018
80	403	Fee for filing etc.	7 th May 2018
1 st proviso to clause (i) and (ii)			

Sections of the Amendment Act	Corresponding Sections of the 2013 Act	Nomenclature of Sections of 2013 Act	Effective Date
82	409	Qualification of President and Members of Tribunal	9 th February 2018
83	410	Constitution of Appellate Tribunal	7 th May 2018
84	411	Qualifications of Chairperson and Members of Appellate Tribunal	9 th February 2018
85	412	Selection of Members of Tribunal and Appellate Tribunal	9 th February 2018
86	435	Establishment of Special Courts	7 th May 2018
87	438	Application of Code to proceedings before a special court	7 th May 2018
88	439	Offences to be non-cognizable	7 th May 2018
89	440	Transitional provisions	7 th May 2018
90	441	Compounding of certain offences	9 th February 2018
91	446A,446B	446 A.- Factors for determining level of punishment and 446 B-Lesser penalties for One Person Companies or small companies (New Section inserted)	9 th February 2018
92	447	Punishment for Fraud	9 th February 2018
93	458	Delegation by CG of its powers and functions	9 th February 2018

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Companies Act, 2013 – Rules and Amendment Rules

Companies (Incorporation) 3rd Amendment Rules, 2018

The amendments pertain to the following

- ♦ **Rule 3-One Person Company(OPC)**

The term ‘resident in India’ would now mean a person who has stayed in India for a period of not less than 182 days during the immediately preceding financial year (FY) (*earlier it was calendar year*).

For the purposes of this Rule, while counting the number of days of stay of a director in India for the FY 2018-19, any period of stay from 1st January 2018 till the date of notification of this Rule should also be counted.

- ♦ **Rule 15- Declaration from Subscribers and 1st Directors**

A declaration (*earlier Affidavit*) has to be submitted by each of the Subscribers to the Memorandum and each of the 1st Directors named in the Articles in Form No.INC-9.

For details refer:

http://www.mca.gov.in/Ministry/pdf/CompaniesIncorporation3rdRules27_30072018.pdf

Companies (Accounts) Amendment Rules, 2018

The amendment includes the following-

- ♦ **Rule 8- Matters to be included in Board’s Report (BR).**

The BR of every company (**other than OPC and small company**) should also include-

- ▲ A disclosure, as to whether maintenance of cost records as specified by the

Central Government (CG) under Section 148(1)(CG to specify audit of items of cost in respect of certain companies) is required by the company and accordingly such accounts and records are made and maintained.

- ▲ A Statement that the company has complied with provision relating to the constitution of Internal Complaints Committee under Sexual Harassment of Women at Workplace(Prevention, Prohibition and Redressal) Act, 2013.

- ♦ **Rule 8A- Matters to be included in the BR for OPC and Small Company**

The BR of OPC and Small Company should be in abridged form and should, among other matters, include the web address where Annual Return has been placed, number of Board Meetings, Directors Responsibility Statement, state of company’s affairs, financial summary or highlights, details of frauds reported by the auditors etc. The BR should contain particulars of contracts or arrangements with related parties in Form AOC-2

For details refer: http://www.mca.gov.in/Ministry/pdf/companiesAccountsRules_31072018.pdf

In brief

- Amendment of Companies (Incorporation) Rules, 2014 – meaning of ‘resident in India’ has been revised, affidavit to be filed by the Subscribers and 1st Directors

(Notification dated 27th July 2018)

- Amendment of Companies(Accounts) Rules, 2014- amendment of matters to be included in the Board Report of every company and OPC and small company

(Notification dated 31st July 2018)

In brief

Amendment of Companies (Prospectus and Allotment of Securities) Rules, 2014 – substitution of Rule 14- Private Placement and Insertion of new Rule 9A- Issue of securities in dematerialised form by unlisted public companies

(Notification dated 7th August 2018 and 10th September 2018)

Companies (Prospectus and Allotment of Securities) 2nd Amendment Rules, 2018 and 3rd Amendment Rules, 2018

Among other matters, amendment relates to –

- ♦ A company should not make an offer or invitation to subscribe to securities through private placement unless the proposal has been previously approved by the shareholders of the company, by a Special Resolution for each of the offers or invitations
- ♦ Explanatory Statement annexed to the notice for shareholders' approval should give the following disclosures-particulars of the offer including date of passing of Board Resolution, kinds of securities offered and the price (including premium) at which the security is being offered, name and address of the valuer who performs valuation etc.
- ♦ Special resolution is not required in the case of offer for non-convertible debentures, where the proposed amount to be raised through such offer does not exceed the limit as specified in Section 180(1)(c) and in such cases relevant Board Resolution under Section 179(3)(c) would be adequate
- ♦ In case of offer for non-convertible debentures, where the proposed amount to be raised through such offer exceeds the limit as specified in Section 180(1)(c), the company can pass a special resolution only once in a year for all the offers for such debentures during the year
- ♦ Offer or invitation to subscribe securities under private placement should not be made to more than 200 persons in the aggregate in a FY except to qualified institutional buyers

or to employees under employee stock option

- ♦ A company can issue private placement offer cum application letter only after the relevant Special Resolution or Board Resolution has been filed in the Registry

For details refer:

http://www.mca.gov.in/Ministry/pdf/RuleProspectusSecurities07_08082018.pdf

Rule 9A- Issue of securities in dematerialised form by unlisted public companies

The above amendment is applicable from **2nd October 2018**. Among other matters, the Rules states that-

- ♦ Every unlisted public company should –
 - ▲ issue the securities only in dematerialised form; and
 - ▲ facilitate dematerialisation of all its existing securities
- ♦ Every unlisted public company making any offer for issue of any securities or buyback of securities or issue of bonus shares or rights offer shall ensure that before making such offer, entire holding of securities of its promoters, directors, key managerial personnel has been dematerialised in accordance with provisions of the Depositories Act 1996 and regulations made there under.
- ♦ Every holder of securities of an unlisted public company-
 - ♦ who intends to transfer such securities on or after 2nd October 2018 should get such securities dematerialised before the transfer; or

In brief

- Amendment of Companies (Appointment and Qualification of Directors) Rules, 2014- Amendment of Rules 12A- Directors KYC

(Notification dated 12th September 2018)

- Amendment of Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2014- deletion of Rule 7(2) and substitution of Form MR-2

(Notification dated 12th September 2018)

- Amendment of Companies (Corporate Social Responsibility Policy) Rules, 2014- Rule 5 – CSR committee has been amended

(Notification dated 19th September 2018)

- who subscribes to any securities of an unlisted public company (whether by way of private placement or bonus shares or rights offer) on or after 2nd October 2018 should ensure that all his existing securities are held in dematerialised form before such subscription.

For details refer:

http://www.mca.gov.in/Ministry/pdf/CompaniesProspectus3amdRule_10092018.pdf

Companies (Appointment and Qualification of Directors) Sixth Amendment Rules, 2018

As per the amendment, every individual who has already been allotted a Director Identification Number (DIN) as at 31st March, 2018 is required to submit e- form DIR-3 KYC on or before 5th October instead of 15th September 2018.

For details refer:

http://www.mca.gov.in/Ministry/pdf/AppoinmentAndQualificaitonSixthAmendmentRules_20092018.pdf

Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2018

The amendments relate to the following -

- Rule 6- Application to the CG.** The heading has been substituted and it now reads as 'Parameters for consideration of remuneration'
- Rule 7-Fees-**Sub-rule (2) pertains to conditions for companies (other than listed

companies and subsidiary of a listed company) to pay remuneration to its managerial personnel, in the event of no profit or inadequate profit beyond ceiling specified in Section II, Part II of Schedule V without the approval of CG approval. This sub-rule has been **deleted**

- Form MR-2-** Application to the CG for approval of appointment or reappointment and remuneration or increase in remuneration or waiver for excess or over payment to managing director or whole time director or manager and commission or remuneration to directors under the provisions of Chapter XIII has been substituted

For details refer:

http://www.mca.gov.in/Ministry/pdf/companiesAmendRules_13092018.pdf

Companies (Corporate Social Responsibility Policy) Amendment Rules, 2018

Among other matters, as per the amendment, where a company is not required to appoint an independent director, it should have its CSR Committee without such director

For details refer:

http://www.mca.gov.in/Ministry/pdf/CompaniesCSRPolicyAmendRules2018_19092018.pdf

In brief

- Amendment of Companies (Indian Accounting Standards) Rules, 2015- Ind AS 20 *Accounting for Government Grants and Disclosure of Government Assistance*

(Notification dated 20th September 2018)

- Amdment of Companies (Registered Valuers and Valuation) Rule, 2017- Rule 11- Transitional Arrangement.

(Notification dated 25th September 2018)

Companies (Indian Accounting Standards) Second Amendment Rules, 2018

Significant changes incorporated in Ind AS 20 are -

- ♦ **Accounting**

An option is available to record non-monetary government grant and asset at a nominal amount.

- ♦ **Presentation**

In addition to the above manner of presentation of the government grants related to assets, another method of presentation of such grants is available. It permits the amount of grant to be deducted in arriving at the carrying amount of the asset. Additionally, the grant would be recognised in the Statement of Profit And Loss over the useful life of a depreciable asset as a reduced depreciation expense

- ♦ **Repayment of government grants**

Repayment of a grant related to an asset should be recognised by increasing the carrying amount of the asset or reducing the deferred income balance by the amount repayable. The cumulative additional depreciation which would have been recognised in the profit or loss to date in the absence of the grant should be recognised immediately in the profit or loss

These amendments will be **applicable for the annual periods beginning on or after 1st April 2018**

Consequential changes to Ind AS 12 *Income Taxes*, Ind AS 16 *Property, Plant and Equipment* and Ind AS 38-*Intangible Asset* have also been carried out

For details refer:

http://www.mca.gov.in/Ministry/pdf/CompaniesIASsecondAmendment_21092018.pdf

- **Companies (Registered valuers and Valuation) Third Amendment Rules, 2018.**

The MCA has amended the Companies (Registered Valuers and Valuation) Rule, 2017. Among other matters, as per the amendment of Rule 11- Transitional Arrangement, on the commencement of these Rules, if any person may be rendering valuation services under the Act, **can continue to render valuation services without a certificate of registration up to 31st January 2019** (earlier 30th September, 2018).

For details refer:

http://www.mca.gov.in/Ministry/pdf/CompaniesThirdAmendment_25092018.pdf

Circulars/Notifications from the Ministry of Corporate Affairs (MCA)

Circulars

Relaxation of additional fees and extension of last date of filing of Form BEN-2 under the Companies Act, 2013

Circular No. 07/2018 dated 6th September 2018

The time limit for filing the BEN-2 form will be 30 days from the date of deployment of BEN-2 e-form on the MCA-21 portal and no additional fee shall be levied if the same is filed within 30 days from the date of deployment of the said e-form.

For details refer:
http://www.mca.gov.in/Ministry/pdf/GeneralCircularNo.7_06082018.pdf

Amendment to Schedule V

Schedule V pertains to conditions to be fulfilled for the appointment of a Managing Director (MD) or Whole-time Director (WTD) or a manager without the approval of the CG. Among other matters, amendment to Schedule V pertains to –

- ♦ Offence under the various Acts to be considered for disqualification of appointment now includes the following Acts-
 - ▲ Insolvency and Bankruptcy Code, 2016
 - ▲ Goods and Services Tax Act, 2017
 - ▲ Fugitive Economic Offenders Act, 2018
- ♦ If any person is a managerial person in more than one company he will be eligible to be appointed as a MD, WTD or Manager in the company.
- ♦ If any special resolution has been passed by the shareholder, they can fix any

any remuneration (*earlier double*) in excess of the limit prescribed in Section II of part II of Schedule V

- ♦ If any company makes any default in repayment of its debt, then the company should obtain prior approval from secured creditor before obtaining the approval in the general meeting.
- ♦ A sick company for whom a scheme of revival or rehabilitation has been ordered by the Board for Industrial and Financial Reconstruction or National Company Law Tribunal, may for a period of 5 years from the date of sanction of scheme of revival, may pay any remuneration to its managerial persons
- ♦ A company in a Special Economic Zone can pay any amount of remuneration to its managerial person.

For details refer:

http://www.mca.gov.in/Ministry/pdf/ScheduleVCompAct_13092018.pdf

National Financial Reporting Authority (NFRA)

The MCA has appointed **1st October 2018** as the date of constitution of NFRA and the date on which Section 132(1) and (2) of the Companies Act, 2013 pertaining to NFRA has come into force

For details refer:

http://www.mca.gov.in/Ministry/pdf/ConstitutionNotificationNFRA_04102018.pdf

http://www.mca.gov.in/Ministry/pdf/CommencementNotification_04102018.pdf

In brief

- Relaxation of additional fees and extension of last date of filing of Form BEN-2

(Circular No. 07/2018 dated 6th September 2018)

- Amendment to Schedule V – addition of offences under various Acts to be considered for disqualification of appointment, a person will be eligible to be appointed as a MD, WTD or Manager in the company even if he holds managerial post in more than 1 Company etc.

(Notification dated 12th September 2018)

- Constitution of NFRA

(Notification dated 1st October 2018)

In brief

NBFC Ind AS Schedule III notified and amendments to Schedule III to Companies Act 2013

Additional disclosure in relation to trade receivables, loans receivables and trade payables and also comply with the disclosure requirements under the Micro, Small and Medium Enterprises Development Act, 2006

(Notification dated 11th October 2018)

NBFC Ind AS Schedule III notified and amendments to Schedule III to Companies Act 2013

The MCA has notified Ind AS Schedule III applicable to NBFCs as defined in the Companies (Indian Accounting Standards) (Amendment) Rules, 2016. This Schedule III will apply to NBFCs covered under Ind AS applicability.

Additionally, the MCA has also amended the existing Division I (Indian GAAP) & Division II (Ind AS) Schedule III. Among other matters, amendment to Ind AS Schedule III require companies preparing Ind AS FS to give additional disclosures related trade receivables, loans receivables and trade payables and also comply with the disclosure requirements under the Micro, Small and Medium Enterprises Development Act, 2006

For details refer:
http://www.mca.gov.in/Ministry/pdf/NotificationScheduleIII_12102018.pdf

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Securities and Exchange Board of India (SEBI)

In brief

- Master Circular for Mutual Funds-includes disclosures and reporting norms and governance norms

(Circular No. SEBI/HO/DF5/CIR/P/2018/109 dated 10th July 2018)

- SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 –among other matters, CFS should be audited and certified by statutory auditor, list of related parties and related party transactions require disclosure in the restated financial information

(Notification No. SEBI/LAD-NRO/GN/2018/31. dated 11th September 2018)

Circulars

Master Circular for Mutual Funds

This Master Circular enables the users to have an access to all the applicable circulars at one place. It is a compilation of all the circulars issued by SEBI on Mutual Funds which are operational as on the date of the Circular. Among other matters, this circular includes disclosure and reporting norms and governance norms.

This Master Circular includes circulars issued up to 5th June 2018 and will supersede the previous Master Circular dated 14th September 2016.

For details refer:

https://www.sebi.gov.in/legal/master-circulars/jul-2018/master-circular-for-mutual-funds_39491.html

Notifications

SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018

As per the above Regulations, Financial Information is divided into 2 parts:

- Requirements in cases where Ind AS is applicable in the latest period presented in the restated financial information
- Requirements in cases where Indian GAAP is applicable in the latest period presented in the restated financial information

Among other matters, regulations require

- Consolidated Financial Statements (CFS) to be audited and certified by the statutory auditor to be presented in the offer document for 3 years (as against the present requirement of separate FS and CFS for 5 years).
- List of related parties and all related party transactions of the consolidated entities (whether eliminated on consolidation or not), which require disclosure under Ind AS/Indian GAAP and/or covered under Section 188(2) of the Companies Act, 2013 (as amended), as disclosed in the separate FS of the consolidated entities, should be disclosed in the restated financial information. .
- The separate audited financial statements (FS) for past 3 FYs immediately preceding the date of filing of offer document of the issuer company and all its material subsidiaries should be made available on issuer's website
- The following information shall be computed as per the Guidance Note issued by the ICAI from time to time and disclosed in other financial information
- Earnings per share (Basic and Diluted)
- Return on net worth
 - Net Asset Value per share
 - EBITDA

For details refer:

<https://www.sebi.gov.in/legal/regulations/se-p-2018/securities-and-exchange-board-of-india-issue-of-capital-and-disclosure-requirements-regulations-2018-40328.html>

In brief

- Securities and Exchange Board of India (Buy Back of Securities) Regulations, 2018- among other matters, audited financial information should be included while making public announcement for open market buyback.

(Notification No. SEBI/LAD-NRO/GN/2018/32 dated 11th September 2018)

- Amendment to SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 mandating transfer of securities in dematerialised form with a depository- clarity that amendment is not applicable to transmission of shares, investors can hold shares even after 5th December 2018.

(PR No.34/2018 dated 10th August 2018)

Securities and Exchange Board of India (Buy Back of Securities) Regulations, 2018

The above Regulations states that, among other matters, while making public announcement for open market buyback through stock exchange, it should include audited financial information for last 3 years and the unaudited financial results, if any disclosed, should be certified/limited review by statutory auditors.

For details refer:

https://www.sebi.gov.in/legal/regulations/sep-2018/securities-and-exchange-board-of-india-buy-back-of-securities-regulations-2018_40327.html

Press Realease

Amendment to SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 mandating transfer of securities in dematerialised form with a depository

SEBI amended Regulation 40 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 wherein it was intimated that transfer of securities shall not be processed unless the securities are held in the dematerialized form with a depository with effect from 5th December 2018.

Pursuant to the amendment, several initiatives were taken by SEBI to spread awareness about the proposed change. Listed companies, Depositories and Exchanges have been advised to take special efforts to reach out to investors

holding physical securities. However, SEBI keeps receiving several calls and/or emails concerning the applicability of the amendment.

In view of the above, the following is hereby clarified:

- ♦ The amendment does not prohibit the investor from holding the shares in physical form; investor has the option of holding shares in physical form even after 5th December 2018.
- ♦ The amendment is not applicable for transmission (i.e. transfer of title of shares by way of inheritance / succession) and transposition (i.e. re arrangement / interchanging of the order of name of shareholders) cases.
- ♦ Any investor who is desirous of transferring shares (which are held in physical form) after 5th December 2018 can do so only after the shares are dematerialized.

For details refer:

https://www.sebi.gov.in/media/press-releases/aug-2018/amendment-to-sebi-listing-obligations-and-disclosure-requirements-regulations-2015-mandating-transfer-of-securities-in-dematerialized-form-with-a-depository_39938.html

In brief

SEBI board meeting - Approved amendments to SEBI(Delisting of Equity Shares) Regulations, 2009, corporate governance report to include complaints under Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

(PR No.41/2018 dated 18th September 2018)

SEBI board meeting

The SEBI in its board meeting held on 18th September 2018, among other matters, has approved some key proposals as under.

- ♦ Key amendments to SEBI (Delisting of Equity Shares) Regulations, 2009
 - ▲ In case of voluntary delisting, if the price discovered through the reverse book building process is not accepted by the promoters, a counter offer can be given by the promoters. However, the price through the counter offer should not be less than the book value and delisting will be successful only if such a counter offer is accepted by such number of public shareholders that the post offer promoter shareholding reaches at least 90%.
 - ▲ As per the existing delisting regulations promoters of compulsorily delisted companies have to provide an exit to the public shareholders. However, the existing regulations do not provide for any timeline for providing this exit option. It has been decided to amend the regulations to provide that promoters will have to give the exit to public shareholders within 3 months of delisting from the recognised stock exchange
- ♦ Reducing the time period for listing of issues
- ♦ Review of Total Expense Ratio (TER) of Mutual Fund Schemes
- ♦ The Board took note of the benefits of the proposal with respect to sharing of economies of scale, lowering the cost for mutual fund investors, bringing in transparency in appropriation of expenses,

and reducing mis-selling and churning. Accordingly, the Board approved the following proposals-

- ▲ Transparency in expenses-All commission and expenses, etc. should be paid from the scheme only and not from the AMC/Associate/Sponsor/Trustee, or any other route.
- ▲ Performance Disclosure- Adequate disclosure of all schemes' returns (category wise) vis-à-vis its benchmark (total returns) shall be made available on the website of Association of Mutual Fund of India (AMFI).
- ♦ Amendment of Regulations relating to re-classification of promoter/public
- ♦ Amendment to Schedule V of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 to insert a disclosure requirement with respect to complaints under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 in the corporate governance report as part of the annual reports of listed entities

For details refer:
https://www.sebi.gov.in/media/press-releases/sep-2018/sebi-board-meeting_40347.html

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In brief

- Details of Equity Holding Pattern of Insurance Companies –revision of format for shareholding of insurance company and Indian promoters to include non-promoters investments.

(Circular No. IRDA/F & A/CIR/EHP/162/09/2018 dated 27th September 2018)

- Moving towards ‘Risk Based Supervision’ of the Insurance Sector–changes envisaged in the functioning of the regulated entities like adopting risk based internal audit, improved IT and MIS to capture and report elements for risk assessment

(Circular No. IRDA/INSP/CIR/RBS F/166/10/2018 dated 3rd October 2018)

Insurance Regulatory and Development Authority of India (IRDAI)

Circulars

Details of Equity Holding Pattern of Insurance Companies

IRDAI vide its Circular No. IRDA/F & I/CIR/100/06/2010 dated 16th June 2010 had mandated all the insurers to submit the detail of the shareholding of the insurance company and the Indian promoters of the insurance company in the prescribed format.

The prescribed format has been revised to capture the information of the non-promoters’ investments made in the insurance companies. The revised format has **come into force with immediate effect** and the **reporting** as per revised formats, will **start from the quarter ending 30th September 2018** and should be **filed within 30 days from the end of the quarter**.

For details refer:

https://www.lifeinscouncil.org/component/Signet%20Circular_Equity%20shareholding%20Pattern.pdf

Moving towards ‘Risk Based Supervision’ of the Insurance Sector

The IRDAI is in the process of adopting ‘Risk Based Supervisory (RBS) Framework’ for holistic supervision of insurance sector in India. The RBS Framework would consider various risks the insurers pose to themselves and to the financial system at large

In the process of moving towards RBS, certain changes are envisaged in the functioning of the regulated entities

Among other matters, changes would include–

- ♦ Improved IT and MIS to capture and report various elements required for risk assessment
- ♦ Adopting risk based internal audit

For details refer:

https://www.irdai.gov.in/admincms/cms/w/hatsNew_Layout.aspx?page=PageNo3610&flag=1

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Accountancy and Audit

ICAI Valuation Standards 2018

In brief

ICAI Valuation Standards 2018

Valuation Standards applicable for all valuation engagements on mandatory basis under the Companies Act, 2013.

Unique Document Identification Number (UDIN)

A unique number, generated for every document certified/attested by Practicing Chartered Accountants and registered with the UDIN portal

The Valuation Standards have been issued by the ICAI to set up concepts, principles and procedures which are generally accepted internationally having regard to legal framework and practices prevalent in India.

The following Valuation Standards has been issued:

- ♦ Preface to the ICAI Valuation Standards
- ♦ Framework for the Preparation of Valuation Report in accordance with the ICAI Valuation Standards
- ♦ ICAI Valuation Standard 101 – Definitions
- ♦ ICAI Valuation Standard 102 - Valuation bases
- ♦ ICAI Valuation Standard 103 - Valuation approaches and methods
- ♦ ICAI Valuation Standard 201 - Scope of work, analyses and evaluation
- ♦ ICAI Valuation Standard 202 - Reporting and documentation
- ♦ ICAI Valuation Standard 301 - Business valuation
- ♦ ICAI Valuation Standard 302 - Intangible assets
- ♦ ICAI Valuation Standard 303 - Financial instruments

Applicability of Valuation Standards

These ICAI Valuation Standards will be applicable for all valuation engagements on **mandatory basis under the Companies Act, 2013**. In respect of valuation engagements under other **statutes like Income Tax, SEBI, FEMA, etc.**, these will be **applicable on recommendatory basis** for the members of

the institute. These valuation standards are **effective for the valuation reports issued on or after 1st July 2018** and will be effective till they are notified by the CG under Rule 18 of the Companies (Registered Valuers and Valuation) Rules, 2018.

Note: These ICAI Valuation Standards will be effective till Valuation Standards are notified by the Central Government under Rule 18 of the Companies (Registered Valuers and Valuation) Rules, 2018

For details refer: https://www.icai.org/new_post.html?post_id=15070&c_id=240

Unique Document Identification Number (UDIN)

It has been observed that at many instances FS and documents are being certified / attested by 3rd persons in lieu of CA members. These statements mislead various authorities/other stake holders who rely upon them.

The Professional Development Committee (PDC) has conceptualized and developed an innovative concept of UDIN, which is a unique number, generated for every document certified/attested by Practicing Chartered Accountants and registered with the UDIN portal (<https://udin.icai.org/>.)

The portal offers the facility to various Regulators/Banks/Authorities/Other Stakeholders to check the authenticity of the documents certified by Practicing Chartered Accountants who have registered on the said

In brief

- Implementation Guide in respect to CBDT No. 33/2018 dated 20th July 2018 requiring additional requirements to be reported in the Form 3CD.
- IG on Standard on Auditing (SA) 610 (Revised) – Using the Work of Internal Auditors - contains detailed guidance on various issues involved in this Standard

portal. It would help them in tracing of forged/wrong documents prepared by any 3rd person in the name of Chartered Accountant, as a person other than Chartered Accountant will not be able to upload the documents on this portal. Additionally, ICAI has published Frequently-Asked Questions for UDIN generation process and other related queries (<https://udin.icai.org/FAQ-UID.pdf>)

It has been made recommendatory with effect from 1st July 2018, and later on it would be made mandatory.

For details refer: https://icai.org/new_post.html?post_id=14903&c_id=240

As per announcement dated 26th September 2018, UDIN to secure the certificates/documents attested/certified by practicing Chartered Accountants which **will be made mandatory with effect from 1st January 2019.**

For details refer: https://icai.org/new_post.html?post_id=15131&c_id=240

Implementation Guide (IG)

IG Notification No. 33/2018 dated 20th July 2018 effective from 20th August 2018

The CBDT vide Notification No. 33/2018 dated 20th July 2018 has made various revisions to Form No. 3CD wherein it requires additional requirements to be reported. These revisions in the Form 3CD have increased the scope of tax audit significantly and require various additional procedures to be performed with due diligence before reporting on these additional requirements.

The Direct Taxes Committee of the ICAI has issued the IG with respect to the Notification dated 20th July 2018. In this IG, only the amendments made by the Notification no. 33/2018 dated 20th July 2018 which are effective from 20th August 2018 have been dealt with. Given that the amendments to Form No. 3CD (other than Clauses 30C and 44) are effective from 20th August 2018, these amendments would not apply to tax audits which have already been signed and uploaded before the amendments come into effect

C N K partners, Mr. Gautam Nayak and Mr. Sanjeev Pandit are the co-authors

For details refer: <https://resource.cdn.icai.org/51424dtc41155.pdf>

IG on Standard on Auditing (SA) 610 (Revised) – Using the Work of Internal Auditors

The above IG contains detailed guidance on various issues involved in this Standard and also assists auditors in practical implementation of this Standard in real life audit situations.

For details refer: <https://resource.cdn.icai.org/51441aasb-igsa610rev.pdf>

In brief

- Clarification on Applicability of Notifications dated 30th March 2017 issued by the MCA for the FY ending on 31st March, 2018-clarifies that notification pertaining to SBN is applicable only for FY 2016-17
- Technical Guide on Audit of Urban Improvement Trusts and Development Authorities-provides comprehensive guidance on various issues involved in audit of these entities to assist auditors in discharge of their professional responsibilities.

Clarification on Applicability of Notifications dated 30th March 2017 issued by the MCA for the FY ending on 31st March, 2018

As per the MCA notification no. G.S.R. 307(E) and G.S.R. 308(E) dated 30th March 2017; (http://www.mca.gov.in/Ministry/pdf/AmendmentinScheduleIII_Notification31032017.pdf) companies were required to disclose transactions in the Specified Bank Notes (SBN) during period from 8th November 2016 to 30th December 2016, in their annual FS as per the given format.

Further, as per the Companies (Audit and Auditors) Amendment Rules, 2017, auditors are required to give suitable note on the same in their Audit report. In both the notifications, it was not specifically mentioned that these requirements are applicable only for FY 2016-17. This has necessitated a clarification on the matter.

The Corporate Laws & Corporate Governance Committee of the ICAI has decided that since this disclosure requirement was event specific and relevant only for FY 2016-17. Hence, the **required disclosure is applicable only for period falling under that FY**. In notes to account as well as Auditors' Report, the **disclosure requirement relating to SBNs are not applicable for the Financial Year 2017-18 & subsequent years**. Consequent disclosures may be made in the FS/Audit Reports

For details refer:
https://www.icai.org/new_post.html?post_id=15085&c_id=240

these requirements are applicable only for FY 2016-17. This has necessitated a clarification on the matter.

The Corporate Laws & Corporate Governance Committee of the ICAI has decided that since this disclosure requirement was event specific and relevant only for FY 2016-17. Hence, the **required disclosure is applicable only for period falling under that FY**. In notes to account as well as Auditors' Report, the **disclosure requirement relating to SBNs are not applicable for the Financial Year 2017-18 & subsequent years**. Consequent disclosures may be made in the FS/Audit Reports

For details refer:
https://www.icai.org/new_post.html?post_id=15085&c_id=240

Technical Guide on Audit of Urban Improvement Trusts and Development Authorities

Urban Improvement Trusts and Development Authorities are responsible for the improvement and expansion of urban areas. In India, these Authorities are playing an important role by planning, coordinating and supervising the proper, orderly and rapid development of urban areas in their jurisdictions. Audit of these entities involve many issues and unique peculiarities

The Technical Guide provides comprehensive guidance on various issues involved in audit of these entities to assist auditors in discharge of their professional responsibilities.

For details refer:
<https://resource.cdn.icai.org/51497icaiaasb-tgaurit.pdf>

In brief

Announcement that Internal Auditor not to undertake Goods and Service Tax (GST) Audit simultaneously

Internal Auditor not to undertake Goods and Service Tax (GST) Audit simultaneously

The Council has decided that based on the conflict in roles as Statutory and Internal Auditor simultaneously, the bar on Internal Auditor of an entity to accept Tax Audit (under Income Tax Act, 1961) will also be applicable to GST Audit (under the Central Goods and Service Act, 2017).

Accordingly, it is clarified that an Internal Auditor of an entity cannot undertake GST Audit of the same entity.

For details refer:
<https://resource.cdn.icai.org/51873esb41600.pdf>

Ind AS

For developments in Ind AS refer *CNK IFRS/ Ind AS Updates, October 2018*

For details refer:
<https://www.cnkindia.com/uploads/attachments/IFRS/CNKIFRSIndASUpdateOct2018.pdf>

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Key Take Away

- The Companies (Amendment) Act, 2017 is nearly fully operational as out of 93 sections, MCA has notified 91 sections till 19 September 2018. Sections pertaining to inspection, inquiry and investigation are still pending to be notified.
- There is a major simplification in managerial remuneration provisions – the process of approvals from CG is almost done away with if shareholders approval is obtained
- CSR- Eligibility criteria for the purpose of constituting the CSR Committee and incurring expenditure towards CSR is to be calculated based on immediately preceding FY. Previously this eligibility was decided based on preceding 3 FYs
- Board Report of every company other than OPC and Small Company should include a statement that the company has complied with provisions relating to the constitution of Internal Complaints Committee under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013
- The amendments to Ind ASs are in line with the requirements of IFRS issued by the IASB. The amendment related to alternate presentation of government grants related to assets as a deduction from the carrying amount of the asset is an important amendment. The amendments are expected to provide with an additional accounting policy choice for the recognition and measurement of asset related grants.
- In respect to Issue of Capital and Disclosure Requirements Regulations, 2018, SEBI has consolidated various provisions of the existing Regulations and various circulars and interpretations issued by SEBI.
- Revisions in Form 3CD requires additional information to be reported. The Implementation Guide is expected to provide guidance in implementing the changes.

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