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Rules and Amendment Rules

The Companies (Removal of Names of Companies from Register of Companies) 2nd Amendment Rules, 2023

[Notification dated 10th May 2023](#)

The MCA has amended the Companies (Removal of Names of Companies from Register of Companies) Rules, 2016 by amending Rule 4 *Application for removal of name of company*. As per the amendment, an application for removal of name of a company under Section 248(2) should be made in Form No. STK-2 along with fee of Rs. 10,000 only if the company has filed overdue financial statements (**FSs**) under Section 137 and overdue Annual Returns under Section 92, up to the end of the financial year (**FY**) in which the company ceased to carry its business operations.

In case a company intends to file the application after the action under Section 248(1) has been initiated by the Registrar, it shall file all pending FSs under Section 137 and all pending Annual Returns under Section 92, before filing the application.

Once notice under Section 248(5) has been issued by the Registrar for publication pursuant to the action initiated under Section 248(1), the company will not be allowed to file the application under this sub-Rule.

The Companies (Compromises, Arrangements and Amalgamation) Amendment Rules, 2023

[Notification dated 15th May 2023](#)

The Companies (Compromises, Arrangements and Amalgamation) Rules, 2016 have been amended by amending Rule 25 *Merger or Amalgamation* of certain companies. The amendment, states that, where no objection/suggestion is received within a period of 30 days of receipt of copy of scheme of merger or amalgamation from the Registrar of Companies (**RoC**) and Official Liquidator by the Central Government (**CG**) and the CG is of the opinion that the scheme is in the public interest or in the interest of creditors, it may, within a period of 15 days after

the expiry of said 30 days, issue a confirmation order. If the CG does not issue the confirmation order within a period of 60 days, it will be deemed that it has no objection to the scheme and a confirmation order will be issued accordingly.

This Rule has come into effect from 15th June 2023

The Companies (Accounts) 2nd Amendment Rules, 2023

[Notification dated 31st May 2023](#)

The Companies (Accounts) Rules, 2014 has been amended. Sub-rule (1B) of Rule 12 *Filing of Financial Statements and Fees to be Paid Thereon* states that every company covered under the provisions Section 135 (1) should furnish a report on Corporate Social Responsibility in Form CSR-2 to the Registrar for the preceding FY 2020-2021 and onwards as an addendum to Form AOC-4 or AOC-4 XBRL or AOC-4 NBFC (Ind AS), as the case may be.

As per the amendment, for the FY 2022-2023, Form CSR-2 should be filed separately on or before 31st March 2024 after filing Form No. AOC-4 or Form No. AOC-4-NBFC (Ind AS), as specified in these Rules or Form No. AOC-4 XBRL as specified in the Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Rules, 2015.

Circulars

Relaxation in paying additional fees in case of delay in filing DPT-3 for FY ended on 31st March up to 31st July 2023

[General Circular No. 06/2023 dated 21st June 2023](#)

The due date for filing Form DPT-3 (Return of deposits) is 30th June 2023 for FY ended on 31st March 2023. Keeping in view of the transition of MCA-2 1 Portal from Version -2 to Version -3, the MCA has decided to allow companies to file Form DPT-3 for the FY on 31st March 2023 without paying additional fees up to 31st July 2023.

SEBI (Listing Obligations and Disclosure Requirements) (LODR) (2nd Amendment) Regulations, 2023

Regulation dated 14th June 2023

SEBI amended LODR, 2015 by issue of the above-mentioned Regulation. Key amendments include the following:

▪ **Regulation 6 - Compliance Officer and his/ her Obligations**

A new sub-regulation (1A) has been inserted which states that any vacancy in the office of the Compliance Officer should be filled by the listed entity (**LE**) at the earliest and in any case not later than 3 months from the date of such vacancy. The LE should not fill such vacancy by appointing a person in interim capacity, unless such appointment is made in accordance with the laws applicable in case of a fresh appointment to such office and the obligations under such laws are made applicable to such person.

▪ **Regulation 15 – Applicability of Chapter IV on High Value Debt Securities**

A new sub-regulation (1A) has been inserted which states that the requirement for High-Value Debt LEs to comply with the provisions of Regulation 16 to Regulation 27 on a ‘comply or explain’ basis has been extended until 31st March 2024 (*earlier from 31st March 2023*), and on a mandatory basis thereafter.

▪ **Regulation 17- Board of Directors (BoD)**

▲ A new sub-regulation (1D) has been inserted which states that with effect from 1st April 2024, the continuation of a director serving on the BoD of a LE will be subject to the approval by the shareholders in a general meeting at least once in every 5 years from the date of their appointment or reappointment.

The continuation of the director serving on the BoD of a LE as on 31st March 2024, without the approval of the shareholders for the last 5 years or more should be subject to the approval of shareholders in the first general meeting to be held after 31st March 2024.

▲ A newly inserted sub-regulation (1E) states that any vacancy in the office of a director should be filled by the LE at the earliest and in any case not later than 3 months from the date such vacancy.

If the LE becomes non-compliant with the requirement under sub-regulation (1) of this regulation, due to expiration of the term of office of any director, the resulting vacancy should be filled by the LE not later than the date such office is vacated.

This will not apply if the LE fulfils the requirement under sub-regulation (1) of this regulation without filling the vacancy created.

▪ **Regulation 26A - Vacancies in respect of certain Key Managerial Personnel (KMP) (*newly inserted*)**

Any vacancy in the office of Chief Executive Officer, Managing Director, Whole Time Director or Manager or Chief Financial Officer should be filled by the LE at the earliest and in any case not later than 3 months from the date of such vacancy.

The LE should not fill such vacancy by appointing a person in interim capacity, unless such appointment is made in accordance with the laws applicable in case of a fresh appointment to such office and the obligations under such laws are made applicable to such person.

▪ **Regulation 30 - Disclosure of events or information**

As per this Regulation every LE should make disclosures of any events or information which, in the opinion of the BoD is material in accordance with the provisions of Part A of Schedule III of the LODR Regulations.

The amendment to this Regulation states that the following:

▲ the LE should consider the certain criteria for determination of materiality of events/information which includes the omission of an event or information, whose value or the expected impact in terms of value, exceeds the lower of the following:

- a) 2% of turnover, as per the last audited consolidated FSs of the LE;
 - b) 2% of net worth, as per the last audited consolidated FSs of the LE, except in case the arithmetic value of the net worth is negative;
 - c) 5% of the average of absolute value of profit or loss after tax, as per the last 3 audited consolidated FSs of the LE
- ▲ In case where the criteria specified in sub-clauses (a), (b) and (c) of Regulation 30(4)(i) is not applicable, an event or information may be treated as being material if in the opinion of the BoD of the LE, the event or information is considered material.
 - ▲ Any continuing event or information which becomes material pursuant to notification of these amendment regulations should be disclosed by the LE within 30 days from the date of coming into effect of the SEBI (LODR) (2nd Amendment) Regulations, 2023.
 - ▲ The amendment further states that the policy for determination of materiality should not dilute any requirement specified under the provisions of these regulations. The policy should assist the relevant employees of the LE in identifying any potential material event or information and reporting the same to the authorised KMP for determining the materiality of the said event or information and for making the necessary disclosures to the stock exchange.
 - ▲ The LE should first disclose to the stock exchange all events or information which are material in terms of the provisions of this regulation as soon as reasonably possible and in any case not later than the following:
 - a) BoD meeting :30 minutes from the closure of the meeting of the BoD in which the decision pertaining to the event or information has been taken;
 - b) Within the LE: 12 hours from the occurrence of the event or information, in case the event or information is emanating from within the LE;
 - c) Not within the LE: 24 hours from the occurrence of the event or information, in case the event or information is not emanating from within the LE.
 - d) Disclosure with respect to events for which timelines have been specified in Part A of Schedule III should be made within such timelines.
- ▲ The top 100 LEs (with effect from 1st October 2023) and the top 250 LEs (with effect from 1st April 2024) should confirm, deny or clarify any reported event or information in the mainstream media which is not general in nature and which indicates that rumours of an impending specific material event or information in terms of the provisions of this regulation are circulating amongst the investing public, as soon as reasonably possible and not later than 24 hours from the reporting of the event or information.
 - ▲ In case an event or information is required to be disclosed by the LE in terms of the provisions of this regulation, pursuant to the receipt of a communication from any regulatory, statutory, enforcement or judicial authority, the LE should disclose such communication, along with the event or information, unless disclosure of such communication is prohibited by such authority.
- **Regulation 31B- Special rights to shareholders 31B (newly inserted)**
Any special right granted to the shareholders of a LE should be subject to the approval by the shareholders in a general meeting by way of a special resolution once in every 5 years starting from the date of grant of such special right.
 - **Regulation 33 -Financial Results for newly LE**
The LE should, subsequent to the listing, submit its financial results for the quarter or the FY immediately succeeding the period for which the FSs have been disclosed in the offer document for the initial public offer, in accordance with the timeline specified below :
 - ▲ Within 45 days from the end of quarter, and,
 - ▲ Annual Audited FSs- within 60 days from the end of the FY.
 - ▲ within 21 days from the date of its listing whichever is later.

▪ **Regulation 37A- Sale, lease or disposal of an undertaking outside Scheme of Arrangement (newly inserted)**

A LE carrying out sale, lease or otherwise disposal of the whole or substantially the whole of the undertaking of such entity or where it owns more than one undertaking, of the whole or substantially the whole of any of such undertakings, should -

- ▲ take prior approval of shareholders by way of special resolution;
- ▲ disclose the object of and commercial rationale for carrying out such sale, lease or otherwise disposal of the whole or substantially the whole of the undertaking of the entity, and the use of proceeds arising therefrom, in the statement annexed to the notice to be sent to the shareholders.

Such a special resolution will be acted upon only if the votes cast by the public shareholders in favour of the resolution exceed the votes cast by such public shareholders against the resolution.

The requirement as mentioned above will not be applicable for sale, lease or otherwise disposal of the whole or substantially the whole of the undertaking by a listed entity to its wholly owned subsidiary (WOS) whose accounts are consolidated with such LE. However, prior to such WOS selling, leasing or otherwise disposing of the whole or substantially the whole of the undertaking received from a LE, whether in whole or in part, to any other entity, such LE should comply with the requirements specified above.

Others

FAQs - Corporate Governance

[BSE Circular dated 10th April 2023](#)

The Bombay Stock Exchange has issued the above Frequency Asked Questions (FAQs) on Corporate Governance only for guidance purposes. These guidelines should not be construed as substitution/clarification/ explanation on any matter on which provision of Law, Regulation or SEBI/Exchange

circular were issued. FAQs are issued on the following topics:

- Composition of Board of Directors
- Composition of Committees
- Meeting of Board of Directors
- Meeting of Committees

National Financial Reporting Standard (NFRA)

Statutory Auditors' Responsibilities in relation to Fraud in a Company

[Circular dated 26th June 2023](#)

NFRA, in its above-mentioned Circular states that there is a misconception amongst some Auditors that resigning from an audit engagement absolves them of their reporting obligations relating to fraud and the consequences under the Companies Act, 2013 (CA 2013) for nonreporting of fraud. In this regard, the Hon'ble Supreme Court of India in a recent judgment dated 3rd May 2023 (Union of India and Another v/s Deloitte Haskins and Sells LLP & Anr CRIMINAL APPEAL NOS.2305-2307 OF 2022), has held that the consequences of Section 140 (5) of CA 2013 will be applicable also on those auditors who resign from their audit engagements without reporting fraud/suspected fraud.

Statutory Auditors are under a mandatory obligation to report fraud or suspected fraud if they observe suspicious activities, transactions or operating circumstances in a company that indicate *reasons to believe* that an offence of fraud is being or has been committed against the company by its officers or employees. In such an event, the Statutory Auditor should initiate the steps prescribed under Rule 13 of Companies (Audit and Auditors) Rules 2014 which begins with reporting the matter to the Board/Audit Committee within 2 days of his/her knowledge of the fraud.

In the case of reporting of a fraud involving or expected to involve individually an amount of Rs. 1 crore or above, the Statutory Auditor fails to get any reply / observations from the Board/Audit Committee within 45 days, the Auditor should forward

a report in the specified form viz., ADT-4 to Secretary, Ministry of Corporate Affairs, Government of India.

The Statutory Auditor is duty bound to submit Form ADT-4 to the CG u/s 143 (12) even in cases where the Statutory Auditor is not the first person to identify the fraud/suspected fraud.

Resignation does not absolve the Auditor of his responsibility to report suspected fraud or fraud as mandated by the law.

The Statutory Auditor should exercise his/her own professional skepticism while evaluating fraud and need not be influenced by legal opinion provided by the Company or its Management.

Accountancy and Audit

Technical Guides (TGs)

- **TG on Disclosure and Reporting of Key Performance Indicators (KPIs) in Offer Documents**

[ICAI Announcement dated 6th April 2023](#)

The TG provides detailed guidance on various aspects of disclosure of KPIs in offer documents. It also provides guidance on KPIs that can be disclosed based on different industries. the role and responsibility of bankers, issuer company and practitioners on various aspects of reporting requirements relating to KPIs including illustrative format of the report on KPIs. The TG also provides guidance to issuer companies for disclosing KPIs in offer documents as per the requirements of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018

- **TG on Accounting for Not-for-Profit Organisations (NPOs)**

[May 2023](#)

This TG is issued to recommend uniform accounting principles in accordance with the Accounting Standards and other generally accepted accounting principles in India for the preparation and presentation of FSs of NPOs to meet the

common information needs of the various stakeholders. This includes the application of sound accounting principles pertaining to recognition, measurement, presentation and disclosure of various items of income and expenses, assets and liabilities in the FSs of NPOs keeping in view the peculiarities of their activities. The TG also recommends formats of FSs keeping in view the objective of these entities being NOP.

Acceptance of certain assignments by the Concurrent Auditor of Bank Branches

[ICAI Announcement dated 9th April 2023](#)

With respect to [FAQs relating to professional ethics of members pertaining to Bank Assignments](#), the ICAI has clarified that the concurrent Auditor of a Branch can undertake the assignment of Long Form Audit Report (LFAR) only with respect to Branches which are not subject to Statutory Audit. With respect to Branches which are subject to Statutory Audit, the LFAR assignment should be undertaken by the Statutory Auditor.

The concurrent auditor/Internal Auditor may undertake the assignment of certification for a Bank branch only if the certificates are addressed to the Bank's management i.e., not addressed to the statutory auditor/a regulator/ without being addressed to anyone in particular.

It has also been clarified that the Concurrent Auditor/Internal Auditor can neither perform a Statutory Audit of FSs of a Bank Branch nor certify them as audited FSs.

Revised Peer Review Mandate-Roll Out

[ICAI Announcement dated 10th May 2023](#)

The ICAI had decided to mandate the Peer Review process for coverage of more firms under Peer Review process at its meeting held in January 2022. (Announcement [dated 12th February 2022](#)).

In [November 2022](#), the ICAI notified applicability of Phase II of the Peer Review Mandate from 1st April 2023.

Considering that some Practice Units which require to get themselves Peer Reviewed under the 2nd phase of

the Peer Review mandate are not ready for the same, the ICAI decided to defer the applicability of the 2nd phase of the mandate by 3 months to be made effective from 1st July 2023 as one time measure.

Practice Units which accept Statutory audits on or before 30th June 2023 should ensure that they have a Peer Review Certificate at the time of signing.

Sustainability Reporting Maturity Model (SRMM) Version 2.0

[May 2023](#)

Sustainability Reporting Standards Board of the ICAI had developed SRMM Version 1.0 based on MCA Committee Report. SRMM Version 1.0 has been updated to SRMM Version 2.0 to incorporate the changes brought in by SEBI [BRSR Circular](#). Similar to SRMM Version 1.0, this version comprises of total 300 scores, by completing the scoring of all 3 sections and 9 principles of the SEBI BRSR and is given as Annexure 1 of this SRMM.

Ind AS

For development in Ind AS refer [CNK IFRS/ISSB and Ind AS Update, July 2023](#).



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