



# The Companies Act 2013

*Enlightening Nation*

## E-newsletter

September, 2015

### About the E-newsletter

**Dear Users,**

Thecompaniesact2013.com imports yet another innovation for all the valuable users in the form of e-newsletter. This is the first issue of the **September** month comprising contemporary articles, latest notifications, circulars & orders.

The notion is to render all the updates about Company law of the current month in a compiled format and serve a better pavement for easy accessibility to the users.



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## ARTICLE

# COMPANY SECRETARY



### DEFINITION:-

#### IN CASE OF WHOLE TIME COMPANY SECRETARY

##### **As Per the Companies Act, 2013**

As per **sub section 24 of section 2** of Companies Act 2013, Company Secretary means a Company Secretary define in clause C of sub section 1 of section 2 of the Company Secretaries Act 1980.

##### **As Per the Company Secretaries Act, 1980**

As per **clause C of subsection 1 of section 2** of the Company Secretaries Act 1980, Company Secretary means a person who is a member of Institute of Company Secretary of India. He is a person who can represent his company before any quasi-judicial body in relation to any legal dispute and other legal litigations.

**Note:** Company Secretary is **managerial personnel** in a **private sector company and in a public sector company**.

#### IN CASE OF COMPANY SECRETARY IN PRACTICE

##### **As Per the Companies Act, 2013**

As per **sub section 25 of section 2** of the Companies Act, 2013 “Company Secretary in Practice” means a company secretary who is deemed to be in practice under sub section 24 of section 2 of the Company Secretaries Act, 1980.

##### **As Per the Company Secretaries Act, 1980**

As per **sub section 2 of section 2** of the Company Secretaries Act, 1980 provides that a member of the institute shall be deemed “to be in practice” when individually or in partnership with one or more members of the institute in practice or in partnership with members of such other recognized professions, he is in consideration of remuneration received or to be received.

## FUNCTIONS:-

### **IN CASE OF WHOLE TIME COMPANY SECRETARY**

In Compliance with **Section 205 read with Rule 10** of The Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 the functions of the company secretary shall include:

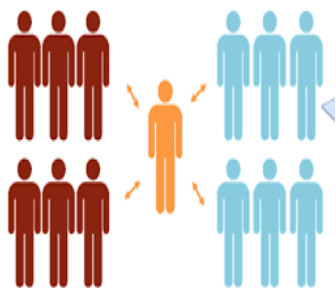
- a) To report to the Board about compliance with the provisions of this Act, the Rules made there under and other laws applicable to the company;
- b) To ensure that the company complies with the applicable secretarial standards;
- c) To discharge such other duties as may be prescribed.

### **IN CASE OF COMPANY SECRETARY IN PRACTICE**

The profile of services which a PCS can render is listed below

- a) In Project Planning
- b) In Raising of Resources/Financial Services
- c) In Foreign Collaboration and joint Ventures Abroad
- d) In Corporate Restructuring
- e) In Corporate Laws Advisory Services
- f) In Tax Planning and Management
- g) In Issuing Certificates under various laws etc

## STATUTORY DUTIES/ LIABILITIES OF COMPANY SECRETARIES:-



### STATUTORY DUTIES :-

- a) Declaration regarding compliance with requirement of registration
- b) Authentication of documents, proceedings and contracts
- c) Signing of Share Certificate
- d) Signing of annual return
- e) Signing of financial Statements
- f) To appear before NCLT
- g) To appoint as Secretary of audit committee
- h) Demat Shares
- i) Additional duties , etc

### LIABILITIES :-

Company Secretary has been defined as “officer in default” along with Managing Director, Manager and Whole time Director etc. Thus, he can be punished in respect of offences under Companies Act. A secretary is guilty if he was responsible to the company for conduct of its business.

## PROVISIONS OF THE APPOINTMENT OF COMPANY SECRETARY:-

### IN CASE OF WHOLE TIME COMPANY SECRETARY

Under Section 2(51) of the Companies Act, 2013, Company Secretary has been defined as “Key managerial person”

In accordance with Section 203 read with Rule 8 and 8 A of the Companies ( Appointment and Remuneration of Managerial Personnel ) Rules , 2014 being a Key managerial Person, Company Secretary is required to be mandatorily appointed in every company belonging to such class or classes of companies as may be prescribed in rules.

**According to the Rule 8 of the Companies (appointment and remuneration of Managerial Personnel) Rules, 2014 following class of companies are mandatorily required to appoint KMP.**

- a) Every listed Company and
- b) Every other public company

**Having paid up share capital of ten crore rupees or more** shall have whole time KMP.

**Note:** MCA vide notification inserted Rule 8A of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014.

**In accordance with Rule 8A of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014**

A Company other than a company under covered in the abovementioned rule which has a paid up share capital of five crore rupees or more shall have a whole time Company Secretary. This means that all companies are required **to appoint whole time CS whose paid up share capital is 5 crore rupees or more.**

### **IN CASE OF COMPANY SECRETARY IN PRACTICE**

**In Accordance with Section 204(1) read with Rule 9** of the Companies (Appointment and Remuneration of Managerial personnel) Rules, 2014 , following Class of companies are required to annex with its board report, a Secretarial audit report given **by Practicing Company secretary** and that report shall be **in form MR-3.**

- a) Every Listed Company and
- b) Every Public company -

having **paid up share capital** of rupees **fifty crore or more** ; or

having **a turnover** of rupees **two hundred fifty crore or more**

## **PROCEDURE TO APPOINT A COMPANY SECRETARY**

### **IN CASE OF WHOLE TIME COMPANY SECRETARY**

- Convene a board meeting after sending notice to all the directors of the company;
- At the board meeting , place the proposal of appointing Company Secretary with the details of the person finalized and pass Board Resolution appointing company secretary and approving the terms and conditions for the same;
- File Return of appointment of Company Secretary with the Registrar in Form DIR-12 within 30 days from the date of appointment and also there is need to file MGT-14 along with fees and following attachments;

### **Attachments for Form DIR-12 :**

- a) **Letter of Appointment**

**b) Optional attachment, if any**

**Attachments with Form MGT-14:**

**a) Copy of Resolutions**

- Make entries in the Register of directors and KMP
- A return in MR 1 shall be filed with the R.O.C. within 60 days from the appointment

**Attachment with Form MR-1**

**a) Copy of Board Resolution**

**b) Copy of Letter of Consent to act as Company Secretary**

**c) Copy of certificate by the Nomination and Remuneration Committee of the company, if any, to the effect that the remuneration is as per remuneration policy of the company**

**d) Optional Attachments, if any**

**LEGAL PROVISIONS**



**IN CASE OF WHOLE TIME COMPANY SECRETARY**

- a) As per Section 203(3) a Company Secretary in whole time employment shall not hold office in more than one company except in its subsidiary company at the same time.
- b) Company Secretary in whole time employment can be appointed as a director of any company with the permission of the board.
- c) Company Secretary is not managerial personnel for the purpose of restriction under section 197; his salary is not considered for the purpose of computing managerial remuneration unless he is also a director of the company.
- d) If the office of any Company secretary in whole time employment is vacated the resulting vacancy shall be filled up by the board within a period of 6 months from the date of such vacancy.

**IN CASE OF COMPANY SECRETARY IN PRACTICE**

Ensure that individual to be appointed as PCS fulfills the definition of company secretary in practice under the Section 2(25) of the Companies Act, 2013

- a) Ensure that individual proposed to be appointed, holds a certificate of practice from ICSI and that certificate is valid.
- b) Convene a board meeting after giving notice to all directors.
- c) Pass Board Resolution to appoint PCS for secretarial audit and the resolution passed must contain remuneration to be paid to such appointee.

- d) The appointment shall be made up to the conclusion of the annual general meeting held after such appointment.

### RESPONSIBILITIES OF COMPANY SECRETARIES:-

#### **1. Under The Companies (Appointment And Remuneration of Managerial Personnel) Rules ,2014 :-**

- He is responsible to provide collectively and individually such guidance as may require by the directors of the company
- He is responsible for convening of meetings and attend these meetings and maintain the minutes of these meetings.
- To obtain the necessary approval by the appropriate authority when required under the provision of company law.
- To represent this company before any authority or quasi-judicial body and other authorities under the act in connection with discharge of various function under the act.
- To Assist the board and advise the board in ensuring the good governance and in complying with the requirement of good corporate governance.
- To Advise the board in relation to applicable laws **and**
- Other duties as may be assigned by the board from time to time

**Note :-** As per section 205 (2) provides that section 204 in relation to secretarial audit and section 205 in relation to functions of company secretary shall not affect the duties and functions of the director , managing director or whole time director under this act ,or any other law for the time being in force.

#### **2. In Audit committee:-**

As per clause 49 of the listing agreement regarding corporate governance, Company Secretary will be the Secretary of the audit committee which is required to be formed by listed companies.

#### **3. As a compliance officer :-**

Every listed company required to appoint the Company Secretary as a Compliance officer of the company who directly get in touch with SEBI, Stock exchange and the registrar of companies etc. (Clause 47 (a) of listing agreements)

\*As per section 432 of companies Act 2013 A Company Secretary can appear before national company law tribunal (N.C.L.T.) on behalf of the company.

### PENALTIES:-



#### **IN CASE OF WHOLE TIME COMPANY SECRETARY(SECTION 203(5))**

If a company contravenes the provisions of whole time key managerial personnel (including Company Secretary) the company shall be punishable with fine which shall not be less than one

lakh rupees but which may extend to five lakh rupees and every director and KMP who is in default shall also be punishable with fine which may extend to one thousand rupees for every day after the first during which the default continues

### **IN CASE OF COMPANY SECRETARY IN PRACTICE (SECTION 204(4))**

If a company or any officer of the company or PCS contravenes the provisions of Secretarial Audit the company, the officer or company secretary in practice shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees

### **CONCLUSION**

On the basis of above discussion we can say appointment of Company Secretary and his unique position in the company who is vested with bunch of legal rights and responsibilities as company secretary of any company. Company Secretary **can add value** to their role by making a good judgment and making quick accurate decision having commercial awareness in addition to their legal expertise. The focus of the company secretary's responsibilities will differ depending on the type of company, whether it is public or private, and also depending on the industry. No matter what the organization however, the role has expanded beyond simply ensuring statutory compliance to become a pivotal one where the skills of the company secretary can have a direct impact on the effectiveness of the Board and organization. Company secretaries can **add real value to their role and increase their impact by bringing commercial acumen, strategic understanding and softer people skills in addition to their already much sought after legal and governance knowledge.**

## **NOTIFICATIONS**

### **A. G.S.R.(E) NOTIFICATION REGARDING SUB-SECTION (1) OF SECTION 467 OF THE COMPANIES ACT, 2013 (18 OF 2013)**

**DATED 04.09.2015**

1. In exercise of the powers conferred by sub-section (1) of section 467 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following further alterations in Schedule III (hereinafter referred to as said Schedule) to the said Act, namely:-
2. In the said Schedule, in Part I- Balance Sheet,-
  - i. Under the heading "Equity and Liabilities", in para (4), for,'(b) Trade payables, the following shall be substituted, namely:-

"(b) Trade Payables:-

A. total outstanding dues of micro enterprises and small enterprises; and



B. total outstanding dues of creditors other than micro enterprises and small enterprises."

- ii. Under the heading "Notes: General Instructions for preparation of Balance Sheet", in para 6, after sub-para F the following shall be inserted, namely:-

"FA. Trade Payables

The following details relating to Micro, Small and Medium Enterprises shall be disclosed in the notes:-

- (a) the principal amount and the interest due thereon (to be shown separately) remaining unpaid to any supplier at the end of each accounting year;
- (b) the amount of interest paid by the buyer in terms of section 16 of the Micro, Small and Medium Enterprises Development Act, 2006, along with the amount of the payment made to the supplier beyond the appointed day during each accounting year;
- (c) the amount of interest due and payable for the period of delay in making payment (which have been paid but beyond the appointed day during the year) but without adding the interest specified under the Micro, Small and Medium Enterprises Development Act, 2006;
- (d) the amount of interest accrued and remaining unpaid at the end of each accounting year; and
- (e) the amount of further interest remaining due and payable even in the succeeding years, until such date when the interest dues above are actually paid to the small enterprise, for the purpose of disallowance of a deductible expenditure under section 23 of the Micro, Small and Medium Enterprises Development Act, 2006.

Explanation.-the terms appointed day', 'buyer', 'enterprise', 'microenterprise', 'small enterprise' and 'supplier', shall have the same meaning assigned to those under clauses (b), (d), (e), (h), (m) and (n) respectively of section 2 of the Micro, Small and Medium Enterprises Development Act, 2006."

3. This notification shall come into force on the date of its publication in the Official Gazette.

### **IMPACT OF THE ABOVEMENTIONED NOTIFICATION**

Following alterations in Schedule III of the Companies Act, 2013 shall be made via notification:-

1. Under the heading "Equity and Liabilities", in para (4), for '(b)' Trade Payables the following shall be substituted, namely:

"(b) Trade Payables:

- (A) total outstanding dues of micro enterprises and small enterprises; and
- (B) total outstanding dues of creditors other than micro enterprises and small enterprises

2. A New Sub Para "FA" inserted under the heading "Notes" in para 6, after sub-para F.

## **B. G.S.R.(E) NOTIFICATION REGARDING COMPANIES (ACCOUNTS) SECOND AMENDMENT RULES, 2015**

**DATED 04.09.2015**

In exercise of the powers conferred under sub-sections (1) and (3) of section 128, sub-section (3) of section 129, section 133, section 134, sub section (4) of section 135, sub-section (1) of section 136, section 137 and section 138 read with section 469 of the Companies Act, 2013, the Central Government hereby makes the following rules further to amend the Companies(Accounts) Rules, 2014, namely:-

1. (1) These rules may be called the Companies (Accounts) Second Amendment Rules, 2015.

(2) They shall come into force from the date of their publication in the Official Gazette.

2. In the Companies (Accounts) Rules, 2014,

(i) in rule 2, in sub-rule (1), after clause (d), following shall be inserted, namely:-

"(da) "Indian Accounting Standards" means the Indian Accounting Standards referred to in rule 3 and Annexure to the Companies (Indian Accounting Standards) Rules, 2015;"

(ii) after rule 4 the following rule shall be inserted, namely:-

"4A. Forms and items contained in financial statements.- The financial statements shall be in the form specified in Schedule III to the Act and comply with Accounting Standards or Indian Accounting Standards as applicable:

Provided that the items contained in the financial statements shall be prepared in accordance with the definitions and other requirements specified in the Accounting Standards or the Indian Accounting Standards, as the case may be, ",

(iii) in rule 8, in sub-rule (3), the following proviso shall be inserted at the end, namely:-

"Provided that the requirement of furnishing information and details under this sub-rule shall not apply to a Government company engaged in producing defense equipment. ",

(iv) in rule 12, for sub-rule (1) the following sub-rule shall be substituted, namely:-

"(1) Every company shall file the financial statements with Registrar together with Form AOC-4 and the consolidated financial statement, if any, with Form AOC - 4 CFS, ",

(v) In Annexure, for Form AOC-4, the following Form AOC-4 and AOC-4 CFS shall be substituted, namely:-

### **IMPACT OF THE ABOVEMENTIONED NOTIFICATION**

✓ MCA finally released the contents of much awaited forms AOC - 4 for filing of Financial Statements and AOC - 4 CFS for Consolidated Financial Statements

- ✓ New clause "(da)" inserted in Rule 2 in Sub Rule 1 after Clause d;
- ✓ New Rule 4A inserted after Rule 4 ;
- ✓ Proviso inserted in sub rule 3 of Rule 8;
- ✓ Substitution in rule 12 for sub rule(1) ;

**Note :-**

- The term "Indian Accounting Standards" will have the same meaning as prescribed in the Companies (Indian Accounting Standards) Rules, 2015.
- Financial Statement shall be prepared in the form specified in Schedule III and also required to comply with the Accounting Standards or the Indian Accounting Standards.
- Company Secretary, Chartered Accountant and Cost Accountant in Practice are now authorized to Pre-certify Form AOC - 4 & AOC - 4 CFS.

**C. S.O.(E) NOTIFICATION REGARDING SUB-SECTION (6) OF SECTION 129 OF THE COMPANIES ACT, 2013 (18 OF 2013)**

**DATED 04.09.2015**

1. In exercise of the powers conferred by the sub-section (6) of section 129 of the Companies Act, 2013 (18 of 2013), the Central Government hereby, in public interest, directs that paras 5 (ii) (a) (1), 5 (ii) (a) (2), 5 (ii) (e), 5 (iii), 5 (viii) (a), 5 (viii) (b), 5 (viii) (c) and 5 (viii) (e) relating to Additional information of the General instructions for preparation of Statement of Profit and Loss in Schedule III of the Companies Act, 2013 shall not apply to government companies producing Defense Equipment including the Space Research subject to fulfillment of following conditions, namely:-

**Conditions:**

The Board of Directors of the Company has given consent with regard to non-disclosure of information relating to paras 5(ii)(a)(1), 5(ii)(a)(2), 5(ii)(e), 5(iii), 5(viii)(a), 5(viii)(b), 5(viii)(c) and 5(viii)(e), as may be applicable;

The Company shall disclose in the Notes forming part of the balance sheet and profit and loss account, the fact of grant of exemption under this notification;

The company shall comply with the prescribed Accounting Standards;

The company shall ensure that its financial statements represent a true and fair state of affairs of its finances; and

The company shall maintain and file such information as may be prescribed or called for or required by the Government or the Reserve Bank of India or any other regulator.

2. This notification shall be applicable in respect of financial statement prepared in respect of the financial years ending on or after the 31st March, 2016.

**D. G.S.R.(E) NOTIFICATION REGARDING COMPANIES(FILING OF DOCUMENTS AND FORMS IN XBRL) RULES ,2015.**

**DATED 09.09.2015**

In exercise of the powers conferred by sub-sections (1) and (2) of section 469 read with section 398 of the Companies Act, 2013 (18 of 2013), and in supersession of the Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Rules, 2011, except as respects things done or omitted to be done before such supersession, the Central Government hereby makes the following rules, namely:

**1. Short title and commencement:-**

- 1) These rules may be called the Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Rules, 2015.
- 2) They shall come into force from the date of their publication in the Official Gazette.

**2. Definitions:-**

(1) In these rules, unless the context otherwise requires,-

- a) "Act" means the Companies Act, 2013;
- b) "Annexure" means annexure appended to these rules;
- c) "Documents and forms" means the documents and forms required to be filed with any authority as specified under the Act or rules or regulations made there under;
- d) "Extensible Business Reporting Language" (XBRL), means a standardized language for communication in electronic form to express, report or file financial information by the companies under the Act
- e) "Taxonomy" means in XBRL, an telephonic dictionary for reporting the business data as approved by the Central Government in respect of any documents or forms indicated in these rules.

(2) Words and expressions used in these rules but not defined and defined in the Act or in the Companies (Specification of Definitions Details) Rules 2014 shall have the meanings respectively assigned to them in the Act and said rules.

**3. Filing of financial statement with Registrar**

The following class of companies shall file their financial statement and their documents under section 137 of the Act with the Registrar in e-form AOC-4 XBRL given in Annexure-I for the financial years commencing on or after 1<sup>st</sup> April2014 using the XBRL taxonomy given in Annexure II, namely:-

- i. all companies listed with any Stock Exchange(s) in India and their Indian subsidiaries; or
- ii. all companies having paid up capital of rupees five crore or above;
- iii. all companies having turnover of rupees hundred crore or above; or
- iv. all companies which were hitherto covered under the Companies(Filing of Documents and Forms in Extensible Business Reporting Language) Rules, 2011:

**Provided that** the companies in Banking, insurance, Power Sector and Non-Banking Financial companies are exempted from XBRL filing.

#### **4. Filing of cost audit report :-**

A company required to furnish cost audit report and other Documents to the Central Government under sub-section (6) of section 148 of the Act and rules made there under shall file such report and other documents using the XBRL taxonomy given in Annexure-III. for the financial years commencing on or after 1<sup>st</sup> April 2014, in E-form CRA-4 specified under the Companies (Cost Records and Audit) Rules' 2014

### **E. G.S.R(E) NOTIFICATION REGARDING THE COMPANIES (ACCEPTANCE OF DEPOSITS) SECOND AMENDMENT RULES, 2015**

**DATED 15.09.2015**

In exercise of the powers conferred by sections 73 and 76 read with subsection (1) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Acceptance of Deposits) Rules, 2014, namely:-

1. (1) These rules may be called the Companies (Acceptance of Deposits) Second Amendment Rules, 2015,  
  
(2) They shall come into force on the date of their Publication in the Official Gazette.
2. in the Companies (Acceptance of Deposits) Rules, 2014 (hereinafter referred to as said rules), in rule 2, in sub-rule (1), in clause (c), for sub-clause (viii), the following shall be substituted, namely:-

"(viii) any amount received from a Peron who, at the time of the receipt of the amount, was a director of the company or a relative of the director of the Private company:

**Provided that** the director of the company or relative of the director of the private company, as the case may be, from whom money is received, furnishes to the company at the time of giving the money, a declaration in writing to the effect that the amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others and the company shall disclose the details of money so accepted in the Board's report;"

3. In the said rules, in rule 3, -

(a) for the words "paid-up share capital and free reserves", wherever they occur, the words "Paid-up share capital, free reserves and securities premium account" shall be substituted;

(b) in sub-rule (8), in the Table, for item (e) and entries relating thereto the following shall be substituted, namely

“(e) Brickwork Ratings India Pvt Ltd (Brickwork)	BWR FBBB”
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## **IMPACT OF THE ABOVEMENTIONED NOTIFICATION**

1. Now a private company can accept loans apart from director also from a relative of Director, provided that -

Relative of director from whom money is received, furnishes to the company at the time of giving the money, a declaration in writing to the effect that the amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others , and

The company shall disclose the details of Money so Accepted in Board's Report.

2. In Rule (3) for the words "paid-up share capital and free reserves", wherever they occur, the words "Paid-up share capital, free reserves and securities premium account" shall be substituted;

### **F. G.S.R(E) NOTIFICATION REGARDING COMPANIES (MANAGEMENT AND ADMINISTRATION) SECOND AMENDMENT RULES, 2015**

**DATED 24.09.2015**

In exercise of the powers conferred by sections 88, 89,91,92, 93,94, 70I, 105, 108, 109, 110, 115, 117, 118, 119, 120 and 121 read with sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Management and Administration) Rules, 2014, namely:-

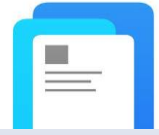
#### **1. Short title and commencement :-**

(1) These rules may be called the Companies (Management and Administration) Second Amendment Rules, 2015.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Companies (Management and Administration) Rules, 2014, in Form No.MGT-7, In paragraph I, under serial number (i), after "Global Location Number (GLN) of the Company", the following shall be inserted, namely:-

Permanent Account Number (PAN) of the company



## CIRCULARS

### A. GENERAL CIRCULAR NO. 12/2015

**SUBJECT:- EXTENSION OF TIME FOR FILING OF COST AUDIT REPORT TO THE CENTRAL GOVERNMENT FOR THE FINANCIAL YEAR 2014-2015 IN FORM CRA-4**

**DATED 01.09.2015**

In continuation to General Circular No.08/2015 dated 12.06.2015. the last date of filing of Form CRA-4 without any penalty/late fee is hereby extended upto 30th September, 2015.



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- [Extension of time for filing of cost audit report to the Central Government for the Financial Year 2014-2015 in form CRA-4](#)
- [Notification regarding sub-section \(1\) of section 467 of the Companies Act, 2013 \(18 of 2013\)](#)
- [Notification regarding sub-section \(6\) of section 129 of the Companies Act, 2013 \(18 of 2013\)](#)
- [Companies \(Accounts\) Second Amendment Rules, 2015](#)
- [Procedure for Conversion of Private Company into One Person Company](#)
- [Procedure for Conversion of Private Company into Public Company](#)
- [Procedure for Conversion of Public Company into Private Company](#)
- [The Companies \(Acceptance of Deposits\) Second Amendment Rules, 2015](#)
- [Designations](#)
- [Annual Filing 2014-2015](#)
- [Companies \(Management and Administration\) Second Amendment Rules, 2015](#)

## EDITORS COLUMN

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