



The Companies Act 2013

Enlightening Nation

E-newsletter

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About the E-newsletter

Dear Users,

To keep you updated about the latest notifications, circulars & orders issued during the month, thecompaniesact2013.com present herewith its monthly e-newsletter. This is the issue of the April month comprising contemporary articles & monthly amendments.

The notion is to render all the updates in a compiled format and serve a better pavement for easy accessibility.

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Demonetization- Disclosure in Financial Statements

The Ministry of Corporate Affairs vide notifications dated March 30, 2017 has notified the Companies (Audit and Auditors) Amendment Rules, 2017 and Amendment to Schedule III to the Companies Act, 2013. Pursuant to these notifications, a new clause (d) has been inserted in Rule 11 of the Companies (Audit and Auditors) Rules, 2014 requiring auditors to report on whether the company had provided requisite disclosures in its financial statements as to holdings as well as dealings in Specified Bank Notes during the period from 8th November, 2016 to 30th December, 2016 and if so, whether these are in accordance with the books of accounts maintained by the company. An amendment has also been made to Schedule III to the Companies Act, 2013 to require that every company shall disclose the details of Specified Bank Notes held and transacted during the period from 8th November, 2016 to 30th December, 2016 in the specified format.

❖ Amendment in Schedule III of Companies Act 2013

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 amendments to Schedule III of the said Act with effect from the date of publication of this notification in the Official Gazette, namely:-

- In the Companies Act, 2013 (hereinafter referred to as the principal Act), in Schedule III, in Division I, in Part I under the heading “General instructions for preparation of Balance Sheet” in paragraph 6, after clause ‘W’, the following clause shall be inserted namely:-
- “X. Every company shall disclose the details of Specified Bank Notes (SBN) held and transacted during the period from 8th November, 2016 to 30th December as provided in the Table below: **(Refer below table)**
- In the principal Act, in Schedule III, in Division II, in Part I under the heading “General instructions for preparation of Balance Sheet” in paragraph 6, after clause ‘J’, the following clause shall be inserted namely:-
- “K. Every company shall disclose the details of Specified Bank Notes (SBN) held and transacted during the period 08/11/2016 to 30/12/2016 as provided in the Table below: **(Refer below table)**

Table For Both Points (X And K)

	SBNs	Other denomination notes	Total
Closing cash in hand as on 08.11.2016			
(+) Permitted receipts			
(-) Permitted payments			
(-) Amount deposited in Banks			
Closing cash in hand as on 30.12.2016			

Note :

Permitted receipts and permitted payments :-

Permitted receipts and permitted payments are not specifically defined in the notification. However, these would include transactions of receipt and payment of Specified Bank Notes as permitted by Reserve Bank of India from time to time. These would include payment for the medical treatment (hospitalization in Government hospitals, medicine etc. as per the relevant notifications), purchase at consumer cooperative stores operated under authorization of Central or State Government, purchase of bus tickets at government bus stands, train tickets at railway station, air tickets at airport, toll charges at National Highway, utility bills, purchase of LPG/gas cylinders, school fees, payment towards any fees, charges, taxes or penalties, payable to the Central or State Government including Municipal and local bodies and fuel purchase etc.

❖ Companies (Audit and Auditors) Amendment Rules, 2017

In exercise of powers conferred by section 143 read with sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government has amended the Rule 11 by inserting the following clause (d)

(d) whether the company had provided requisite disclosures in its financial statements as to holdings as well as dealings in Specified Bank Notes during the period from 8th November, 2016 to 30th December, 2016 and if so, whether these are in accordance with the books of accounts maintained by the company.

Applicability - The disclosures as per the notification are applicable to financial statements which are issued after March 30, 2017

Auditors should obtain closing cash balance certificate with denominations from the Management as at 8th November 2016 and as at 30th December 2016 in respect of Specified bank notes (SBNs) and other denomination notes and verify/reconcile the same from the books of accounts.

For more clarification one should review the Implementation Guide on Auditor's Report under Rule 11(d) of Companies (Audit and Auditors) Amendment Rules, 2017 and Amendment to Schedule III to Companies Act, 2013 issued by Institute of Chartered Accountants of India.



NOTIFICATIONS

- **G.S.R. 339(E) Companies (Registration of Charges) Amendment Rules, 2017 Dated 07.04.2017**

In exercise of the powers conferred by 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 (Registration of Charges) Rules, 2014, namely:—

1. Short title and commencement.-

(1) These rules may be called the Companies (Registration of Charges) Amendment Rules, 2017..

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

2. In the Companies (Registration of Charges) Rules, 2014, (hereinafter referred to as the principal rules) for Form No. CHG-1, shall be substituted .

- **G.S.R. 355(E) Companies (Removal of Names of Companies from the Register of Companies) Amendment Rules, 2017. Dated 12.04.2017**

In exercise of the powers conferred by sub-sections (1), (2) and (4) of section 248 read with section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules to amend the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016 , namely:—

1. Short title and commencement.-

(i) These rules may be called the Companies (Removal of Names of Companies from the Register of Companies) Amendment Rules, 2017.

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

2. In the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016 (hereinafter referred to as the principal rules), in rule 7, in sub-rule (1), after the proviso, the following proviso shall be inserted, namely:— “Provided further that the publication of notice under clause (iii) of this sub-rule, in respect of cases falling under subsection (1) of section 248 shall be in Form No. STK 5A.”.

3. In the principal rules, after the Form STK-5, the following Form shall be inserted, namely:—

FORM No. STK – 5A

PUBLIC NOTICE

[Pursuant to sub-section (1) and sub-section (4) of section 248 of the Companies Act, 2013 and second proviso to rule 7(1) of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016]

**GOVERNMENT OF INDIA
MINISTRY OF CORPORATE AFFAIRS
Office of the Registrar of Companies
(Address of RoC)**

Public Notice No.-----

Date:-----

Reference:

In the matter of striking off names of companies under section 248 (1) of the Companies Act, 2013, of the companies as per details below:—

1. Notice is hereby given that the Registrar of Companies has a reasonable cause to believe that, the companies, whose names are listed on the _____ (provide web link of the page on Ministry's website where the names are listed),-

(i) have not commenced business within one year of their incorporation;
OR

(ii) have not been carrying on any business or operation for a period of two immediately preceding financial years and have not made any application within such period for obtaining the status of dormant company under section 455 of the Companies Act, 2013.

[Strike off whichever is not applicable]

And, therefore, proposes to remove/strike off the names of the above mentioned companies from the register of companies and dissolve them unless a cause is shown to the contrary, within thirty days from the date of such notice.

2. Any person objecting to the proposed removal/striking off of name of the companies from the register of companies may send his objection to the office address mentioned hereabove within thirty days from the date of publication of this notice.

Registrar of Companies”.

• G.S.R (E) Companies (Compromise , Arrangement, and Amalgamation) Amendment Rules, 2017 Dated 13.04.2017

In exercise of powers conferred by section 234 read with sections 469 of the Companies Act, 2013, the Central Government in consultation with Reserve Bank of India , hereby makes the following rules to amend the Companies (Compromise , Arrangement, and Amalgamation) Amendment Rules 2017,, namely:—

1. Short title and commencement.-

(i) These rules may be called the Companies (Compromise , Arrangement, and Amalgamation) Amendment Rules 2017

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

25A. Merger or amalgamation of a foreign company with a Company and vice versa.

(1) A foreign company incorporated outside India may merge with an Indian company after obtaining prior approval of Reserve Bank of India and after complying with the provisions of sections 230 to 232 of the Act and these rules.

(2) (a) A company may merge with a foreign company incorporated in any of the jurisdictions specified in Annexure B after obtaining prior approval of the Reserve Bank of India and after complying with provisions of sections 230 to 232 of the Act and these rules.

(b) The transferee company shall ensure that valuation is conducted by valuers who are members of a recognized professional body in the jurisdiction of the transferee company and further that such valuation is in accordance with internationally accepted principles on accounting and valuation. A declaration to this effect shall be attached with the application made to Reserve Bank of India for obtaining its approval under clause (a) of this sub-rule.

(3) The concerned company shall file an application before the Tribunal as per provisions of section 230 to section 232 of the Act and these rules after obtaining approvals specified in sub-rule (1) and sub-rule (2), as the case may be.

Explanation 1._ For the purposes of this rule the term “company” means a company as defined in clause (20) of section 2 of the Act and the term “foreign company” means a company or body corporate incorporated outside India whether having a place of business in India or not:

Explanation 2. For the purposes of this rule, it is clarified that no amendment shall be made in this rule without consultation of the Reserve Bank of India.”]

- **General Circular No 03/17 of Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Amendment Rules, 2017 Dated 27.04.2017**

Pursuant to second proviso to Rule 6 of Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Amendment Rules, 2017 notified on February 28, 2017, where the seven year period provided under subsection (5) of section 124 is completed during September 7, 2016 to May 31, 2017, the due date for transfer of such shares by companies is May 31, 2017.

The Ministry of Corporate Affairs has issued General Circular 03/2017 dated 27th April 2017 in relation to transfer of shares to IEPF Authority.

The following clarifications have been made:

1. The IEPF Authority has decided to open a special demat account with NSDL through a Depository Participant of NSDL.
2. The special demat account will have features and functionality to support IEPF operations using paperless, digital processes.

3. All companies required to transfer shares to IEPF Authority, whether such shares held in dematerialised form or physical form, to the demat account of IEPF Authority by way of corporate action.

4. NSDL will prescribe the file formats and operational procedures for transfer of shares to special demat account of the IEPF Authority by April 30th 2017 and May 15th 2017 respectively.

S.O. 1182(E) :- In exercise of the powers conferred by sub-section (3) of section 1 of the Companies Act, 2013 (18 of 2013), the Central Government hereby appoints the 13th day of April, 2017 as the date on which the provisions of section 234 of the said Act shall come into force.

- **SEBI Updates**

Board meeting – Decision on Instant Access Facility (IAF) in mutual fund , amendments in SCR (Stock Exchanges and Clearing Corporations) Reg 2012, Exemption under SEBI (ICDR) Regulations, 2009, , relating to preferential allotments, to be extended to Scheduled Banks and Financial Institutions, Strengthening the Monitoring of Utilization of Issue Proceeds, Amendment to SEBI (Foreign Portfolio Investor) Regulations, 2014, Amendments to the SEBI (Debenture Trustee) Regulations, 1993, etc.

The SEBI Board met in Mumbai today and took the following decisions

1. Instant Access Facility (IAF) in Mutual Funds and use of e-wallet for investment in Mutual Funds

With an objective to channelize households' savings into capital market and to promote digitalization in mutual funds, SEBI Board after deliberation has decided the following:

- Mutual Funds / Asset Management Companies (AMCs) can offer instant access facility (through online mode) of upto INR 50,000 or 90% of folio value, whichever is lower, to resident individual investors in liquid schemes by applying lower of Previous Day NAV or Prospective NAV. For providing such facility AMCs would not be allowed to borrow. Liquidity is to be provided out of the available funds from the scheme and AMCs to put in place a mechanism to meet the liquidity demands. This facility can also be used for investment in mutual funds through tie-ups with Payments Banks provided necessary approvals are taken from RBI. Presently, any scheme providing this facility would reduce the limit to INR 50,000, immediately and other than liquid schemes providing this facility would completely stop this facility within one month from the date of circular.
- b) Investment of up to INR 50,000 per Mutual Fund per financial year can be made using e-wallets. However, redemptions of such investments can be made only to a bank account of the unit holder. E-wallet issuers must not offer any incentive such as cash back etc., directly or indirectly for investing in mutual fund scheme through them. E-wallet's balance loaded through cash or debit card or net banking, can only be used for subscription to mutual funds schemes and balance loaded through credit card, cash back, promotional scheme etc. should not be allowed for subscription to MF schemes. Further, this limit of INR 50,000 would be an umbrella limit for investment by an investor through e-wallet and/or cash, per mutual fund per financial year.

2. Amendments to Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2012

- While presenting the Union Budget for the FY 2016-2017, the Hon'ble Union Finance Minister, made an announcement for permitting new derivative products in the commodity derivatives market. In pursuance thereof, SEBI vide circular dated September 28, 2016, permitted launch of "options" in commodity derivatives market. In this regard, to enable the Commodity Derivatives Exchanges to organize trading of 'options', the Board, after undertaking due public consultation process, has approved a proposal to amend the relevant provisions of Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2012. Detailed guidelines for trading in "option" on commodity derivatives exchanges will be issued by SEBI.

3. Inclusion of RBI registered systemically important NBFCs in the category of QIBs

- Presently institutions such as banks and insurance companies are categorized as Qualified Institutional Buyers (QIBs) by SEBI. They are eligible for participation in IPOs with specifically earmarked allocations.
- Hon'ble Union Finance Minister in his Budget Speech for the FY 2017-18, proposed to allow systemically important NBFCs regulated by RBI and above a certain net worth, to be categorised as QIBs since it would strengthen the IPO market and channelize more investments.
- Accordingly, the Board considered and approved the proposal for inclusion of systemically important NBFCs registered with RBI having a net worth of more than Rs. 500 crore in the category of QIBs. As NBFCs are well regulated entities, classifying such NBFCs under the definition of QIBs will give Issuers access to a larger pool of funds.

4. Exemption under SEBI (ICDR) Regulations, 2009, relating to preferential allotments, to be extended to Scheduled Banks and Financial Institutions

- Presently, SEBI (ICDR) Regulations prohibit the issuer from making preferential issue to any person who has sold any equity shares of the issuer during the six months preceding the relevant date. It also provides that the entire pre-preferential allotment shareholding of the allottees, if any, shall be locked-in from the relevant date upto a period of six months from the date of trading approval. Mutual Funds and Insurance Companies are, however, exempted from both the said requirements.
- Recently, many instances have been there where it has been observed that the Banking sector is exposed to the risk of significantly high Non-Performing Assets (NPA) and the Banks have been advised by the Reserve Bank of India to reduce the NPA and to initiate stringent actions to recover the dues from the borrowers.
- As a result, it is expected that many Banks will go aggressively for recovering their dues and in order to achieve this objective, the Banks may opt for CDR / SDR or bilateral restructuring. In order to carry out actions for recovery from a borrower which may be a listed Company, Banks or Financial Institutions have sold equity shares of the issuer during the preceding six months of the relevant date. Such Banks/Financial Institutions may also be one of the allottees of the specified securities of the company pursuant to CDR approved scheme under preferential issue route.
- The Board considered and approved the proposal for extending such relaxation to the Scheduled Banks and Public Financial Institutions as is already being extended to Mutual Funds and Insurance Companies.

5. Strengthening the Monitoring of Utilization of Issue Proceeds

- Presently, the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009, require mandatory appointment of 'Monitoring Agency' if the issue size of specified securities exceeds Rs. 500 Cr. The purpose for the same is to ensure adequate supervision of the utilization of the funds raised.
- SEBI Board considered and approved certain proposals to further strengthen the monitoring of issue proceeds raised in IPOs/FPOs/Rights Issues. Key proposals approved by Board are as under:
- Mandatory appointment of Monitoring Agency where the issue size (excluding offer for sale component) is more than Rs. 100 crore.
- Frequency of submission of Monitoring Agency Report has been enhanced from half-yearly to quarterly.
- Introduction of maximum timeline of 45 days for submission of Monitoring Agency Report from the end of the quarter in conjunction with the submission of the quarterly results.
- Mandating the disclosure of the Monitoring Agency Report on Company's website in addition to submitting it to Stock Exchange(s) for wider dissemination.
- Introduction of new requirement, i.e., comments of Board of Directors and Management on the findings of Monitoring Agency

6. Framework for consolidation and re-issuance of debt securities issued under the SEBI (Issue and Listing of Debt Securities) Regulations, 2008

- The Board considered and approved the following proposals contained in the agenda for laying down a framework for consolidation and re-issuance of debt securities, one of the ways to increase liquidity in the secondary market.
- a) Maximum of 12 ISINs maturing per financial year may be allowed for debt securities and within the bucket of these 12 ISINs, the issuer can issue both secured and unsecured Non-Convertible Debentures (NCDs)/bonds and no separate category of ISINs may be provided to them. Additionally, the issuer may issue five ISINs per financial year for structured debt instruments of a particular category (say bonds with call option or bonds with both call and put option);
- b) The above restrictions will not be applicable on debt instruments which are used for raising regulatory capital such as Tier I, Tier II bonds, bonds for affordable housing and the capital gains tax bonds issued under section 54EC of the Income Tax Act, 1961;
- c) In order to resolve the issue of bunching of liabilities, the issuer can as a one-time exercise make a choice of having bullet maturity payment or the issuer can make staggered payment of the maturity proceeds within that financial year;
- d) Active consolidation, i.e consolidation, of existing outstanding debt securities may be made recommendatory at present, which may be reviewed at a later stage. Such active consolidation can be done through switches and conversion; and
- e) There should not be any clause prohibiting consolidation and re-issuance in the Articles of Association of the issuer/company.

7. Amendment to SEBI (Foreign Portfolio Investor) Regulations, 2014

- The SEBI (Foreign Portfolio Investor) Regulations, 2014 shall be amended as follows:
- a) An express provision shall be inserted in the regulations to prevent Resident Indians/NRIs or the entities which are beneficially owned by Resident Indians/NRIs from subscribing to Offshore Derivative Instruments.

8. Amendments to the SEBI (Debenture Trustee) Regulations, 1993

- A Consultative Paper was placed on the SEBI website on proposed amendments to SEBI (Debenture Trustee) Regulations, 1993 (DT Regulations) for comments..
- The Board approved the amendments to the DT Regulations, 1993 after taking into consideration the public comments.
- The amendments are aimed to achieve the following objectives:
- I. To streamline the existing provisions in the DT Regulations with the provisions as mentioned in the Companies Act 2013, Companies (Share Capital and Debentures) Rules, 2014 and on account of amendment to the other SEBI Regulations.
- II. To fortify the existing provisions in the DT Regulations to enable the debenture trustees to perform the task of securing the interest of the investors.

9. Integration of broking activities in Equity Markets and Commodity Derivatives Markets under single entity

- Consequent to merger of FMC with SEBI, commodity derivatives brokers are also being regulated by SEBI. However, as per extant Securities Contracts (Regulation) Rules, 1957 (SCR Rules) and SEBI (Stock Brokers and Sub-brokers) Regulations, 1992 (Stock Brokers Regulations), a stock broker / clearing member dealing in commodity derivatives cannot deal in other securities or vice versa, except by setting up of a separate entity.
- In this regard, the Board approved the proposal to remove this restriction by amending Stock Brokers Regulations and also to recommend to Government of India for amending SCR Rules accordingly.

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