



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 September 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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CRACKDOWN ON SHELL COMPANIES AND NON OPERATIONAL COMPANIES BY REGULATORY BODIES

➤ Definition of Shell Company

Shell Companies - A non-trading company used as a vehicle for various financial maneuvers or kept dormant for future use in some other capacity.

Non Operational Company - Any Company which is not carrying its business on continuous basis it's called Non Operational Companies

➤ Steps Taken by Central Government :-

Ministry of Corporate Affairs (MCA) issued a Notification dated 26th December, 2016 notifying Section 248, 249, 250, 251 and 252 of Companies Act, 2013 (Chapter XVIII). This chapter deals with Removal of Names of Companies from Register of Companies. MCA has appointed 26.12.2016 as effective date for Section 248 to 252.

This is alternative to winding up of a Company subject to statutory criterion specified under the section. This has replaced Section 560 (Form FTE) of erstwhile Companies Act, 1956.

Chapter XVIII The Companies (Removal of Name of Companies from the Register of Companies) Rules, 2016, Under this Chapter and Rule MCA has given Notice to defunct, Non operational companies for Strike off Name of such companies. This Notices has became boon for Non working companies, Non working Companies have got opportunity to Exit from corporate world with easy process, After the introduction of STK-2 Form companies received notices from their respective ROC for strike off and on the basis of Reply of Notices ROC(s) has struck off 3 lacs of Companies in India, This was Announced by our beloved **P.M. Shri Narendra Modi** on GST launching ceremony.

But as proverb **"Mite with wheat is also grinding"**. ROC(s) has also Striked off Operational companies with Non Operational Companies. Such Companies have sound balance sheet with appropriate assets and properties. Striking off order disturbed to all working Companies and Management of Companies wanted to Restoration of those companies, On the Demand and Requirement of such management, MCA has introduced process and Form NCLT-9 for Restoration of Companies.

The latest move comes close on the heels of the ministry of corporate affairs **cancelling the registration** of 2.09 lakh companies that have not been carrying out business activities for a long period. Many Non Operational Companies had struck off by ROC for not complying provision of section 248 companies Act, 2013.

"The fight against black money shall be incomplete without breaking the network of shell companies. Possibility of using the shell companies for laundering black money cannot be undermined," Minister of State for Corporate Affairs Shri P. P. Chaudhary said.

The ministry is also monitoring the situation emerging out of cancellation of registration of the companies and is holding regular meetings with officials of the ministry and various related organizations. These include Serious Fraud Investigation Office (SFIO), ROC(s), Department of Financial Services, Indian Banks Association and other departments involved in the crackdown against defaulting companies.

Action against shell companies by SEBI: SEBI has directed to bourses to initiate action against 331 suspected shell companies that are listed and these scripts will not be available for trading. BSE, NSE and Metropolitan Stock Exchange, markets regulator has asked them to keep the 331 shares in stage four of the Graded Surveillance Mechanism (GSM) with immediate effect. Securities coming in stage four are permitted to trade only once a month under trade to trade category.

"Trading in these securities shall be permitted once a month (first Monday of the month),"

Further, any upward price movement would not be permitted beyond the last traded price while additional surveillance deposit of 200 per cent of trade value would be collected from the buyers. This amount would be retained by the exchanges for five months.

Apart from initiating a "process of verifying the credentials/fundamentals of such companies", the exchanges have also been asked to appoint an independent auditor to carry out audit of these entities. If necessary, even forensic audit could be ordered to verify their credentials and fundamentals.

On verification, if the bourses do not find appropriate credentials or fundamentals about existence of these companies, they proceeding for "compulsory delisting" would be started. Besides, these entities would not be permitted to deal in any security on exchange platform and its holding in any depository account would be frozen till such delisting process is completed.

"The shares held by the promoters and directors in such listed companies shall be allowed to be transferred by depositories only upon verification by concerned exchanges,"

They would not be allowed to transact in the security except to buy shares in the particular listed company until verification of credential is completed.

Out of the list of shell companies, if securities of any of the listed company are under suspension, the trading in such securities shall be placed under stage four of the GSM directly on revocation of suspension,

Impact on Directors

The ministry has "identified 1, 06,578 directors for disqualification under Section 164(2)(a) of the Companies Act, 2013 as on September 12, 2017," according to Ministry official.

Under Section 164, a director in a company that has not filed financial statements or annual returns for three financial years continuously would not be eligible for re- appointment in that company for five year .

Signaling that more regulatory action is expected, the ministry is further analysing the data of the 2.09 lakh company's available with the Registrar of Companies ROC(s) to identify the directors and the significant beneficial interests behind these entities.

Impact on Promoters and Ultimate Beneficiaries

The regulator is probing these shell companies that exist only on paper for seriously breaching the market driven price discovery process. It is also examining the ultimate beneficiaries of such trades.

Promoters of many shell companies with poor fundamentals, no business and financial standing are colluding with certain entities to trade significantly among themselves so as to create artificial volume and rise in stock price. SEBI's preliminary investigation has shown that funds are transferred through several layers to hide the true identity of the ultimate beneficiary or owner.

Several individuals are stuck with shares of shell companies as trading in these stocks have dried up after markets regulator SEBI came down heavily on various entities, accusing them of being set up to evade income tax. Trading in around 300 stocks has stopped abruptly causing losses to those who invested in these shell firms for generating fictitious long-term capital gains to evade tax.

Impact on Auditors:

Auditors, who have greater responsibilities under the Companies Act, 2013, are required to ensure that financial statements of a company are proper and can red flag dubious transactions.

A multi-agency clampdown has begun on shell companies to tackle the black money menace where in the role of auditors has come under the scanner for alleged connivance in facilitating illegal transactions.

The auditors' role is also being looked into for not raising the red flag as several cases have come to the fore, including at listed companies, for alleged mismatch in financial statements, sharp erosion in net worth, siphoning off funds to group and promoter entities,

The ministry as well as SEBI is closely looking at the functioning of auditors in various companies, especially those that have not been carrying out business for long.

Clampdown on Professional who was indulge with Such Companies:

The ministry, which is implementing the company's law, has also identified professionals, chartered accountants, company secretaries and cost accountants associated with the defaulting companies. Agencies are planning to Clampdown on involved professionals.



G.S.R 1061 (E) National Company Law Appellate Tribunal (Amendment) Rules, 2017

G.S.R. 1061(E).—In exercise of the powers conferred by sub-section (1) and sub-section (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the National Company Law Appellate Tribunal Rules, 2016, namely:

1. Short title and commencement. — (1) these rules may be called the National Company Law Appellate Tribunal (Amendment) Rules, 2017.

2 They shall come into force on the date of their publication in the Official Gazette. 2. In the National Company Law Appellate Tribunal Rules, 2016, for rule 63, the following rule shall be substituted, namely:-

“63. Appearance of authorised representative.-

(1) Subject to provisions of section 432 of the Act, a party to any proceedings or appeal before the Appellate Tribunal may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any other person to present his case before the Appellate Tribunal.

(2) The Central Government, the Regional Director or the Registrar of Companies or Official Liquidator may authorise an officer or an Advocate to represent in the proceedings before the Appellate Tribunal.

(3) The officer authorised by the Central Government or the Regional Director or the Registrar of Companies or the Official Liquidator shall be an officer not below the rank of Junior Time Scale or company prosecutor.”.

G.S.R 2751 (E) Dated 24th August 2017

S.O. 2751(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 24th day of August, 2017 as the date on which the provisions of sub-sections (8), (9) and sub-section (10) of section 212 of the said Act shall come into force.

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 7th September, 2016 as the date on which the provisions of section 124, sub-sections (1) to (4), (6) [with respect to the manner of administration of the Investor Education and Protection Fund] and (8) to (11) of section 125 of the said Act shall come into force.

S.O. 2872 (E) Delegation of powers to RDs under section 458 of Companies Act 2013 Dated on 06.09.2017

S.O. 2872(E).—In exercise of the powers conferred by sub-section (1) of section 435 of the Companies Act, 2013 (18 of 2013), the Central Government, with the concurrence of the Chief Justice of the High Court of Judicature at Patna, hereby designates the following Court mentioned in column (1) the Table below as Special Court for the purposes of providing speedy trial of offences punishable with imprisonment of two years or more under the said sub-section, namely

Courts	Jurisdiction as Special Court
1	2
Court of Additional District and Sessions Judge, Patna	State of Bihar

Delegation of powers to RDs under section 458 of CA 2013 Dated 06.09.2017 ;

Central Government has Delegated its power which is related with Section 66 (2) to following Regional directors,

Delhi (Regional Directors)
Mumbai (Regional Directors)
Chennai (Regional Directors)
Kolkata (Regional Directors)
Hyderabad (Regional Directors)
Ahmadabad (Regional Directors)
Shilong (Regional Directors)



General Circular No. 09/2017 Exemptions given to certain unlisted public companies under the companies (Appointment and Qualification of Directors) Rules, 2014 from the appointment of independent directors Dated 05.09.2017

This Ministry, vide notification number G.S.R. 839(E) dated 5th July, 2017 issued the Companies (Appointment and Qualification of Directors) Amendment Rules, 2017 inter-alia amending rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014. The said amended Rule 4 inter-alia provides that an unlisted public company which is a joint venture, a wholly owned subsidiary or a dormant company will not be required to appoint Independent Directors. Stakeholders have sought clarifications with regard to the meaning of joint venture for the purposes of availing exemption under Rule 4 of the aforesaid Rules as such a term is not defined in the Companies Act 2013.

The matter has been examined and it is hereby clarified that a "Joint venture" would mean a joint arrangement, entered into in writing, whereby the parties that have joint control of the arrangement, have rights to the net assets of the arrangement. The usage of the term is similar to that under the Accounting Standards.

General Circular No. 09/2017 - Clarification regarding obligation with the Indian Accounting Standards (Ind AS) and Rule 4 of Companies (Indian Accounting Standards) Rules 2015- payment banks, small finance banks which are subsidiaries of Corporate Dated on 13.09.2017

The Ministry of Corporate Affairs (MCA) has issued General Circular No 10/2017 Dated 13.09.2017 and made Clarification in Rule 4 of Companies (Indian Accounting Standards) Amendment Rules 2016.

MCA has clarified that If any Holding Company is Covered by Corporate Sector Roadmap for implementing IND AS, then that Company shall follow the Corporate Sector Roadmap, and Such Holding Company having a Small Finance Company or Payment Bank as its Subsidiary, Then Such Subsidiary Shall follow the Corporate Sector Roadmap and Provide Finance Statement to its holding company for Consolidation of Financial Statement.

LATEST UPDATES ON thecompaniesact2013.com

- [G.S.R 1061 \(E\) National Company Law Appellate Tribunal \(Amendment\) Rules, 2017](#)
- [G.S.R 2751 \(E\) Dated 24th August 2017](#)
- [S.O. 2872 \(E\) Delegation of powers to RDs under section 458 of Companies Act 2013 Dated on 06.09.2017](#)
- [Delegation of powers to RDs under section 458 of CA 2013 Dated 06.09.2017](#)
- [General Circular No. 09/2017 Exemptions given to certain unlisted public companies under the companies \(Appointment and Qualification of Directors\) Rules, 2014 from the appointment of independent directors Dated 05.09.2017](#)
- [GeneralCircularNo.09/2017 - Clarification regarding obligation with the Indian Accounting Standards \(Ind AS\) and Rule 4 of Companies \(Indian Accounting Standards\) Rules 2015-payment banks ,small finance banks which are subsidiaries of Corporate Dated on 13.09.2017](#)

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