

Newsletter



TheCompaniesAct2013

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Getting Started

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 May 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.

**"Diagnosis is not the end ,
but the beginning of
practice."**

- Martin H. Fischer

Introduction

The primary legislation governing companies in India is the Companies Act, 2013.

In addition, for listed entities, with a view to consolidate and streamline the provisions of listing agreements for different segments of the capital market and to align the provision relating to listed entities with the Companies Act, 2013, SEBI has notified the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 herein after referred as 'Listing Regulations' on September 2, 2015, after following the consultation process.

Further, to make amendment in the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, these

regulations i.e. SEBI(Listing Obligation and Disclosure Requirements) (Amendment) Regulations, 2018 came in force on 09-05-2018, which will be effective from April 1, 2019.

“Education is the process of driving a set of prejudices down your throat.”

- Martin H. Fischer

Regulations

1. These regulations may be called the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2018.
2. Save as otherwise specifically provided for in these regulations, they shall come into force with effect from April 1, 2019.
3. In the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, -
 - (a) in regulation (2), in sub-regulation (1), in clause (zb), -
 - i. the following proviso shall be inserted after the definition and before the existing proviso, namely, - “Provided that any person or entity belonging to the promoter or promoter group of the listed entity and holding 20% or more of shareholding in the listed entity shall be deemed to be a related party.”
 - ii. in the existing proviso, which shall be renumbered as the second proviso, the word “further” shall be inserted after the word “Provided” and before the word “that”.
 - (b) in regulation 15, in sub-regulation (2) as well as in the proviso to clause (b) of sub-regulation (2), the figure “17A” shall be inserted after the figure “17” and the figure “24A” be inserted after the figure “24”

SEBI (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2018.

(c) in regulation (16), in sub-regulation (1), -
i. in clause (b), -

1. in sub-clause (ii), the words "or member of the promoter group of the listed entity" shall be inserted after the words "associate company".

2. after the existing sub-clause (vii), the following new sub-clause shall be inserted, namely, - "(viii) who is not a non-independent director of another company on the board of which any non-independent director of the listed entity is an independent director:" The aforesaid amendments mentioned in clause (i) shall come into force with effect from October 1, 2018.

ii. in clause (c), the word "twenty" shall be substituted with the word "ten".

iii. in clause (d), the words "executive directors, including all functional heads" shall be substituted with the following -

"chief executive officer/managing director/whole time director/manager (including chief executive officer/manager, in case they are not part of the board) and shall specifically include company secretary and chief financial officer:"

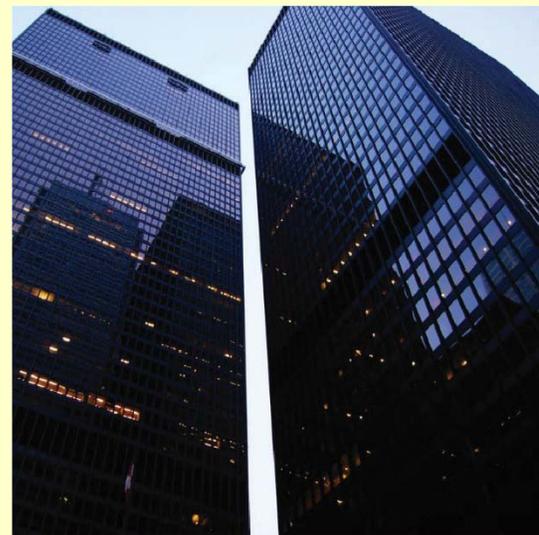
(d) in regulation 17, -

i. in sub-regulation (1), -

1. in clause (a), the following proviso and explanation shall be inserted- "Provided that the Board of directors of the top 500 listed entities shall have at least one independent woman director by April 1, 2019 and the Board of directors of the top 1000 listed entities shall have at least one independent woman director by April 1, 2020; Explanation: The top 500 and 1000 entities shall be determined on the basis of market capitalisation, as at the end of the immediate previous financial year."

2. after the existing clause (b), the following new clause shall be inserted, namely, - "(c) The board of directors of the top 1000 listed entities (with effect from April 1, 2019) and the top 2000 listed entities (with effect from April 1, 2020) shall comprise of not less than six directors.

Explanation: The top 1000 and 2000 entities shall be determined on the basis of market capitalisation as at the end of the immediate previous financial year."



**"Whenever ideas fail,
men invent words."**

- Martin H. Fischer

ii. after the existing sub-regulation (1), the following new sub-regulation shall be inserted, namely,-

“(1A) No listed entity shall appoint a person or continue the directorship of any person as a nonexecutive director who has attained the age of seventy five years unless a special resolution is passed to that effect, in which case the explanatory statement annexed to the notice for such motion shall indicate the justification for appointing such a person.”

iii. after the newly inserted sub-regulation (1A) as above, the following new sub-regulation shall be inserted, namely, - “(1B). With effect from April 1, 2020, the top 500 listed entities shall ensure that the Chairperson of the board of such listed entity shall -

(a) be a non-executive director;
(b) not be related to the Managing Director or the Chief Executive Officer as per the definition of the term “relative” defined under the Companies Act, 2013:

Provided that this sub-regulation shall not be applicable to the listed entities which do not have any identifiable promoters as per the shareholding pattern filed with stock exchanges.

Explanation - The top 500 entities shall be determined on the basis of market capitalisation, as at the end of the immediate previous financial year.”

iv. after the existing sub-regulation (2), the following new sub-regulation shall be inserted, namely, - “(2A) The quorum for every meeting of the board of directors of the top 1000 listed entities with effect from April 1, 2019 and of the top 2000 listed entities with effect from April 1, 2020 shall be one-third of its total strength or three directors, whichever is higher, including at least one independent director;

Explanation I - For removal of doubts, it is clarified that the participation of the directors by video conferencing or by other audio-visual means shall also be counted for the purposes of such quorum.
Explanation II - The top 1000 and 2000 entities shall be determined on the basis of market capitalisation, as at the end of the immediate previous financial year.”

v. in sub-regulation (6), -

1. after clause (c), the following new sub-clause shall be inserted, namely,-

“(ca) The approval of shareholders by special resolution shall be obtained every year, in which the annual remuneration payable to a single non-executive director exceeds fifty per cent of the total annual remuneration payable to all non-executive directors, giving details of the remuneration thereof.”

2. after the existing clause (d), the following new clause shall be inserted, namely,-

“(e) The fees or compensation payable to executive directors who are promoters or members of the promoter group, shall be subject to the approval of the shareholders by special resolution in general meeting, if-

(i) the annual remuneration payable to such executive director exceeds rupees 5 crore or 2.5 per cent of the net profits of the listed entity, whichever is higher; or

(ii) where there is more than one such director, the aggregate annual remuneration to such directors exceeds 5 per cent of the net profits of the listed entity: Provided that the approval of the shareholders under this provision shall be valid only till the expiry of the term of such director.

Explanation: For the purposes of this clause, net profits shall be calculated as per section 198 of the Companies Act, 2013.”

(e) after the existing regulation 17, the following new regulation shall be inserted, namely, -

"17A. Maximum number of directorships.

The directors of listed entities shall comply with the following conditions with respect to the maximum number of directorships, including any alternate directorships that can be held by them at any point of time -

(1) A person shall not be a director in more than eight listed entities with effect from April 1, 2019 and in not more than seven listed entities with effect from April 1, 2020: Provided that a person shall not serve as an independent director in more than seven listed entities.

(2) Notwithstanding the above, any person who is serving as a whole time director / managing director in any listed entity shall serve as an independent director in not more than three listed entities. For the purpose of this sub-regulation, the count for the number of listed entities on which a person is a director / independent director shall be only those whose equity shares are listed on a stock exchange."

(f) in regulation 19, -

a. after the existing sub-regulation (2), the following new sub-regulation shall be inserted, namely,-

"(2A) The quorum for a meeting of the nomination and remuneration committee shall be either two members or one third of the members of the committee, whichever is greater, including at least one independent director in attendance."

b. after the existing sub-regulation (3), the following new sub-regulation shall be inserted, namely, -

"(3A) The nomination and remuneration committee shall meet at least once in a year."

(g) in regulation 23, -

a. in sub-regulation (1), the words "including clear threshold limits duly approved by the board of directors and such policy shall be reviewed by the board of directors at least once every three years and updated accordingly" shall be inserted after the words "related party transactions" and before the symbol ":".

b. after sub-regulation (1), the following new sub-regulation shall be inserted, namely,-

"(1A) Notwithstanding the above, a transaction involving payments made to a related party with respect to brand usage or royalty shall be considered material if the transaction(s) to be entered into individually or taken together with previous transactions during a financial year, exceed two percent of the annual consolidated turnover of the listed entity as per the last audited financial statements of the listed entity."

c. in sub-regulation (4), the words "the related parties shall abstain from voting on" shall be substituted with the words "no related party shall vote to approve".

d. in sub-regulation (7), the words "abstain from voting" shall be substituted with the words "not vote to approve the relevant transaction".

e. after the existing sub-regulation (8), the following new sub-regulation shall be inserted, namely, - "(9) The listed entity shall submit within 30 days from the date of publication of its standalone and consolidated financial results for the half year, disclosures of related party transactions on a consolidated basis, in the format specified in the relevant accounting standards for annual results to the stock exchanges and publish the same on its website." The amendment shall come into force with effect from the half year ending March 31, 2019.

(h) in regulation 24, -

a. the existing sub-regulation (1) shall be substituted with the following, namely, -

“(1) At least one independent director on the board of directors of the listed entity shall be a director on the board of directors of an unlisted material subsidiary, whether incorporated in India or not. Explanation- For the purposes of this provision, notwithstanding anything to the contrary contained in regulation 16, the term “material subsidiary” shall mean a subsidiary, whose income or net worth exceeds twenty percent of the consolidated income or net worth respectively, of the listed entity and its subsidiaries in the immediately preceding accounting year.”

b. in the Explanation to sub-regulation (4), the word “material” appearing after the word “unlisted” shall be omitted. (k) after the existing regulation 24, the following new regulation shall be inserted, namely,-

“24A. Secretarial Audit. Every listed entity and its material unlisted subsidiaries incorporated in India shall undertake secretarial audit and shall annex with its annual report, a secretarial audit report, given by a company secretary in practice, in such form as may be specified with effect from the year ended March 31, 2019.”

(i) in regulation 29, in sub-regulation (1), in clause (f), the proviso thereto shall be omitted with effect from October 1, 2018.

(j) in regulation 32, after the existing sub-regulation (7), the following new sub-regulation shall be inserted, namely, - “(7A) Where an entity has raised funds through preferential allotment or qualified institutions placement, the listed entity shall disclose every year, the utilization of such funds during that year in its Annual Report until such funds are fully utilized.”

(k) in regulation 44, -

(i) the title ‘Voting by shareholders’ shall be replaced with the title ‘Meetings of shareholders and voting’ ; and

(ii) after the existing sub-regulation (4), the following new sub-regulations (5) and (6) shall be inserted, namely, - “(5) The top 100 listed entities by market capitalization, determined as on March 31st of every financial year, shall hold their annual general meetings within a period of five months from the date of closing of the financial year. (6) The top 100 listed entities shall provide oneway live webcast of the proceedings of the annual general meetings. Explanation: The top 100 entities shall be determined on the basis of market capitalisation, as at the end of the immediate previous financial year.”

(l) in regulation 46, in sub-regulation (2), -

i. for the words “on its website”, the words “under a separate section on its website” shall be substituted;

ii. after the existing clause (q), the following new clauses shall be inserted, namely, - “(r) With effect from October 1, 2018, all credit ratings obtained by the entity for all its outstanding instruments, updated immediately as and when there is any revision in any of the ratings. (s) separate audited financial statements of each subsidiary of the listed entity in respect of a relevant financial year, uploaded at least 21 days prior to the date of the annual general meeting which has been called to inter alia consider accounts of that financial year.”

NOTE: There are other regulations as well which is amended . For all the amended regulations visit :

<https://thecompaniesact2013.com>

NOTIFICATIONS

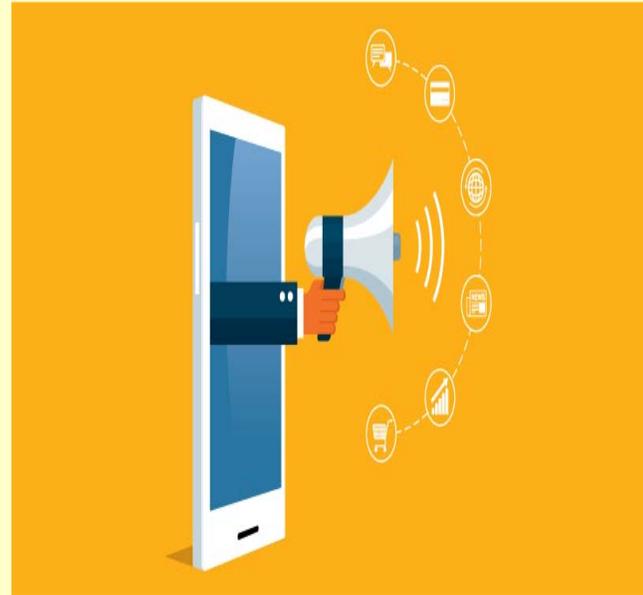
- G.S.R. (E): Companies (Prospectus and Allotment of Securities) Amendment Rules, 2018, Dated 02.05.2018

In the Companies (Prospectus and Allotment of securities) Rules, 2014, the rule 3, rule 4, rule 5 and rule 6 shall be omitted.

- G.S.R. (E): Companies (Appointment and Qualification of Directors) Second Amendment Rules, 2018, Dated 07.05.2018

A new clause has been inserted vide this notification in the main rules i.e. Companies (Appointment and Qualification of Directors) Rules, 2014, which is:

"(2) None of the relatives of an independent director, for the purposes of sub-clauses (ii) and (iii) of clause (d) of sub-section (6) of section 149,- (i) is indebted to the company, its holding, subsidiary or associate company or their promoters, or directors; or (ii) has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, its holding, subsidiary or associate company or their promoters, or directors of such holding company, for an amount of fifty lakhs rupees, at any time during the two immediately preceding financial years or during the current financial year."



- G.S.R. (E): Companies (Meetings of Board and its powers) Amendment Rules, 2018, Dated 07.05.2018

A new clause has been inserted vide this notification in the main rules i.e. Companies (Meetings of Board and its powers) Rules, 2014, which is:

"Provided that where there is quorum in a meeting through physical presence of directors, any other director may participate through video conferencing or other audio visual means."

- G.S.R. (E): Companies (Audit and Auditors) Amendment Rules, 2018, Dated 07.05.2018

In the principal rule which is Companies (Audit and Auditors) Rules, 2014:

1. Rule 9 shall be omitted
2. Further Amendments has been made in the principal rules.

- G.S.R. (E): Companies (Specification of Definitions Details) Amendment Rules, 2018, Dated 07.05.2018

According to this notification clause (r) of sub-rule (1) of rule 2 in the main rules i.e. Companies (Specification of Definitions Details) Rules, 2014, shall be omitted.

- G.S.R. (E): Companies (Registration Offices and Fees) Second Amendment Rules, 2018, Dated 07.05.2018

In the principal rule which is Companies (Registration Offices and Fees) Rules, 2014:

1. Sub-rule (3) of rule 10 shall be substituted.
2. In the Principal rules, in the Annexure, Various amendments has been done.

Latest updates on thecompaneisact2013.com

- G.S.R. (E): Companies (Prospectus and Allotment of Securities) Amendment Rules, 2018, Dated 02.05.2018
- G.S.R. (E): Companies (Appointment and Qualification of Directors) Second Amendment Rules, 2018, Dated 07.05.2018
- G.S.R. (E): Companies (Meetings of Board and its powers) Amendment Rules, 2018, Dated 07.05.2018
- G.S.R. (E): Companies (Audit and Auditors) Amendment Rules, 2018, Dated 07.05.2018
- G.S.R. (E): Companies (Specification of Definitions Details) Amendment Rules, 2018, Dated 07.05.2018
- G.S.R. (E): Companies (Registration Offices and Fees) Second Amendment Rules, 2018, Dated 07.05.2018
- G.S.R. (E): Commencement Notification of various Sections of Companies (Amendment) Act, 2017 , Dated 07.05.2018

- G.S.R. (E): Commencement Notification of various Sections of Companies (Amendment) Act, 2017 , Dated 07.05.2018

According to this notification various sections of the Companies (Amendment) Act, 2017 various sections of the said Act, Came into force.

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