



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 June 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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ROLE OF COMPANY SECRETARY IN LABOUR LAWS

INTRODUCTION

Company secretary are known as a vital link between the Company and its Board of Directors, Shareholders, Government and Regulatory Authorities and ensures that board procedures are followed and regularly reviewed and provide guidance to Chairman and Directors on their responsibilities under various Laws including Labour Laws.

A Practicing Company Secretary, advices on good governance practices and compliance of various laws like Corporate laws, Industrial laws, Labour laws and other government norms as prescribed under the Companies Act , 2013, Listing agreement with Stock Exchanges and compliances of various Labour laws.



The compliance of Labour laws is as important for good corporate governance as any other Corporate, Economic and Securities Laws. A Practicing Company Secretary by virtue of his knowledge and expertise in Labour laws is competent enough to render value added services in ensuring the compliance of various Labour laws to protect and further the interest of Labour, industry and all stakeholders and at same time prevent unwanted lawsuits and penalty for non compliance.

COMPLIANCE REQUIREMENT UNDER LABOUR LAWS AND REGULATIONS

Quantum of compliance under various Acts and Rules largely depends upon the size of the organization and the sector of the business. Various Acts and Rules were enacted over a period of time, based on the requirement from the corporate. Labour Law legislation can be broadly explained in five different categories as follows:

➤ **Regulatory procedure:**

All the organization within jurisdiction of India is subject to the approvals and licenses from the respective department. Acts like Factories Act, Contract Labour Act, Provident Act, ESIC Act, etc. requires the registration certificate in the name of the organization based on the applicability of the Acts. Registration certificate are the first requirement to start with.

➤ **Workplace Health & Safety and Labour Welfare**

Safety and welfare of the employees and workers are top most priority for any organization, especially at the manufacturing setups.

➤ **Interest of staff and workers**

Acts like Payment of Bonus Act, Payment of Wages Act, Minimum Wages Act, Payment of Gratuity Act, Provident Fund Act, ESIC Act, etc. were enacted to make sure that the interest of the workers is not hampered by the Employer. The entire above mentioned act safeguards the interest of the workers and all of the above acts are significant in its own way. Hence the Acts and rules were framed with the specific requirement to ensure the proper and adequate safeguard of the interest of staff and workers at large.

➤ **Maintenance of registers and records**

Once the organization is registered under various legislation, all the registers and records (as per the prescribed format) are required to be maintained and kept up to date periodically.

➤ **Returns and Reports**

There are endless returns and reports which are required by an organization to submit to the concerned authorities. Timely submission of the returns with complete details of any organization like the number of staff / workers, salary range, no. of contract workers deployed at the unit, payment of bonus, etc.

WAY FORWARD FOR ENSURING THE COMPLIANCE IN SPIRIT OF LAW

Since past decade, there had been lot of reformation in Indian legislation, which was in demand since long time. The compliance under Labour Law regime has been amended to a great extent. Both Centre and State have made lot of appreciable efforts to ensure that existing law which meant for protecting the interest of the employees / workers should be made more strict and effective.

❖ **Maintenance of combined registers and records under various Labour Law**

Ministry of Labour and Employment vide its notification dated February 21, 2017 issued rules “Ease of Compliance to Maintain Registers under Labour Law Rules, 2017”, whereby amending various provisions of the Legislation, to implement the above- mentioned rules, which demand for maintaining the consolidated registers and records in just five (5) formats, rather than maintaining various registers which is repetitive in nature, which is remarkable efforts for encouraging the compliance to be done in true spirit and law

❖ **Consolidated returns to be filed under various Labour Law**

Exhaustive formats are prescribed by the state government which will have entire coverage of all the major acts and rules under the regime of Labour Law and hence there will be no longer required to submit the separate returns and reports.

❖ **Allotment of Labour Identification Number (“LIN”)**

Press Information Bureau² released the data of allotment of LIN to almost 18 lacs units covered under various Labour laws on November 24, 2016. Presently, unit to be registered under various laws through

application to be made with the respective department and compliance thereof. LIN would subsume the various registration granted separately by Labour Enforcement Agencies i.e. ESIC Registration Number, EPFO Number, Registration under Contract Labour (Regulation and Abolition) Act. Post allotment of LIN, all the returns under various Labour laws can be submitted using login credential via LIN details under one roof. This portal was launched on October 16, 2014 with vision of ease of doing business and is platform that can be shared by all labour enforcement agencies under control of Central and State Government.

COMPLIANCE WORK THAT CAN BE UNDERTAKEN BY COMPANY SECRETARY UNDER LABOUR LAWS:

1. Registration of the establishment under various applicable Labour legislations.
2. Maintenance of appropriate records with regard to employees of the establishment under various Labour legislations.
3. Submission of return on regular basis.
4. Draft employment agreements between the employer and employee and also specific non-disclosure agreements, if required.
5. Ensure adequate facilities have been provided for the employees on behalf of the establishment under various Labour legislations.

BY UNDERTAKING THE ABOVE MENTIONED ACTIVITIES A COMPANY SECRETARY CAN ACHIEVE THE FOLLOWING:

1. Compliance with Labour laws and regulations.
2. Set up adequate internal control system to minimize risks.
3. Identify gaps and adequate measures to rectify the same.
4. Implement an adequate system to ensure regular and timely compliance of the provisions of laws.
5. Prevent lawsuits and penalties for non compliance.

LABOUR LAWS AUDIT: AN EMERGING CONCEPT FOR COMPANY SECRETARY

Social Justice is guaranteed by the Preamble of our Constitution. Even after six decades of attaining independence, India is still plagued with victimization, Non compliance of labour legislation at large. Many businesses have not put in a place for reporting non compliance of Labour law legislation by an independent professional like company secretaries in practice.

Audit under Labour laws is a new concept, which is necessitated, in direct consequence of its non – compliance in large scale. Audit under the Labour and Employment laws is an effective tool for compliance management of Labour, employment and Industrial laws.

Labour Law Audit envisages a systematic scrutiny of records prescribed under Labour legislations by an independent professional like practicing Company Secretary, who shall report to the compliance and non-compliance/extent of compliance and conditions of labour in the Indian Industry/Business and in any commercial establishments.

Labour Law Audit is a process of facts findings and it is a continuous process. Labour Law Audit will ensure a win - win situation for all the stakeholders. It is expected that in near future Labour Law Audit will be made applicable for certain class of establishments, as Central Government is receiving many representations from Professional Institutes such as ICSI and other industry associations.

CONCLUSION

Company Secretaries are team / individual, expected to understand and help an organization to comply with all the applicable laws and regulations. In India, non-compliance cost is costlier than the compliance cost and it also affects the brand image of an organization. Roles and Responsibilities of CS are getting attention towards the Labour Law Compliance with time, whereby law maker is making necessary amendments in Labour Law. Because of multiple location and decentralized compliance, it becomes very difficult for the Company Secretary to maintain same corporate culture at all the location and to bring all the location under single corporate structure.



Notifications

A. G.S.R-(E):- The Companies (Appointment and Qualification of Directors) Third Amendment Rules, 2018.

Dated -12.06.2018.

In exercise of the powers conferred by section 149 and 168 of read with section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Appointment and Qualification of Directors) Rules, 2014, namely:-

1. (i) these rules may be called the Companies (Appointment and Qualification of Directors) Third Amendment Rules, 2018.
(ii) They shall come into force on the date of their publication in the Official Gazette.
2. In the Companies Appointment and Qualification of Directors) Rules, 2014, in the annexure,
 - (i) For form DIR-3, the following form shall be substituted;
 - (ii) For form DIR-6, the following form shall be substituted;

B. S.O. (E):- Commencement Notification

Dated- 13.06.2018

In exercise of the powers conferred by sub- section (2) of section 1 of the Companies (Amendment) Act, 2017 (1st of 2018), the Central Government hereby appoints the 13th June, 2018 as the date on which the following provisions of the said Act shall come into force, namely;

Sl. No.	Section
1.	Section 22
2.	Section 24
3.	Section 25
4.	Section 26
5.	Section 71

C. G.S.R. (E):- The Companies (Registered Valuers and Valuation) Second Amendment Rules, 2018,

Dated- 13.06.2018

In exercise of the powers conferred by section 247 read with section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Registered Valuers and Valuation) Rules, 2017, namely:-

1. (i) These rules may be called the Companies (Registered Valuers and Valuation) Second Amendment Rules, 2018.
- (ii) They shall come into force on the date of their publication in the Official Gazette.

D. GSR (E) :- The Companies (Significant Beneficial Owners) Rules, 2018

Dated: - 13.06.2018

In exercise of the powers conferred by Section 90 read with sub-section (1) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules, namely :-

1. Short title and commencement.-

These rules may be called the Companies (Significant Beneficial Owners) Rules, 2018.

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

E. G.S.R-(E) :- The Companies (Management and Administration) Second Amendment Rules, 2018

Dated: -13.06.2018

In exercise of the powers conferred by sub-sections (1) and (2) of section 469 read with sections 93,94,96 and 110 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. (i) These rules may be called the Companies (Management and Administration) . Second Amendment Rules, 2018.
- (ii) They shall come into force on the date of their publication in the Official Gazette.

F. G.S.R. (E) . - The Companies (Accounting Standards) Amendment Rules, 2018

Dated: - 18.06.2018

In exercise of the powers conferred by clause (a) of sub-section (1) of section 642 of the Companies Act, 1956 (I of 1956) read with section 21 OA and sub-section (3C) of Section 211 and of the said Act, the Central Government, in consultation with National Advisory Committee on Accounting Standards, hereby makes the following rules to amend the Companies (Accounting Standards) Rules, 2006, namely:-

1. Short title and commencement.-

(1) These rules may be called the Companies (Accounting Standards) Amendment Rules, 2018.

(2) They shall come into force on the 1st day of April, 2018.



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