

MCA has amended three rules on 18<sup>th</sup> March, 2015 & 19<sup>th</sup> March 2015. These are:

1. The Companies (Meetings of Board & its Powers) Rules, 2014;
2. The Companies (Share Capital & Debentures) Rules, 2014; and
3. The Companies (Management & Administration) Rules, 2014.

Major impact of the said amendments is summarized herewith for ready reference.

### **MGT 14 filing for Resolutions**

Rule 8 of Companies (Meetings of Board & its Powers) Rules, 2014 requires certain powers which are required to be exercised by the Board of Directors only by means of resolutions passed at the meetings of the Board. Consequent to section 117, these are to be filed with Registrar of Companies too and if filed beyond 300 days, it results in minimum penalty of Rs. 5 Lacs. The amendment has omitted certain sub-rules resulting in no longer mandatory requirement to pass these resolutions by Board of Directors. Hence, from the date of this notification the resolutions related to these would not be required to be filed in MGT-14. The items deleted are:-

1. To take note of appointment(s) or removal(s) of one level below the KMP
2. To take note of disclosure of director's interest and shareholding (MBP-1)
3. To buy sell investments held by the company (other than trade investments), constituting 5% or more of the paid up share capital and free reserves of the investee company
4. To invite or accept or renew public deposits and related matters
5. To review or change the terms and conditions of public deposits
6. To approve quarterly, half yearly and annual financial statements or financial results as the case may be

Please note that resolution for approval of financial statements and board's report shall still continue to be passed at the meetings of the Board in terms of Sec 179(3)(g) and filed in MGT 14.

This relaxation was the major demand from SME corporate world. However there are still many resolutions which are required to be passed and filed with Registrar in MGT 14. These are provided in section 117 read with section 179(3).

### **Preferential Issue of Shares**

Rule 13(1) of Companies (Share Capital & Debentures) Rules, 2014 relates to issue of shares on preferential basis. A company going for preferential issue of shares is also required to comply with provisions of section 42 i.e., Private Placement. A relaxation, has been provided in the amendment in case preferential issue is made to **one or more existing members only**. In such a case the company shall be exempt from issuing of Private Placement Offer Letter in PAS-4 and also filing of PAS 4 and PAS 5.

---

This document has been compiled as service to our clients. We recommend that you seek professional advise prior to initiating action on specific issues.

**Lunawat & Co.**

Chartered Accountants

E-mail: [ca@lunawat.com](mailto:ca@lunawat.com), [lunawat@vsnl.com](mailto:lunawat@vsnl.com).

Website: [www.lunawat.com](http://www.lunawat.com).

This amendment in my view does not serve much purpose as this relaxation is applicable only when preferential issue is made to **one or more existing members only**. A company may go for right issue also, in such a case. The case of issue of shares other than cash is also not resolved through this amendment as procedure of Private Placement is still to be complied in such cases.

### **Other amendments in Shares & Debentures**

1. Error in Rule 3 dealing with "Applicability" of the Rules is now corrected to clarify that the Rules apply to listed company so far as they do not contradict or conflict with any other provision framed in this regard by the SEBI.
2. Rule 5 has been amended and now it shall not be mandatory for a company secretary to be authorised for signing the share certificates while it is being issued.
3. Rule 6 has been amended to provide that in case of listed companies, duplicate share certificates shall be issued within 45 days from the date of submission of complete documents with the company instead of the earlier 15 days
4. Explanation (c) to Rule 12(1) has been amended to exclude employee of an associate company to be an employee for the purpose of ESOPs.
5. Rule 18(1)(d) relating to creation of charge or mortgage on debenture trustee of Secured Debentures has been substituted and now be read as follows:

*"..the security for the debentures by way of charge or mortgage shall be created in favour of the debenture trustee on*

- (i) any specific movable property of the company ; or*
- (ii) any specific immovable property wherever situate, or any interest therein:*

*Provided that in case of a non-banking financial company, the charge or mortgage under sub-clause (i) may be created on any movable property,*

*Provided further that in case of any issue of debentures by a Government company which is fully secured by the guarantee given by the Central Government or one or more State Government or by both, the requirement for creation of charge under this sub-rule shall not apply.*

*Provided also that in case of any loan taken by a subsidiary company from any bank or financial institution the charge or mortgage under this sub-rule may also be created on the properties or assets of the holding company"*

6. Rule 18(5) related to time for execution of trust deed by the debenture issuer company in favour of the debenture trustees has now been made "within three months of closure of the issue or offer" from the earlier "within 60 days of allotment of debentures"

---

This document has been compiled as service to our clients. We recommend that you seek professional advise prior to initiating action on specific issues.

**Lunawat & Co.**

Chartered Accountants

E-mail: [ca@lunawat.com](mailto:ca@lunawat.com), [lunawat@vsnl.com](mailto:lunawat@vsnl.com).

Website: [www.lunawat.com](http://www.lunawat.com).

7. Rule 18(9) included to exclude Issuance of Commercial Papers from the purview of the Rules
8. Rule 18(10) included to exclude any offer of foreign currency convertible bonds or foreign currency bonds issued in accordance with the Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 or regulations or directions issued by the Reserve Bank of India, unless otherwise provided in such Scheme or regulations or directions.
9. Rule 19(11) amended to provide that nomination by security holders in case of minors is also to be done in "Form SH-13, instead of Form SH-14.
10. "Form SH-13" has been revised and Form SH-14 - Cancellation or Variation of Nomination introduced.

### **Voting through Electronic means**

Rule 20 of the Companies (Management & Administration) Rules, 2014 pertaining to Voting through Electronic Means for listed companies having not less than 1000 members has been substituted.

**CA. Pramod Jain**

B. Com (H), FCA, FCS, FCMA, LL.B, DISA (ICAI), MIMA

---

This document has been compiled as service to our clients. We recommend that you seek professional advise prior to initiating action on specific issues.

***Lunawat & Co.***

Chartered Accountants

E-mail: [ca@lunawat.com](mailto:ca@lunawat.com), [lunawat@vsnl.com](mailto:lunawat@vsnl.com).

Website: [www.lunawat.com](http://www.lunawat.com).