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M/s A.K. Kuchhal & Co., Company Secretaries, Noida  
M/s NPV & Associates, Chartered Accountants, Mumbai

## MCA UPDATES

\* MCA21 system will not be unavailable from Saturday, 09<sup>th</sup> February, 2019 10:00 PM to Sunday, 10<sup>th</sup> February, 2019 10:00 AM IST due to maintenance activity.

### **Notification under Section 465 of Companies Act 2013 dated 30.01.2019**

Date: 30<sup>th</sup> January, 2019

Notification No. [F. No. 1/1/2019-CL.I]

S.O.- (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 30<sup>th</sup> January, 2019 as the date on which the provisions of section 455 of the said Act in so far as they relate to the repeal of the Companies Act, 1956 (1 of 1956) [that in except in so far as they relate to the repeal of the Registration of Companies (Sikkim) Act, 1961 (Sikkim Act 8 of 1961)] shall come into force.

Related Link: [http://www.mca.gov.in/Ministry/pdf/NotificationSection465\\_31012019.pdf](http://www.mca.gov.in/Ministry/pdf/NotificationSection465_31012019.pdf)

### **Companies (Significant Beneficial Ownership) Amendment Rules, 2019**

Date: 08<sup>th</sup> February, 2019

Notification No. [F. No. 1/1/2018-CL.V]

G.S.R.- (E). – In exercise of the powers conferred by sub-sections (1) and (2) of Section 469 read with Section 90 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Significant Beneficial Owners) Rules, 2018 namely:-

1. (1) These rules may be called the Companies (Significant Beneficial Owners) Amendment Rules, 2019.

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

2. In the Companies (Significant Beneficial Owners) Rules, 2018 (hereinafter referred to as the principal rules), in rule 2, in sub-rule (1), for clauses (b) to (e), the following clauses shall be substituted, namely:-

(b) "control" means control as defined in clause (27) of section 2 of the Act.

(c) "form" means the form specified in Annexure to these rules;

(d) "majority stake" means;-

(i) holding more than one-half of the equity share capital in the body corporate; or

- (ii) holding more than one-half of the voting rights in the body corporate; or
- (iii) having the right to receive or participate in more than one-half of the distributable dividend or any other distribution by the body corporate;
- (e) "partnership entity" means a partnership firm registered under the Indian Partnership Act, 1932 (9 of 1932) or a limited liability partnership registered under the Limited Liability Partnership Act, 2008 (6 of 2009);
- (f) "reporting company" means a company as defined in clause (20) of section 2 of the Act, required to comply with the requirements of section 90 of the Act;
- (g) "section" means a section of the Act;
- (h) "significant beneficial owner,, in relation to a reporting company means an individual referred to in sub-section (1) of section 90, who acting alone or together, or through one or more persons or trust, possesses one or more of the following rights or entitlements in such reporting company, namely:\_
  - (i) holds indirectly, or together with any direct holdings, not less than ten per cent. of the shares;
  - (ii) holds indirectly,- or together with any direct holdings, not less than ten per cent. of the voting rights in the shares;
  - (iii) has right to receive or participate in not less than ten per cent. of the total distributable dividend, or any other distribution, in a financial year through indirect holdings alone, or together with any direct holdings;
  - (iv) has right to exercise, or actually exercises, significant influence or control, in any manner other than through direct-holdings alone:

Related

Link:

[http://www.mca.gov.in/Ministry/pdf/CompaniesOwnersAmendmentRules\\_08020219.pdf](http://www.mca.gov.in/Ministry/pdf/CompaniesOwnersAmendmentRules_08020219.pdf)

#### SEBI UPDATES

### **Format for Annual Secretarial Audit Report and Annual Secretarial Compliance Report for Listed Entities and their material subsidiaries**

Circular No. CIR/CFD/CMD1/27/2019

Dated: 08<sup>th</sup> February, 2019

1. The Committee on Corporate Governance, constituted under the Chairmanship of Shri Uday Kotak, in its report dated October 05, 2017, recommended the following in view of the criticality of secretarial functions to efficient board functioning:

- a. Secretarial audit to be made compulsory for all listed entities under the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("Regulations") in line with the provisions of the Companies Act, 2013.
- b. Secretarial audit to be extended to all material unlisted Indian subsidiaries in line with the

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*recommendations of the Committee on strengthening group oversight and improving compliance at a group level for listed entities.*

*2. The aforesaid recommendations were accepted and in order to implement the same, the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 have been amended to include the following Regulation 24A:*

***“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 prescribed with effect from the year ended March 31, 2019.”*

*3. Accordingly, the following shall be complied with by a listed entity and its material unlisted subsidiaries, as applicable:*

*a. Annual secretarial audit report:*

*(i) Currently, Section 204 of the Companies Act, 2013 read with rule 9 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 requires Secretarial Audit by Practicing Company Secretaries (PCS) for listed companies and certain unlisted companies above a certain threshold in Form No. MR-3.*

*(ii) In order to avoid duplication, the listed entity and its unlisted material subsidiaries shall continue to use the same Form No. MR-3 as required under Companies Act, 2013 and the rules made there under for the purpose of compliance with Regulation 24A of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 as well.*

*b. Annual secretarial compliance report:*

*(i) While the annual secretarial audit shall cover a broad check on compliance with all laws applicable to the entity, listed entities shall additionally, on an annual basis, require a check by the PCS on compliance of all applicable SEBI Regulations and circulars/ guidelines issued there under, consequent to which, the PCS shall submit a report to the listed entity in the manner specified in this circular.*

*(ii) The format for the annual secretarial compliance report is placed at Annex-A.*

*(iii) The annual secretarial compliance report in the aforesaid format shall be submitted by the listed entity to the stock exchanges within 60 days of the end of the financial year.*

*c. The listed entities and their material subsidiaries shall provide all such documents/information as may be sought by the PCS for the purpose of providing a*

certification under the Regulations and this circular.

4. ICSI may consider issuing a guidance note to Practising Company Secretaries to enable them to undertake certifications in accordance with the Regulations and this circular in letter and in spirit.

5. The Stock Exchanges are advised to bring the provisions of this circular to notice of the listed entities and also to disseminate on their websites.

6. This circular shall come into force as under:

a. With respect to the annual secretarial audit report, in the annual reports of the listed entities and the material unlisted subsidiaries from the financial year ended March 31, 2019 onwards.

b. With respect to the annual secretarial compliance report, applicable to listed entities, with effect from the financial year ended March 31, 2019 onwards.

7. The circular is issued in exercise of the powers conferred under sections 11 and 11A of the Securities and Exchange Board of India Act, 1992 read with Regulations 24A and 101 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

Related Link: [https://www.sebi.gov.in/legal/circulars/feb-2019/format-for-annual-secretarial-audit-report-and-annual-secretarial-compliance-report-for-listed-entities-and-their-material-subsidiaries\\_42015.html](https://www.sebi.gov.in/legal/circulars/feb-2019/format-for-annual-secretarial-audit-report-and-annual-secretarial-compliance-report-for-listed-entities-and-their-material-subsidiaries_42015.html)

## **Performance Review of Public Interest Directors (PIDs)**

Circular No. SEBI/HO/MRD/DOP2DSA2/CIR/P/2019/26

Dated: 05<sup>th</sup> February, 2019

1. In respect of Public Interest Directors (PIDs) appointed in the governing board of Stock Exchanges, Clearing Corporations and Depositories (herein after referred as Market Infrastructure Institutions or MIIs), SEBI Board, in its meeting dated June 21, 2018, inter alia, decided that the tenure of PIDs may be extended by another 3 years, subject to performance review in the manner specified by the Board.
2. Based on decisions taken by SEBI Board, the clauses relating to tenure of PID were amended and have been provided in the Regulation 24(3) of Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2018 [SECC Regulations, 2018] and Regulation 25(3) of SEBI(Depositories and Participants) Regulations, 2018 [SEBI(D&P) Regulations, 2018] as under:

Public interest directors shall be nominated for a term of three years, extendable by another term of three years, subject to performance review in the manner as may be specified by the

*Board:*

*Provided that post the expiry of term(s) at the recognized stock exchange or the recognized clearing corporation / depository, a public interest director may be nominated for a further term of three years in other recognized clearing corporation or recognized stock exchange, or a depository, only after a cooling-off period of one year.*

*Provided further that a person may be nominated as a public interest director for a maximum of three terms across recognized stock exchanges / recognized clearing corporations / depositories, subject to a maximum age limit of seventy five years.*

*Related Link: [https://www.sebi.gov.in/legal/circulars/feb-2019/performance-review-of-public-interest-directors-pids\\_41978.html](https://www.sebi.gov.in/legal/circulars/feb-2019/performance-review-of-public-interest-directors-pids_41978.html)*

#### **RBI UPDATES**

### **External Commercial Borrowings Policy- ECB facility for Resolution Applicants under Corporate Insolvency Resolution Process**

*Notification No. RBI/2018-19/121*

*Dated: 07<sup>th</sup> February, 2019*

*Attention of Authorized Dealer Category-I (AD Category-I) banks is invited to paragraph 1 of the Statement on Developmental and Regulatory Policies of the Sixth Bi-monthly Monetary Policy Statement for 2018-19 dated February 07, 2019. [Notification No. FEMA 22(R)/RB-2016 dated March 31, 2016], namely:*

*2. In terms of paragraph 2.1.(viii) of the Annex to the A.P. (DIR Series) Circular No. 17, dated January 16, 2019 on "External Commercial Borrowings (ECB) Policy – New ECB Framework", ECB proceeds cannot be utilised for repayment of domestic Rupee loans, except when the ECB is availed from a Foreign Equity Holder as defined in the aforesaid framework.*

*3. On a review it has been decided, in consultation with the Government of India, to relax the end-use restrictions for resolution applicants under the Corporate Insolvency Resolution Process (CIRP) and allow them to raise ECBs from the recognised lenders, except the branches/ overseas subsidiaries of Indian banks, for repayment of Rupee term loans of the target company under the approval route. Accordingly the resolution applicants, who are otherwise eligible borrowers, can forward such proposals to raise ECBs, through their AD bank, to Foreign Exchange Department, Central Office, Mumbai of the Reserve Bank for approval.*

*4. All other provisions of the ECB policy remain unchanged. AD Category - I banks should bring the contents of this circular to the notice of their constituents and customers. The amended ECB policy will come into force with immediate effect.*

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5. The directions contained in this circular have been issued under section 10(4) and 11(2) of the Foreign Exchange Management Act, 1999 (42 of 1999) and are without prejudice to permissions / approvals, if any, required under any other law.

Related Link: <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11472&Mode=0>

**Thanking You,**  
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