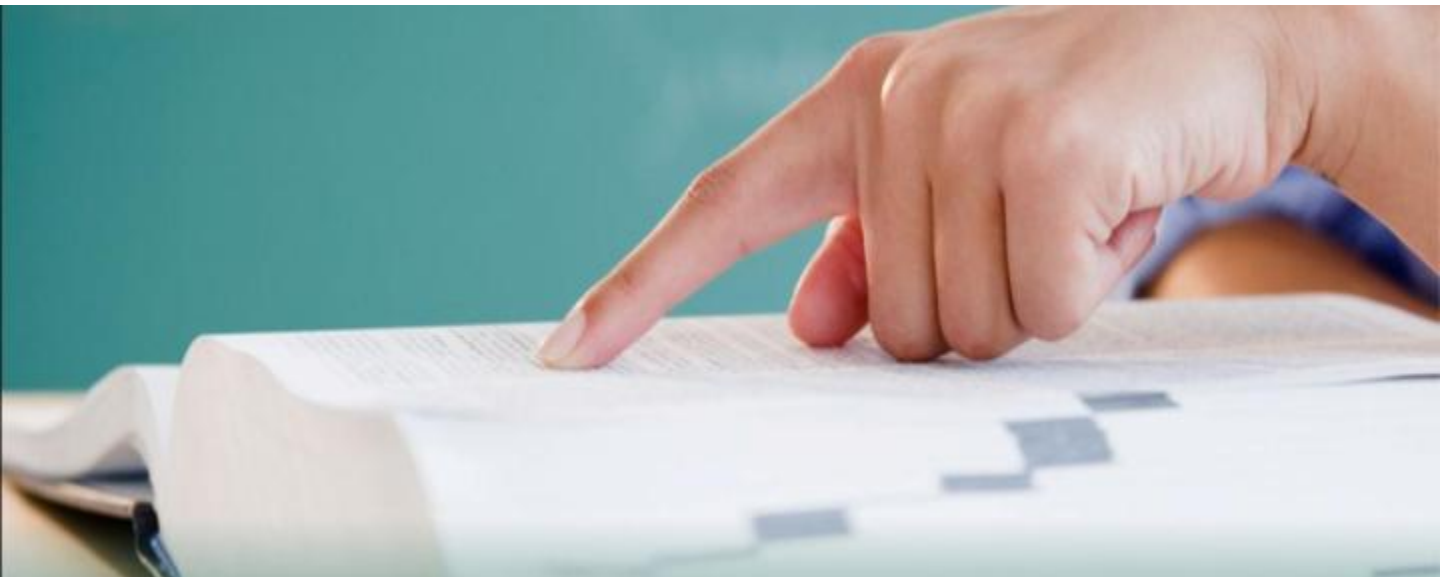


## Deferment of provisions relating to voting through e-means and other significant clarifications and amendments

18 June 2014



### First Notes on:

Financial Reporting

**Corporate law updates**

Regulatory and other information

Disclosures

### Sector:

**All**

Banking and Insurance

Information, Communication, Entertainment

Consumer and Industrial Markets

Infrastructure and Government

### Relevant to:

**All**

Audit committee

CFO

Others

### Transition:

**Immediately**

Within the next 3 months

Post 3 months but within 6 months

Post 6 months

The Companies Act, 2013 (the Act) was largely operationalised with effect from 1 April 2014. However, there are a number of implementation issues on which various stakeholders have sought clarifications from the Ministry of Corporate Affairs (MCA). On 9 June 2014, the MCA provided clarifications on the matters relating to pecuniary relationships, appointment and tenure of independent directors<sup>1</sup>. Recently, the MCA has provided further clarifications and has amended certain Rules. These clarifications and amendments to the Rules have been discussed below:

### Voting through electronic means

Based on practical difficulties observed by stakeholders in respect of voting by electronic means (e-means) at general meetings, the MCA vide general circular no. 20/2014 has decided not to make the provisions relating to voting through e-means mandatory till 31 December 2014. The MCA has provided the following clarifications on issues:

- Voting by 'show of hands' is not permissible at a general meeting for companies required to follow Rule 20 of the Companies (Management and Administration) Rules, 2014 i.e., voting through e-means.
- A person who has voted through e-means can still participate physically in the general meeting. Such a person will not be eligible to vote again in the general meeting and his earlier vote shall be treated as final.
- Where transactions of items is permitted only through postal ballot under Rule 22(16), then those items can not be considered in a general meeting which has e-voting facility. The MCA pointed out that the provisions of section 110(1)(a) read with Rule 22(16),

require such items to be transacted only through postal ballot and not at the general meeting.

- Provisions relating to 'demand for poll' are not relevant for the companies that are covered under section 107 and Rule 20 of the Companies (Management and Administration) Rules, 2014 i.e., voting through e-means.
- A shareholder would not be permitted to vote through postal ballot if he has neither participated in the general meeting personally nor has voted through e-means.
- In a general meeting where voting is through e-means i.e., either on the basis of proportion of share in the paid-up capital or as 'one-share one-vote', the chairperson of the meeting shall regulate the meeting.
- Rule 20(3) allows companies not covered in the Rule 20(1) to conduct voting through e-means. Such companies would be required to follow the whole procedure specified in Rule 20 and not in piece meal. The MCA has clarified that Rule 20(3) would be amended to align with the requirements of the Rule 20(1).

<sup>1</sup> For details refer to the First Notes dated 12 June 2014

## Amendments to Rules

- According to the Companies (Declaration and Payment of Dividend) Rules, 2014, companies are not permitted to declare dividend unless the lower of carried over previous year losses or the depreciation is set off against the profit of the company for the year for which the dividend is to be declared or paid.

The MCA vide notification dated 12 June 2014 has amended the aforesaid Rules. The amended Rules require a company to set off carried over previous losses and also the depreciation against the profit of the current year, in order to declare dividend instead of earlier requirement to set off lower of carried over previous year losses or depreciation.

This amendment would come into force on its publication in the Official Gazette.

- Under the Companies (Meetings and Powers of Board) Rules, 2014, public companies:
  - with a paid up capital of INR100 million or more
  - have a turnover of INR1,000 million or more
  - have an aggregate, outstanding loans or borrowings or debentures or deposits exceeding INR500 million or more
 are required to constitute an audit committee.

Previously under the Companies Act, 1956 (section 292A), public companies having paid-up capital of not less than INR50 million were required to constitute an audit committee.

Section 177(3) of the Act grants a transition period of one year to the audit committees existing under the Companies Act, 1956 in order to reconstitute them in accordance with the requirements of the section 177(2).

However, the Act grants no such transition period to those public companies that need to constitute an audit committee for the first time under the Act.

Therefore, the MCA vide notification dated 12 June 2014 has amended the aforesaid Rules. As per the amendment, the public companies that were not required to constitute audit committee

under section 292A of the Companies Act, 1956 would now constitute their audit committee within one year from the commencement of the amended Rules or appointment of independent directors, whichever is earlier. Additionally, such companies would constitute their 'nomination and remuneration committee' within one year from the commencement of the amended Rules or appointment of independent directors, whichever is earlier.

The amendment is effective from the date of its publication in the Official Gazette i.e., 12 June 2014.

- The MCA vide notification dated 9 June 2014 has amended the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014. The amendment requires that a company having a paid up share capital of INR50 million or more to have a whole-time company secretary.

Earlier, the Rules required listed companies and other public companies having a paid-up share capital of INR100 million or more to appoint a whole-time company secretary.

This amendment is effective from the date of its publication in the Official Gazette i.e., 9 June 2014.

- The MCA vide notification dated 6 June 2014 has amended the Companies (Acceptance of Deposits) Rules, 2014. The amendment allows the companies to accept deposits without deposit insurance till 31 March 2015.

The amendment is effective from the date of its publication in the Official Gazette i.e., 6 June 2014.

## The MCA clarification on matters relating to share capital - general circular no. 19/2014

- Clarification had been sought by various stakeholders with regard to share transfer forms executed before 1 April 2014 as per the forms prescribed under the Companies Act, 1956 and which are yet to be accepted/registered by the companies.

The MCA has clarified that:

- any share transfer form executed before 1 April 2014 and submitted to the company within the period prescribed under the Companies Act, 1956 needs to be accepted by the company for registration of transfers
- where share transfer form is executed prior to 1 April 2014 and is not submitted within the prescribed period under the Companies Act, 1956, the concerned company may consider the justification of delay in submission, etc. If the company decides not to accept the share transfer form, it shall convey the reasons for such non-acceptance within the time provided under section 56(4)(c) of the Act.
- Clarification had been sought on whether the powers of the Board with regard to issue of duplicate shares can be exercised by a committee of directors.

The MCA has clarified that a committee of directors may exercise powers of the Board with regard to issue of duplicate share certificates subject to any regulations imposed by the Board in this regard.

#### Other updates

- The MCA has notified the effective date of application of sub-section (2) and (3) of section 74, Repayment of deposits, etc., accepted before commencement of this Act, as 6 June 2014.
- The MCA vide order dated 2 June 2014 has issued the Companies (Removal of Difficulties) Third Order, 2014 as per which until the National Company Law Tribunal is constituted under the Act, the Board of Company Law Administration constituted under Companies Act, 1956 shall continue to exercise the jurisdiction, powers, authority and functions under the first proviso to section 2(41) of the Act. The aforesaid order has come into force from 2 June 2014.

#### Our comments

- The MCA has acted on to the concerns raised by various stakeholders by providing clarifications on a significant matter like voting through e-means. Other than companies that are required to provide e-voting facility under the Securities and Exchange Board of India's norms, the transition period is likely to positively affect a large number of companies.
- The amended Rules provide clarity regarding dividend declaration rules and require set off of carried over previous losses and depreciation against the current year profits. The position is unlike the Companies Act, 1956 which required a set off of lower of carried over previous losses or depreciation against the current year profits and/or previous year before declaring a dividend.
- The transition period granted by the MCA for constitution of audit committees is a welcome relief for companies that are required to constitute an audit committee and the nomination and remuneration committee for the first time under the Act.
- By reducing the threshold for a appointment of a company secretary, the MCA appears to be stressing the importance of better corporate governance and compliance across Indian companies.

#### The bottom line

These amendments/clarifications are a welcome step and we can expect that more guidance of a similar nature will emanate from the MCA in the weeks to come.

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## Introducing Voices on Reporting



KPMG in India is pleased to present Voices on Reporting – a monthly series of knowledge sharing calls to discuss current and emerging issues relating to financial reporting.

In our call this month, we provided practical insights on steps that companies are taking in implementing the requirements under the Companies Act, 2013 that are now effective. We also discussed the key changes that were made in the gazetted version of the rules.

Additionally, we discussed the recent opinion issued by the Expert Advisory Committee of the Institute of Chartered Accountants of India (ICAI) on accounting for 'principal only currency swaps', as well as cover a clarification issued by the ICAI with respect to creation of deferred tax liability on 'special reserves' created by banks. Further, we briefly touched upon the proposed new roadmap for adoption of Ind-AS.

You can reach us for feedback and questions at [aaupdate@kpmg.com](mailto:aaupdate@kpmg.com)

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