

### Highlights

- MCA clarifies on Section 185 and 186 of the Companies Act, 2013
- MCA amends the Companies (Acceptance of Deposits) Rules, 2014 and clarifies on applicability of the Rules
- MCA clarifies on filing of e-form DIR-11 and DIR-12 under the Companies Act, 2013
- MCA amends the Companies (Meetings of Board and its Powers) Rules, 2014
- MCA revises norms for the Companies (Share Capital and Debentures) Rules, 2013
- RBI permits citizens of certain countries to acquire/transfer immovable property
- SEBI amends norms for buy-back of securities
- SEBI amends norms for issue and listing of debt securities
- SEBI amends SEBI (Issue of Capital & Disclosure Requirements) Regulations, 2009
- SEBI amends norms for Takeover Code
- SEBI amends SEBI (Delisting of Equity Shares) Regulations, 2015
- Insurance Bill passed in Parliament

## Corporate Brief

### ➡ *MCA clarifies on Section 185 and 186 of the Companies Act, 2013*

**MCA** has examined the issue regarding applicability of Section 186 of the Companies Act, 2013 ('The Act') relating to grant of loans and advances by Companies to their employees and clarified that loans and/or advances made by companies to their employees, other than the managing or whole-time director (which are governed by Section 185) are not governed by the requirement of Section 186 of the Act. Provided that the loans/advances to employees are in accordance with the conditions of service applicable to employees and the remuneration policy, if such policy is required to be formulated. Section 186 of the Act requires company to pass special resolution at its general meeting if aggregate of its loan, guarantee and security exceed the stipulated limits specified in the Section. [See MCA General Circular No. 04/2015 dated March 10, 2015]

### ➡ *MCA amends the Companies (Acceptance of Deposits) Rules, 2014 and clarifies on applicability of the Rules*

**MCA** has amended the Companies (Acceptance of Deposits) Rules, 2014 (The Rules). Highlights of the amendments are: (a) If a company receives subscription money for allotment of securities before 1<sup>st</sup> April, 2014 and has disclosed in the balance sheet for the financial year ending on or before the 31<sup>st</sup> March, 2014 against which the allotment is pending on the 31<sup>st</sup> March, 2015, the company shall either return such amounts to the persons on or before 1<sup>st</sup> June, 2015 or comply with these Rules; (b) Every eligible company is required to obtain credit rating for deposits accepted by it, at least once in a year, and a copy of the rating shall be sent to the ROC along with the return of deposit; (c) Companies are permitted to accept deposit without deposit insurance contract till 31<sup>st</sup> March, 2016 or till the availability of a deposit insurance product, whichever is earlier. [See MCA Notification No. 1/8/2013-CL-V dated March 31, 2015]

**MCA** has examined the matter of applicability of Companies (Acceptance of Deposits) Rules, 2014 in consultation with RBI and clarified that any amount received by private companies from their members, directors or their relatives prior to April 1, 2014 shall not be treated as 'deposits' under the Companies Act, 2013 and Companies (Acceptance of Deposits) Rules, 2014. Such private companies shall be required to disclose, in the notes to its financial statement for the financial year commencing on or after April 1, 2014, the figure of such amount and the accounting head, in which such amounts have been shown in the financial statement. However circular prescribes that any renewal or acceptance of fresh deposits on or after April 1, 2014 shall be in accordance with the provisions of

the Companies Act, 2013 and rules made thereunder. [MCA General Circular F.No. 1/8/2013-CL-V dated March 30, 2015]

### ➡ *MCA clarifies on filing of e-form DIR-11 & DIR-12 under the Companies Act, 2013*

**MCA** has received several representations about the difficulties faced by stakeholders due to deactivation of Digital Signature Certificate (DSC) following en masse resignation of all the directors of a company before appointment of new directors in their places. The difficulties have arisen because of automatic deactivation of DSC on filing of DIR-11 by the resigned/resigning Director(s), and none of the new Director's details having been filed. As a result, Form DIR-12 cannot be filed by a company due to lack of an authorized signatory Director.

In order to enable the filing of such e-forms and till an alternative mechanism is put in place in MCA21 system, MCA has clarified that the Registrar of Companies within their respective jurisdictions are authorized, on request from the stakeholders, and after due examination, to allow any one of the resigned director who was an authorized signatory Director for the purpose of filing DIR-12 only along with additional fees, as applicable and subject to compliance of other provisions of Companies Act, 2013.

[See MCA General Circular No. 03/2015 dated March 03, 2015]

### ➡ *MCA amends the Companies (Meetings of Board and its Powers) Rules, 2014*

**MCA** has amended Rule 8 of the Companies (Meetings of Board and its Power) Rules ('the Rules'), to omit certain items on which Board can exercise power only by means of Board's resolution passed at a meeting. The items on which Board Resolution will not be mandatorily required to be passed in the Board Meeting are: (a) To take note of appointment or removal of one level below the Key Managerial Personnel, (b) To take note of disclosure of Directors' interest and shareholding, (c) To buy, sell investments held by the company constituting 5% or more of the paid-up share capital and free reserve, (d) To invite, renew or accept public deposits, (e) To review or change the terms and conditions of public deposits, (f) To approve quarterly, half yearly and annual financial statement/financial results of the company. [See MCA Notification F. No. 1/32/2013-CL-V-Part dated March 03, 2015]

### ➡ *MCA revises norms for the Companies (Share Capital and Debentures) Rules, 2013*

**MCA** has amended the Companies (Share Capital and Debentures) Rules, 2013 ('The Rules'). Highlights of the amendments are: (a) Rule 6 has been amended to extend the time period during which listed companies are required to issue duplicate share certificate within the date of submissions of complete documents from 15 days to 45 days; (b) Rule 12 which deals with provisions related to issuance of employee stock options has been amended to omit 'employee of an associate company' from the definition of 'employee' eligible for issuance of employee stock options; (c) Rule 13 has been amended to provide that where any preferential offer is made to existing members of the Company, the requirement to make an offer or invitation to subscribe to securities and the requirement to file such offer with the Registrar shall not be applicable; (d) Rule 18 has been amended to provide that

companies shall be permitted to create any security for debentures on specific movable property, including securities being in the nature of pledge; (e) The maximum time limit within which trust deed is required to be executed by the company issuing debentures in favour of debenture trustees has been revised from 'a period of 60 days of the date of allotment' to 'a period of 3 months of closure of the issue or offer'. [See MCA Notification F. No. 1/4/2013-CL-V-(Pt I) dated March 18, 2015]

➡ **RBI permits citizens of certain countries to acquire/ transfer immovable property**

RBI has observed that Macau and Hong Kong are the two special administrative regions of China and notified that citizens of Macau and Hong Kong will be included in the list of countries prohibited to acquire/transfer immovable property in India, other than lease not exceeding five years, without prior approval of RBI, in terms of Regulation 7 of Foreign Exchange Management (Acquisition and Transfer of immovable property in India) Regulations, 2000. [See A.P. (DIR Series) Circular No. 83 dated March 11, 2015]

➡ **SEBI amends norms for buy-back of securities**

SEBI has amended SEBI (buy-back of securities) Regulations, 1998 ('Regulations') by inserting sub-regulation 3A in regulation 9 of the Regulations. Sub-Regulation 3A requires the acquirer or promoter to facilitate tendering of shares by the shareholders and settlement of the same through the stock exchange mechanism. [See SEBI Notification No. LAD-NRO/GN/2014-15/29/543 dated March 24, 2015]

➡ **SEBI amends norms for issue and listing of debt securities**

SEBI has amended SEBI (Issue and Listing of Debt Securities) Regulations, 2015 ('Regulations') to insert Regulation 17A and 20A in the Regulations.

(a) Regulation 17A enables issuer making public issue of debt securities to recall such security or provide such right of redemption of such securities prior to maturity date, subject to the conditions specified in the Regulation. The conditions required to be satisfied *inter-alia* include the following: (i) Detailed disclosure with regard to right to recall or redeem is made in the offer document; (ii) Such right can be exercised with respect to all securities or a part of the securities so issued, provided in case of partial exercise of right, recall or redemption shall be done on proportionate basis; (iii) Such right shall not be exercisable before expiry of 24 months from the date of issue of debt securities; (iv) Issuer shall pay interest at the rate of 15% per annum for the period of delay.

(b) Regulation 20A enables issuer to carry out consolidation and re-issuance of its debt securities subject to the conditions specified in the Regulations. The conditions required to be satisfied *inter-alia* include the following: (i) Issue is through private placement; (ii) Issuer has obtained fresh credit rating for each re-issuance; (iii) Such ratings shall be revalidated on a periodic basis. [See SEBI Notification No. LAD-NRO/GN/2014-15/25/539 dated March 24, 2015]

➡ **SEBI amends SEBI (Issue of Capital & Disclosure Requirements) Regulations, 2009**

SEBI has amended SEBI (Issue of Capital & Disclosure Requirements) Regulations, 2009 ('Regulations'). Highlights of the amendments are: (a) Tenure of warrants issued by issuer, along with public issue or right issue under these Regulations, has been reduced from 18 months to 12 months from the date of allotment in the public/rights issue; (b) Price or conversion formula of the warrants, issued under these Regulations, shall be determined upfront and at least 25% of the consideration amount shall be received upfront. In case

warrant holder does not exercise the option to take equity shares, the consideration paid shall be forfeited by the issuer; and (c) Where issuer makes right issue under these Regulations and gives option of part payment to investors, the part payment on application shall not be less than 25% of the issue price. [See SEBI Notification No. LAD-NRO/GN/2014-15/24/538 dated March 24, 2015]

➡ **SEBI amends norms for Takeover Code**

SEBI has amended SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ('Regulations') to permit acquirer to delist the companies through offer letter. The amendment provides that in the event the acquirer makes a public announcement of an open offer for acquiring shares of target company, under these Regulations, he may delist the company in accordance with provisions of the SEBI (Delisting of Equity Shares) Regulations, 2009. Such acquirer shall be required to declare upfront his intention to delist the company at the time of making the detailed public statement. [See SEBI Notification No. LAD-NRO/GN/2014-15/28/542 dated March 24, 2015]

➡ **SEBI amends SEBI (Delisting of Equity Shares) Regulations, 2015**

SEBI has amended SEBI (Delisting of Equity Shares) Regulations, 2009 ('Regulations'). Highlights of the amendments are: (a) Promoter or promoter group shall not be permitted to propose delisting of equity shares of a company, if any entity belonging to the promoter or promoter group has sold equity shares of the company, during the period of 6 months prior to the date of board meeting in which the delisting proposal was approved; (b) The Board of Directors of the company while approving the proposal for delisting of shares shall be required to (i) make a disclosure to the recognized stock exchange that the company is proposed to be delisted, (ii) appoint a merchant banker to carry out due-diligence, (iii) obtain details of trading in shares of the company for a period of 2 years prior to the date of board meeting by top 25 shareholders etc; (c) Any entity belonging to the acquirer, promoter or promoter group shall not be permitted to sell shares of the company during the period from the date of the board meeting in which the delisting proposal was approved till the completion of the delisting process; (d) Time limit within which promoter is required to dispatch letter of offer to the

public shareholders has been reduced from 45 working days to 2 working days from the date of public announcement; (e) Time period within which offer is required to be opened, under Regulation 13, has been reduced from 55 working days to 7 working days from the date of public announcement. [See SEBI Notification No. LAD-NRO/GN/2014-15/27/541 dated March 24, 2015]

### ➡ Insurance Bill passed in Parliament

**Parliament** has passed the Insurance Laws (Amendment) Bill, 2015 (The Bill) to amend Insurance Act, 1938, the General Insurance Business (Nationalisation) Act, 1972 and the Insurance Regulatory and Development Authority Act, 1999. Highlights of the amendments are: (a) Health insurance business has been defined to mean 'the effecting of the contracts which provide for sickness benefits or medical, surgical or hospital expense benefits, whether in-patient or out-patient travel cover and personal accident cover; (b) Foreign companies, including Lloyd's established under the Lloyd's Act, 1871 (United Kingdom) or any of its Members, are enabled to engage in re-insurance business through a branch established in India; (c) Insurance in respect of any properties in India with an insurer whose principal place of business is outside India shall be permitted only with the prior approval of IRDAI; (d) The responsibility to appoint any person to act as insurance agent for the purpose of soliciting and procuring insurance business has been entrusted with insurer. IRDAI or any officer authorized by IRDAI, while framing regulations, has to ensure that no conflict of interest is allowed to arise for any agent in representing two or more insurers for whom he may be agent; (e) Any person aggrieved by the order of Insurance Regulatory Development Authority of India (IRDAI) may prefer an appeal to the Securities Appellate Tribunal having jurisdiction in the matter; and (f) The General Insurance Corporation and insurance companies specified in section 10A of the General Insurance Business (Nationalisation) Act, 1972 are now permitted to raise their capital for increasing their business in rural and social sectors to meet solvency margin and such other purposes, as the Central Government may empower, subject to the shareholding of the Central Government not be less than fifty one percent.

Insurer is not permitted to appoint any principal agent, chief agent and special agent and transact any insurance business in India through them. No person is allowed to take out or renew or continue an insurance policy through multilevel marketing scheme. IRDAI may make a complaint to the appropriate police authorities against the entity or persons involved in the multilevel marketing scheme. Multilevel marketing scheme has also been defined to mean any scheme, programme, arrangement or plan for the purpose of soliciting and procuring insurance business through persons not authorized for the said purpose with or without consideration of whole or part of commission or remuneration earned through such solicitation and procurement and includes enrolment of persons into a multilevel chain for the said purpose either directly or indirectly. [The Gazette of India: Extraordinary Part-II-Section I dated March 23, 2015]



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