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## IRDA MAKES APPOINTMENT OF COMPANY SECRETARY AS COMPLIANCE OFFICER (KMP) MANDATORY FOR ALL INSURANCE COMPANIES.

Insurance Regulatory Development Authority vide its circular IRDA/F&A/GDL/CG/100/05/2016 dated 18<sup>TH</sup> May, 2016 and also in separate Guidelines for appointment/re-appointment and remuneration of MD/CEO/WTD as well as other Key Managerial Persons (KMPs) as well as the appointment of statutory auditors of insurers makes the following guidelines for the Insurers:



- Insurers are required to comply with these guidelines within a period of three months from the date of notification of these guidelines and ensure full compliance with these guidelines from the financial year 2016-17 and in case of non-compliance, reasons to be given.
- Every Insurer should designate Company Secretary as the Compliance officer whose duty will be to monitor continuing compliance with guidelines.
- Annual Report of insurers shall have a separate certification from the Compliance Officer.
- All insurers are required to obtain and maintain the particulars of the respective 'Key Management Persons' in the format 'Form KMP-1', separately for each key person, as and when there is an

appointment/ change in the individual person holding the position of Key management Person.

## ENFORCEABILITY OF SECTION 2(29)(IV), 435, 436, 437, 438 AND 440 UNDER CHAPTER XXVIII OF COMPANIES ACT, 2013

Special Court under chapter XXVIII, Central Government has fixed 18<sup>th</sup> May, 2016 as the date on which provisions of Section 2(29)(iv), 435, 436,437,438 and 440 shall come into force.

- Government has also designated a few courts and specified their jurisdiction as Special Courts for the purpose of trial of offences punishable under Companies Act, 2013 with imprisonment of two years or more in terms of section 435 of the said Act.
- Till date, government has notified 8 courts as Special Courts for the purpose of Section 435 of speedy trial of offences.

S.No	Section	Applicability
1.	435	Establishment of Special Court
2.	436	Offences triable by Special Court
3.	437	Appeals and Revision
4.	438	Application of Code to proceedings before Special Court
5.	440	Transitional Provisions

## SPECIAL COURTS UNDER SECTION 435 OF COMPANIES ACT, 2013

MCA vide its notification dated 18<sup>th</sup> May, 2016 states that in exercise of powers conferred by sub-section (1) of section 435 of the Companies Act, 2013 (18 of 2013), after obtaining the concurrence of the respective Chief Justice of High Courts, designates the following Courts mentioned in the Table below as Special Courts for the purpose of trial of offences punishable under the Companies Act, 2013 with imprisonment of two years or more in terms of Section 435 of the Companies Act, 2013 namely:



S. No	Existing Court	Jurisdiction as Special Court
1.	Courts of Additional Special Judge, Anti- Corruption at Jammu and Srinagar	State of Jammu and Kashmir
2.	Presiding officers of Courts No's. 37 and 58 of the City Civil and Sessions Court, Greater Mumbai	State of Maharashtra
3.	Court of Principal District and Sessions Judge, Union territory of Dadra and Nagar Haveli at Silvassa	Union Territories of Dadra and Nagar Haveli and Daman and Diu
4.	Court of District Judge -1 and Additional Sessions Judge,	State of Goa

	Panaji	
5.	Court of Principal District and Sessions Judge, Ahmedabad (Rural), situated at Mirzapur, Ahmedabad	State of Gujarat
6.	9 <sup>th</sup> Additional Session Judge, Gwalior, Madhya Pradesh	State of Madhya Pradesh
7.	Courts of Additional District and Session Judge, Port Blair, Andaman and Nicobar Islands	Union Territories of Andaman and Nicobar Islands
8.	2nd, Special Court, Calcutta	State of West Bengal

The aforesaid courts mentioned shall exercise the jurisdiction as Special Courts in respect of jurisdiction mentioned.

## COMPANIES (CORPORATE SOCIAL RESPONSIBILITY POLICY) AMENDMENT RULES, 2016

MCA vide its notification dated 23<sup>rd</sup> May, 2016, in exercise of powers conferred under Section 135 and sub-section (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Corporate



Social Responsibility Policy) Rules, 2014, namely:-

1. These rules shall be called the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2016.
2. In Companies (Corporate Social Responsibility Policy) Rules, 2014, in rule 4, for sub-rule (2), the following sub-rule shall be substituted.

Earlier Provision	New Provision (to the extent revised)
<p>The Board of the company may decide to undertake its CSR activities approved by the CSR Committee, through a registered trust or a registered society or a company established by the company or its holding or subsidiary or associate company under section 8 of the Act or otherwise.</p>	<p>The Board of a company may decide to undertake its CSR activities approved by the CSR Committee, through</p> <p>(a) a company established under section 8 of the Act or a registered trust or a registered society, established by the company, either singly or alongwith any other company,</p> <p>(b) a company established under section 8 of the Act or a registered trust or a registered society, established by the Central Government or State Government or any entity established by the Central Government or State Government or any entity established under an Act of Parliament or a State Legislature</p>

## RELAXATION OF ADDITIONAL FEES AND EXTENSION OF TIME FOR FILING OF E-FORMS BY COMPANIES UNDER COMPANIES ACT, 2013 AND FOR FILING OF ANNUAL RETURN (FORM 11) BY THE LLPs UNDER THE LIMITED LIABILITY PARTNERSHIP ACT, 2008

In continuation of the General Circular No. 03/216 dated 12th April, 2016 and General Circular No. 06/216 dated 16th May, 2016 MCA has issued another Circular No. 07/2016 dated 31<sup>st</sup> May, 2016 which provides extension of period for which the one time waiver of additional fees is applicable to all E-forms which are due for filing by companies between 25<sup>th</sup> March, 2016 to 30<sup>th</sup> June, 2016 as well as extend the last date for filing such documents and availing the benefit of waiver to 10<sup>th</sup> July, 2016.

- Further, vide Circular No. 07/2016 dated 31<sup>st</sup> May, 2016 the time limit prescribed under the provisions of section 35 of the LLP Act, for filing of Form 11 of LLP in respect of Financial Year ending on 31<sup>st</sup> March, 2016 was extended upto 30<sup>th</sup> June, 2016, without additional fees has also been provided.

## POWER TO REGIONAL DIRECTORS TO APPOINT INSPECTORS FOR INSPECTION OF BOOKS

Ministry of Corporate Affairs, in its notification dated 29<sup>th</sup> April 2016, in exercise of the powers conferred by sub-section (1) of section 458 of



the Companies Act (18 of 2013), the Central Government being satisfied that circumstances warrant, hereby delegates the powers to appoint Inspectors for inspection of books and papers of a company under sub-section (5) of section 206, to the Regional Directors.

**WHERE TRANSFER OF SHARES, OCCASIONED BY A SCHEME OF AMALGAMATION AND ARTICLE TREATS IT AS TRANSMISSION THE TRANSFEREE CAN BE REGISTERED AS A MEMBER UNDER TRANSMISSION ONLY WITH THE CONSENT OF THE DIRECTORS AND IF THE DIRECTORS REFUSE TO GIVE SUCH CONSENT THE TRANSFEREE WOULD BE FREE TO INVOKE RELEVANT ARTICLES WHICH APPLY TO TRANSFER OF SHARES**

**BOMBAY HIGH COURT- JUDGEMENT dated 1<sup>st</sup> March 2016  
SHAKTI INSULATED WIRES (P.) LTD. AND OTHERS vs GREAT VIEW PROPERTIES (P) LTD. AND OTHERS**

**Brief facts:** One Jayalaxmi Holdings (P.) Ltd. ('JHPL') held 1,980 shares of the appellant company ('subject shares'). In pursuance of a scheme of amalgamation sanctioned by the court, all assets and liabilities of JHPL were transferred to the respondent. The assets included the subject shares. The respondent, thereafter, applied for registration of such transfer and inclusion of its name in the register of members. The appellant rejected the application on the ground that



the transfer of shares was in breach of the relevant articles of association providing for a right of pre-emption. This rejection was challenged by the respondent before the Company Law Board under section 111 of the Act. The Company Law Board allowed the petition and directed rectification of the register.

The appellants submitted the plea that the CLB has erred in law by treating the transfer of shares under the scheme of amalgamation as a case of transmission by operation of law, whereas transfer of assets by a scheme of amalgamation is considered as a voluntary transfer between the transferor- and transferee-companies. He relies on the articles of association of the appellant company and contends that all voluntary transfers come within the pre-emption clause of the articles. The plea submitted by the appellant company was that the transfer of shares was in breach of the articles of the company and was, thus, rightly rejected by the appellant company.

Articles 21 to 43 of the articles of association of the appellant provide for transfer and transmission of shares. Article 22 restricts transfers of shares except after exhaustion of rights of pre-emption provided in articles 23 to 38 which follow. Article 39 provides for a 'transmission clause', where a person becomes entitled to shares other than by transfer in accordance with the articles. In case of a transmission, the articles providing for rights of pre-emption do not apply. The Articles related to 'transfer of shares' stated:

- “(22) Except as hereinafter provided, no shares in the company shall be transferred unless and until the rights of pre-emption hereinafter conferred shall have been exhausted.

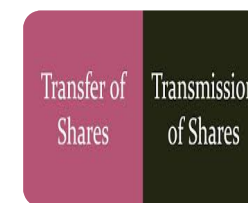
- (23) Except where the transfer is made pursuant to article 29 or article 38 hereto, the person proposing to transfer any share (‘the Proposing Transferor’) shall give notice in writing (‘a Transfer Notice’) to the company, that he desires to transfer the same. Such notice shall specify the sum he fixes as the fair value and shall constitute the Board of directors his agent for the sale of the share to any member of the company or person approved of selected by the Board of directors who is willing to purchase the share (‘the purchasing member’) at the price so fixed, or at the option of the purchasing member at the fair value to be fixed by the auditors of the company in accordance with article 25 hereof. A transfer notice may include several shares and in such cases shall operate as if it were a separate notice in respect of each. A transfer Notice shall not be revocable except with the sanction of the directors.

- (24) If the company shall within the space of 28 days after being served with a transfer notice find a purchasing member and shall give notice thereof to the proposing transferor he shall be bound upon payment of the fair value in accordance with article 25 thereof, to transfer the share to the purchasing member.

- (27) If the company shall not within the space of 28 days after being served with a transfer notice, find a purchasing member and notice in manner aforesaid, the proposing transferor shall at any time

within calendar months afterwards be at liberty subject to article 36 hereof to sell and transfer the share (of where there are more shares than one those not placed) to any person and at any price, not being less than the said fair value.

- (29) Any share may be transferred by a member to any child or other issue, son-in-law, daughter-in-law, father, mother, brother, sister, nephew, niece, cousin, wife or husband of such member and any share of a deceased member may be transferred by his executors or administrators or other legal representatives to any child or other issue, son-in-law, daughter-in law, father, mother, brother, sister, nephew, niece, cousin, widow or widower of such deceased member (to whom such deceased member may have specifically bequeathed the same) and shares standing in the name of the trustees of the will of a deceased member may be transferred upon any change of trustees to the trustees for the time being of such Will and restrictions in articles 22 to 28 hereof shall not apply to any transfer authorized by this article.



- (38) The executors or administrators of a deceased member or the holder of a succession certificate of deceased member (such deceased member not being one of several joint-holders) shall be the only person recognized by the company as having interest in or title to the shares registered in the name of such member, and the company shall not be bound to recognize such executors, administrators or holder of succession certificate unless such executors, administrators

or holder of succession certificate shall have first obtained probate or letters of administration or a succession certificate, as the case may be, from a duly constituted court in India.”

The Articles related to ‘transmission of shares’ stated:

“(39) Subject to the provisions of article 38 any person becoming entitled to shares in consequence of the death, lunacy or insolvency of any member or by any lawful means other than by transfer in accordance with these presents, upon producing such evidence that he sustains the character in respect of which he proposes to act upon this article or of his title as the directors thinks sufficient, may, with the consent of directors (which they shall not be under any obligation to give), be registered as a member in respect of such shares, or may, subject to the regulations as to transfer hereinbefore contained, transfer such shares. This clause is hereinafter referred to as “the transmission clause.”

The main question of the appellant’s case is that transfer of assets in the case of a scheme of amalgamation between transferor and transferee-companies is a voluntary transfer and not an involuntary transfer by operation of law. The plea made by the company was that the transfer of assets and liabilities between a transferor and transferee company in the case of amalgamation is by volition, and such transfer is not of individual assets or liabilities separately but of interest in a going concern.

The Company Law Board held that the transfer of shares occasioned in the present case is under the transmission clause of article 39 and not transfer of shares under articles which precede it. Even if respondent

case be covered under the transmission clause of article 39, respondent can be registered as a member in respect of the shares only with consent of the directors. The directors are not under any obligation to give such consent. If the directors refuse to give such consent, the respondent would be free to invoke the regulations which apply to transfer of shares. Accordingly, the CLB had to give an option to the Board of directors of the appellant to register the first respondent as a member or in the alternative, to purchase the shares through any purchasing member or otherwise at a fair value to be determined by the auditors of the company within the meaning of article 25.

**Judgement:** The High Court of Bombay has disposed of an appeal against the order of the Company Law Board (Board) allowing the appeal of the respondent declaring it to be the owner of 1980 shares of the petitioner-company and directing the latter to rectify the register of members. The High Court held that the Board was perfectly justified in coming to the conclusion that the transfer of shares occasioned in the present case was under the transmission clause of article 39 and not transfer of shares under articles which preceded it. Without disturbing the findings of the Board, the operative order passed by the Board was modified by the High Court. The High Court thus gave two options, and observed that until either of these options were exercised, the appellant-company shall maintain status quo in respect of the company and its fixed assets.



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