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MCA has notified Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2018

MCA has notified the Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2018 which shall come into force from the date of their publication in the Official Gazette.



As per the notification, now Public Companies can pay managerial remuneration without the approval of central government.

Enforcement of provisions of the Companies Act 2017

- (1) MCA in its notification appointed 12th September 2018, as the date from when the below mentioned provisions of Section 66 to 70 of the Companies (Amendment) Act 2017 shall come into force.

Section of the Companies (Amendment) Act, 2017	Amended Section of Companies Act, 2013	Title & Amendment
Section 66	Section 196	Company may appoint or continue the appointment of a person as a Key managerial personnel who has attained the age of seventy years subject to approval by ordinary resolution and the Central Government being satisfied on such appointment

Section 67	Section 197	Payment of remuneration by public companies to its directors in excess of the limits prescribed under Section 198 of CA 2013, shall require special resolution only and no government approval.
Section 68	Section 198	For calculating net profit under this section the following shall not be deducted: (i) profits, by way of premium on shares or debentures of the company (ii) any amount representing unrealised gains, notional gains or revaluation of assets
Section 69	Section 200	Central Government word has been omitted
Section 70	Section 201	Section 201 is in respect of section 196 only.

- (2) MCA in its notification has appointed 19th September 2018, as the date from when the provisions of Section 37 of the Companies (Amendment) Act 2017 shall come into force.



Section of the Companies (Amendment) Act, 2017	Amended Section of Companies Act, 2013	Title & Amendment
Section 37	Section 135	<p>Eligibility criteria for the purpose of constituting the corporate social responsibility committee and incurring expenditure towards CSR is proposed to be calculated based on immediately preceding financial year. Currently this eligibility is decided based on preceding three financial years.</p> <ul style="list-style-type: none"> • Further it is proposed that where a company is not required to appoint an independent director, it shall have in its Corporate Social Responsibility Committee two or more directors. • It also proposed to empower the Central Government to prescribe sums which shall not be included for calculating 'net profit' of a company under section 135.

MCA has notified Limited Liability Partnership (Second Amendment) Rules, 2018

MCA has notified the Limited Liability Partnership (Second Amendment) Rules, 2018 which shall come into force from 2nd October, 2018.

As per the notification revised forms have been introduced as under:



Purpose of Form	Old Form	New Form
Reservation of Name of LLP	Form 1	RUN-LLP
Filing of Incorporation documents as well as DPIN of maximum two directors	Form 2	Form FiLLip

Companies (Registered Valuers and Valuation) Third Amendment Rules, 2018

MCA vide notification dated 25th September, 2018 has notified Companies (Registered Valuers and Valuation) Third Amendment Rules, 2018 which shall come into force from the date of their notification in official gazette.



As per the notification, any person who may be rendering valuation services under the Act, on the date of commencement of Companies (Registered Valuers and Valuation) Rules, 2018 i.e., 18th October 2018, may continue to render valuation services without a certificate of registration upto 31st January, 2019 as earlier it was 31st March, 2018 as mentioned in Companies (Registered Valuers and Valuation) Rules, 2018.

Further, Any eligible organisation may be recognised as a registered valuers organisation if it can be converted or registered as company under section 8 of the Act within two year of commencement of Companies (Registered Valuers and Valuation) Rules, 2018 as earlier it was one year period.

Enforcement of provisions of National Financial Reporting Authority (NFRA) under Companies Act 2013

MCA vide notification dated 1st October, 2018 has notified commencement of provisions of sub section 1 and sub section 12 of section 132 of Companies Act, 2013 w.e.f. 1st October, 2018.

As per the notification:

Under sub section 1, National Financial Reporting Authority (NFRA) has been constituted w.e.f. 1st October, 2018 to provide accounting and auditing standards under Companies Act, 2013, and

(1) Under Sub section 12, The head office of NFRA shall be at new delhi and it may meet at such places as they deem fit.

Transfer of Proceedings from Courts to NCLT: The Calcutta High Court's View

A question that has often come up since the Companies Act, 2013 (**the 2013 Act**) came into force is how will proceedings ongoing before the High Courts be transferred to the National Companies Law Tribunal (**NCLT**)? Section 434(1) (c) of the 2013 Act deals with transfer of “*all proceedings*” under the Companies Act, 1956[1] to the NCLT. For winding up proceedings, this provision states that only such proceedings relating to winding up, which are at a certain stage as prescribed by central Government, are to be transferred to the NCLT.



A recent division bench judgment of the Calcutta High Court in Prasanta Kumar Mitra & Ors. v. India Steam Laundry (P) Ltd. & Ors. attempted to throw light on the issue. The question before the Court was: “Whether the term “all” and “including” in Section 434(1)(c) of the 2013 [Companies] Act are expansive in nature or the same is to be read in a restrictive manner?” The Court held: “The term ‘including’ in section 434(1)(c) of the 2013 Act is extensive and expansive and not restrictive in nature. Accordingly, Section

434(1)(c) of the 2013 Act that states “all proceedings under the Companies Act 2013 including proceedings relating to...” would include all matters, without any exception, pending before the District High Courts and High Court and all such matters would have to be transferred to the NCLT.”

Recent Case Laws on whether a public company can say no to share transfer or not

Section 58(2) of CA 2013 states that the securities of any member in a public company are freely transferable, while under section 58(4) of CA 2013, it is open to the public company to refuse registration of the transfer of securities for a ‘sufficient cause’. To that extent, section 58(4) of CA 2013 can be read as a limited restriction on the free transfer permitted under section 58(2) of CA 2013. However, the statute does not provide any guidance on what would constitute ‘sufficient cause’ and leaves it open to the company itself to ascertain the same.



(1) The position taken by the High Court of Andhra Pradesh has now been confirmed by the Supreme Court of India in *Mackintosh Burn Limited v. Sarkar and Chowdhury Enterprises Private Limited*, (2018) 5 SCC 575 (**Mackintosh Case**). In this case the Supreme Court held that the registration of a share transfer may not only be refused on the ground of it resulting in a violation of any law but also for any other sufficient cause.

(2) The Mackintosh Case involved an unlisted public company, which had refused to register a transfer of shares to its competitor. Here the Supreme Court noted “...The Company Law Board, it appears, was of the view that the refusal to register the transfer of shares can be permitted only if the transfer is otherwise illegal or impermissible under any law. Going by the expression “without sufficient cause” used in section 58(4), it is difficult to appreciate that view. Refusal can be on the ground of violation of law or any other sufficient cause. Conflict of interest in a given situation can also be a cause...”

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