

ICSI-EIRC NEWSLETTER



**THE INSTITUTE OF
Company Secretaries of India**

IN PURSUIT OF PROFESSIONAL EXCELLENCE

Statutory body under an Act of Parliament

MARCH 2017 ISSUE



MARCH

31

TIME TO PLAN



My Dear Esteemed Colleagues,

At the outset, please accept warm greetings on behalf of the Eastern India Regional Council (EIRC) of ICSI! It gives me immense pleasure in sharing my thoughts with you for the third time through this Communique in the capacity of Chairman of EIRC-ICSI.

In these three months, we have touched upon several aspects of the Institute's working such as Placement, Member Programs, improving student training etc.

Our constant endeavour to place our members in organizations has started showing tangible results, that too in a short span of just about 3 months. In addition to hiring 5 (five) members of our Institute, HSBC has now offered to hire at least 2 (two) more members of our Institute with about 5 years of experience. The minimum annual compensation that they are willing to offer will be to the tune of Rs 12 (twelve) lacs p.a. These developments are encouraging enough driving us to work further in the direction of placements. We are also planning to launch a placement drive in the month of May.

In the month of March, we had the privilege to felicitate newly elected President of ICSI, CS (Dr.) Shyam Agrawal and Vice President, CS Makarand Lele in the presence of Chairmen and Secretaries from our Chapters of the Eastern Region. We also celebrated International Women's Day where we ensured that it was an all woman dias right from the Chief Guest to the speakers and other dignitaries. In association with NSE, we organized a very well laid out program on Secretarial Audit where the Chief Regulatory Officer of NSE, CS (Dr.) VR Narasimhan shared extremely valuable insights on Secretarial Audit. On this occasion, we were also delighted to have with us Regional Director of SEBI, Mr. A. Sunil Kumar.

To convert seminars from just learning and networking opportunity to professional opportunity as well, we organized a full day program on GST in association with the Indian Chamber of Commerce (ICC). Our delegates not only benefitted from the deliberations but professionals could also explore professional opportunities.

To address the requirement of obtaining PCH by our members within 31st March, we organized, in addition to the above, several study circle meetings and half day work shop on subjects such as Related Party Transactions, Secretarial Standards, Striking Off, Managerial Remuneration and CSR.

To address similar requirement of members in Siliguri for obtaining PCH, we organized a workshop there on topics such as Secretarial Audit, GST, Related Party Transactions. I thank CS Khushboo Goyal for taking personal initiative and making efforts in organizing the workshop without any physical presence or support of the Institute there.

On 25th March, we also organized a full day seminar in Hotel Golden Park wherein the learned speakers deliberated on topics of relevance. Both the Study Circles of EIRC, namely Madhya Kolkata Study Circle and Tollygunge Study Circle have also been contributing to professional development.

My Regional Council Members and our respected Central Council Members have been supporting and guiding me in all my initiatives. Needless to

mention the untiring and dedicated efforts of my EIRO colleagues provides strength to the Regional Council.

I once again acknowledge the efforts put in by our Past Presidents, Past Chairmen and Council Colleagues in building this Institution of Excellence. We as a team will endeavor to take the legacy forward.

I request my fellow members and students to reach out to me with their thoughts at my coordinates provided below

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With warm regards
Your privileged colleague

Siddhartha Murarka
Chairman - EIRC-ICSI

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List of Activities organised by EIRC from 1.3.2017 to 31.3.2017

Date	Programme / Activity	Venue
5th March, 2017	President's Meeting with EIRC and Chapter's Chairman	ICSI-EIRC House
6th March, 2017	Meeting of EIRC Chairman with Chapter's Chairman	ICSI-EIRC House
8th March, 2017	Workshop on the occasion of International Women's Day	ICSI-EIRC House
10th March, 2017	ICSI-NSE Joint Workshop on Secretarial Audit	IMI Auditorium, Kolkata
16th March, 2017 to 24th March, 2017	55th EDP Batch	ICSI-EIRC House
17th March, 2017	Workshop on "Getting Ready for GST" (joint programme with ICC)	ICC Auditorium
18th March, 2017	Study Circle Meeting on Related Party Transactions and SS1	ICSI-EIRC House
18th March, 2017	Holi Meet	ICSI-EIRC House
25th March, 2017	Investor Awareness Programme	TMU, Bhagalpur
25th March, 2017	Full Day Seminar on "Preparing for Tomorrow"	The Golden Parkk, Kolkata
28th March, 2017	Study Circle Meeting on Striking off & Other Contemporary Issues related to RoC Forms	ICSI-EIRC House
28th March, 2017	Workshop on GST, RPT, Secretarial Audit and Recent Amendment to Companies Act	Bang Onn, Siliguri
29th March, 2017	Study Circle Meeting on Managerial Remuneration and CSR	ICSI-EIRC House

18 Career Awareness Programmes were organised during this period.

President Meet on 5.3.2017



L to R: CS Dinesh Chandra Arora, Secretary, ICSI; CS Makarand Lele, Vice President, ICSI; CS (Dr.) Shyam Agrawal, President, ICSI; CS S K Agrawala, Council Member, ICSI and CS Siddhartha Murarka, Chairman, EIRC-ICSI at the Inaugural Session of President Meet at Kolkata

Felicitation Ceremony of President and Vice President, ICSI at Kolkata

Celebration of International Women's Day on 8.3.2017



L to R: CS Ganga Maharshi, Secretary, Hooghly Chapter; CS Abhijeet Nagee, Chairperson, Hooghly Chapter; CS Kavita Bhavsar, Company Secretary, Balmer Lawrie & Co. Ltd.; the Ms. Manorama Kumari, Hon'ble Member (Judicial), NCLT, Kolkata Bench; CS Mamta Binani, Immediate Past President, ICSI and CS Rupanjana De, Treasurer, EIRC-ICSI at the Inaugural Session of the Celebration of International Women's Day

Cross section of participants at the programme

Joint Workshop on Secretarial Audit on 10.3.2017



L-R: CS Siddhartha Murarka, Chairman, EIRC-ICSI; Dr. V R Narasimhan, Chief Regulatory Officer, NSE; Shri A Sunil Kumar, Regional Director, Eastern Region, SEBI and CS Ashok Purohit, Vice Chairman, EIRC-ICSI

CS Siddhartha Murarka, Chairman, EIRC-ICSI Addressing

CS Vinod Kohari Addressing

CS SM Gupta Addressing

Workshop on "Getting GST ready" on 17.3.2017



CS Siddhartha Murarka, Chairman, EIRC-ICSI addressing

Study Circle Meeting on 18.3.2017



L- R: CS Gautam Dugar, Secretary, EIRC-ICSI; Shri Vishal Kedia, Founder and Director, Complykaro Services Pvt. Ltd; CS Nitin Bagaria, Company Secretary and GM (Legal), Balrampur Chini Mills Limited; CS Ravi Varma, Company Secretary & Compliance Officer, Texmaco Rail and Engineering Limited and CS Siddhartha Murarka, Chairman, EIRC-ICSI

Holi Meet on 18.3.2017



Students and Members in Holi Meet

Full Day Seminar on theme of "Preparing for Tomorrow" on 25th March, 2017



CS Gautam Dugar, Secretary, EIRC-ICSI and CS Ashok Purohit, Vice Chairman, EIRC-ICSI along with senior members at the Inaugural Lamp lighting session



L - R: Speaker at the Full Day Seminar - CS Taposh Roy, Company Secretary and Compliance Officer, Vesuvius India Limited; CA Mohit Bhuteria, Practising Chartered Accountant; CS Mamta Binani, Practising Company Secretary, Immediate Past President, ICSI and CS Stuti Pithisaria, Manager, Magma Fincorp. Limited

Study Circle Meeting on 28.3.2017



L - R: CS Mohan Ram Goenka, Practising Company Secretary as the moderator at the Study Circle and CS Gautam Dugar, Secretary, EIRC at the Study Circle Meeting

Study Circle Meeting on 29.3.2017



L - R: CS Tehnaz Punwani, Vice President (Legal) and Company Secretary, Eveready Industries India Limited and CA Sandip Pitty, Practising Chartered Accountant at the Study Circle Meeting



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(Relevant Sections of 230-232 of The Companies Act, 2013 with Companies (Compromise, Arrangement and Amalgamation), Rules, 2016)

Related Forms:

NCLT-1—Application

NCLT-2-A notice of admission

NCLT-6-An affidavit (Affidavit supporting to application)

CAA.2- Notice and Advertisement of notice of the meeting of creditors or members

CAA.3 - Notice to Central Government, Regulatory Authorities

CAA.4 - Report of result of meeting by Chairperson

CAA.5 - Petition to sanction compromise or arrangement

CAA.6 - Order on petition

CAA.7 - Order under section 232 of the Act

CAA.8 - Statement to be filed with Registrar of Companies

The process should divide in two steps i.e. filing of 1st Motion application (Take permission/ instruction for holding of Meetings) with NCLT and filing of 2nd motion Petition (Scheme of Merger/De-Merger) with NCLT. The necessary steps are as follows:

1. Responsibility of filing an application for Merger/Demerger

An application for Merger/De-Merger can be file with Tribunal (NCLT). Both the transferor and the transferee company shall make an application in the form of petition to the Tribunal in whose jurisdiction registered office of the Company is situated in accordance with section 230 and 232 of the Companies Act, 2013 for the purpose of sanctioning the scheme of Merger/Demerger.

Joint Application: Rule 3(2)

Where more than one company is involved in a scheme, such application may, at the discretion of such companies, be filed as a joint application. However, where the registered office of the Companies are in different states, there would be more than one Tribunals having the jurisdiction over those, companies, hence separate petition will have to be filed.

2. Preparation and approved of Draft Scheme from the Board of Directors

Check whether the Memorandum of Association of the company contains the powers to amalgamate. Even if the object clause of the company not specifically empowers Company to amalgamate, the Company can amalgamate, because there is statutory power of amalgamation under the Act.

i. Prepare the Draft Scheme of Merger/Demerger as per provisions given below

ii. Convene the Board Meeting to approve the Draft Scheme from the Board of Directors.

3. General process of application with NCLT

Petition shall be filed in Form NCLT-1 with attachment thereto accompanied by the Form NCLT-2 and it shall be verified by an affidavit in Form No. NCLT-6

1ST MOTION APPLICATION

4. Application to the NCLT for direction to convene Meetings Members and Creditors:

The Company shall prepare an application in Form No- NCLT-1

mentioning the details about applicant, jurisdiction, limitation, and relief sought the basis on which each class of members or creditors has been identified for the purposes of approval of the scheme etc. The Company will submit the application along with following documents:

a) A notice of admission in Form No. NCLT-2

b) An affidavit in form no. NCLT-6. Affidavit should be on stamp paper and duly notarized

c) Copy of Draft Scheme Merger/De-Merger

d) Copy of latest financial Statement of the Company

e) Valuation Report for determining of share exchange ratio

f) A certificate from the Statutory Auditors stating that accounting treatment is in conformity with Accounting Standard under section 133 of the Act

g) Details of any investigation or proceeding pending against the company if any

5. Submission of copy application with NCLT:

The company would file the application in NCLT-1 to the tribunal in whose jurisdiction registered office of the Company is situated along with above mentioned documents along with the fee of Rs. 5000/-.

6. Direction by NCLT for convening Meetings of Members and Creditors (Rule 5):

After considering the application in NCLT, Tribunal can give the instructions regarding holding and concluding of Meeting, fixing the time and place of the meeting or meetings, Appointing a Chairperson the procedure to be followed at the meeting, including voting in person or by proxy or by postal ballot or by voting through electronic means, the time within which the chairperson of the meeting is required to report the result of the meeting to the Tribunal and Such other matters as the Tribunal may deem necessary.

Note: It has been mentioned in the Act, 2013 that for dispersion of meeting of creditors there is need to take consent of 90% of value of creditors in the form of duly notarized affidavit. By reading of the provisions of Act, 2013 it seems that dispense of meeting of members are not allowed in this Act. As specific provisions are given for dispense of creditors but no provisions are prescribed for dispense of meeting of shareholders.

7. Convene of Meeting/Issue of Notice:

7.1 Notice of Meeting: The Notice of the meeting pursuant to the order of tribunal to be given in Form No. CAA.2 (Rule 6) at least one month before the date of meeting.

Person entitled to receive the notice: The notice shall be sent individually to each of the Creditors or Members and the debenture holders at the address registered with the company. Section 230(3)

Person authorized to send the notice:

• Chairman of the Company, or

• If tribunal so direct by the Company or its liquidator or by any other Person

Modes of Sending of notice:

• By Registered post, or by Speed post, or by courier, or

• By email, or by hand delivery, or by any other mode as directed by the Tribunal

Documents to be send along with notice:

- a) Scheme of Merger/Demerger
- b) Summary of valuation Report
- c) Details of any investigation or proceeding pending against the company
- d) Details of any No-objections/approvals/sanctions if already received from the concerned Governmental authorities
- e) Supplementary accounting statements if any
- f) Proxy Form of the shareholders
- g) Any other relevant document as may required

7.2) Advertisement of Notice of Meeting: The Notice of the meeting shall be advertised in Form No. CAA.2 at least in one English Newspaper and in at least one vernacular language newspaper. Such Newspapers shall be published on the website of the company at least 30 days before the date fixed for meeting, as directed by tribunal. Section 230(3). In case of Listed Company, such notice and other documents shall also be published on the website of SEBI and stock exchange, where securities of the Company are listed.

7.3) Notices to Statutory Authorities: Section 230(5) and Rule 8A notice in Form No CAA.3 along with Copy of Scheme of C&A, the explanatory statement and Disclosures shall also be sent to followings regulatory authorities:

- a) The Central Government, The Registrar of Companies and The income tax authorities, in all cases
- b) The Reserve Bank of India, the Securities and Exchange Board of India, the Competition Commission of India, and the stock exchanges, as may be applicable.
- c) Other Sectoral Regulators or authorities, as required by Tribunal. Notice shall be sent to the office of the authority after sending of notice to members or creditors of the Company by Registered post, or by Speed post, or by courier, or by hand delivery.

Representation by authority:

- a) The authority desire to make any representation then shall send to the tribunal within a period of 30 days from the date of receipt of such notice.
- b) Copy of such representation shall simultaneously be sent to the concerned Companies
- c) In case of no representation within the 30 days then presumed that authority doesn't have any representation.

7.4) Voting: The persons to whom the notice is sent may vote in the meeting either themselves or through proxies or by postal ballot to the adoption of the Scheme of Merger/Demerger within one month from the date of receipt of such notice. Section 230(4) Rule 9

Right of Objections: Section 230(4)

Any objection to the Merger/Demerger shall be made only by:

- Persons holding not less than 10% of the shareholding or
- Person having outstanding debt amounting to not less than 5% of the total outstanding debt as per the latest audited financial statement

7.5) Holding of Meeting: The Company on the requisition of the creditors or members entitled to attend meeting shall furnish a copy of scheme and copy of statement required to furnish in section 230(2)(c) with in one day of requisition.

7.6) Filing of Affidavit with Tribunal: Liability to Service: The Chairperson appointed for the meeting of the company or other person directed to issue the advertisement and the notices of the meeting shall file an affidavit before the Tribunal at least seven days before the date fixed for the meeting or the date of the first of the meetings, as the case may be, stating that the directions regarding the issue of notices and the advertisement have been duly complied with.

7.7) Result of Meeting: Method of Voting: The voting at the meeting or meetings held in pursuance of the directions of the Tribunal on all resolutions shall take place by poll or by voting through electronic means. The report of the result of the meeting shall be in Form No. CAA.4 and shall state accurately

- >> The number of creditors or class of creditors or
- >> The number of members or class of members, as the case may be,
- >> who were present and
- >> who voted at the meeting either in person or by proxy, and
- >> where applicable, who voted through electronic means, their individual values and the way they voted.

7.8) Report of the result of the meeting by Chairperson: The Chairperson of the meeting shall, within the time fixed by the Tribunal, or where no time has been fixed, within 3 (Three) days after the conclusion of the meeting, submit a report to the Tribunal on the result of the meeting in Form No. CAA.4

2nd Motion Application

8.) Petition for confirming Merger & Amalgamation (Rule 15)

The Company shall, within 7 (seven) days of the filing of the report by the Chairperson, present a petition to the Tribunal in Form No. CAA.5 for sanction of the scheme of Merger/Demerger. The petitioner will pray for the appropriate orders and directions from the Tribunal. The Tribunal shall fix a date for the hearing of the petition.

9.) Legal Responsibility of the Tribunal: The notice of the hearing of the petition shall also be served by the Tribunal ;

- >> To the Objectors or
- >> To their Representatives under subsection (4) of section 230 of the Act And
- >> To the Central Government and
- >> Other Authorities who have made representation under rule 8 and have desired to be heard in their representation.

10. Publication of the Notice: The notice of the hearing shall be advertised in the same newspaper in which the notice of the meeting was advertised or in such other newspaper as the Tribunal may direct, at least 10 (ten) days before the date fixed for the hearing.

Elements of satisfactory scheme- The tribunal has to satisfy itself that:

- >> The meeting was duly held and conducted
- >> That the Merger/Demerger was an actual
- >> That it was accepted by a competent majority
- >> That the majority was acting in good faith and for common advantage of the whole class
- >> It was reasonable, prudent and proper

11. Order by Tribunal Rule 12:

Where the Tribunal sanctions the Merger/Demerger, an order made under section 232 read with section 230 of the Act shall be in Form No.CAA.6 & CAA.7

12. Compliance after approval/order of Merger/Demerger:

Filing of Order of Tribunal with ROC: Section 232(5)

The order of the Tribunal shall be filed in Form No-INC-28 with the Registrar by the company within a period of thirty days of the receipt of the copy of order, or such other time as may be fixed by the Tribunal.

Compliance until completion of Scheme:

Every company in relation to which the order is made shall, until the completion of the scheme, file statement in Form No. CAA.8 and within two hundred and ten days from the end of each financial year with the Registrar every year duly certified by a chartered accountant or a cost accountant or a company secretary in practice indicating whether the scheme is being complied with in accordance with the orders of the Tribunal or not.

Article On Transfer Of Shares To Investor Education And Protection Fund



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The Ministry of Corporate Affairs (MCA) vide its notification dated 5th September, 2016 has enforced the provisions of sections 124 and 125 of the Companies Act, 2013 although some of the sub-sections were already notified earlier vide notification dated 13th January, 2016. Again, MCA notified the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016 (hereinafter referred to as "the IEPF Rules") which have come into effect from September 7, 2016 which was amended vide notification dated 28th February, 2017.

In this article, we will focus only on the Transfer of shares to IEPF in respect of which dividend has/have remained unpaid or unclaimed for consecutive seven years pursuant to Section 124 (6) of the Act.

Section 124(6) of the act reads as follows:

"All shares in respect of which dividend has not been paid or claimed for seven consecutive years or more shall be transferred by the company in the name of Investor Education and Protection Fund along with a statement containing such details as may be prescribed:

Provided that any claimant of shares transferred above shall be entitled to claim the transfer of shares from Investor Education and Protection Fund in accordance with such procedure and on submission of such documents as may be prescribed.

[Explanation.—For the removal of doubts, it is hereby clarified that in case any dividend is paid or claimed for any year during the said period of seven consecutive years, the share shall not be transferred to Investor Education and Protection Fund.]"

Keeping in view of the aforesaid Section 124 (6) of the Act, Accordingly produced below is the detailed steps for transfer of shares to IEPF :

1. Conduct the Board Meeting and give authorization for transfer of shares to IEPF under IEPF RULES, 2016 of which dividend remains unpaid & unclaimed for a continuous period of 7 years
2. Prepare the details of the shares to be transferred to IEPF of which dividend remains unpaid & unclaimed for a continuous period of 7 years
3. Draft Reminder letter & Advertisement to be prepared
4. Cut-off date for sending letter to be determined
5. Send intimation to shareholders 3 months prior to amount being transferred to IEPF with name, address, details of shares :
 - A. By Registered or speed post
 - B. By Newspaper notification
 - C. By Website updation

6. Upload a copy of the advertisement in BSE Website

7. Receive the correspondence from the shareholders and mark them so that these shares are not transferred to IEPF

8A. For the purposes of effecting the transfer to IEPF where the shares are held in physical form-

>> Authorization to issue duplicate share certificate in Board Meeting or Share Transfer Committee meeting to be given in favour of M.D./ WTD/CFO/C.S.

>> Convene the Board Meeting or Share Transfer Committee meeting

>> Issue of Duplicate share Certificate with the words "Issued in lieu of share certificate No..... for purpose of transfer to IEPF" on the face of it and the word "duplicate" shall be stamped or punched in bold letters on the first page of the share certificate;

>> Particulars of every share certificate issued shall be entered forthwith in a register of renewed and duplicate share certificates maintained in Form No. SH-2 as specified in the Companies (Share Capital and Debentures) Rules, 2014;

Obtain Corporate Action to convert the duplicate share certificates into DEMAT form and transfer in favour of the Authority.

Inform the NSDL/CDSL (depository) by way of Corporate Action to convert the duplicate share certificates into DEMAT form and transfer in favour of the IEPF Authority.

8B. For the purposes of effecting the transfer to IEPF, where the shares are dealt with in a depository-

>> Inform the NSDL/CDSL (depository) by way of Corporate Action, where the shareholders have their accounts for transfer in favour of the IEPF Authority.

>> On receipt of such intimation, the NSDL/CDSL (depository) shall effect the transfer of shares in favour of DEMAT account of the IEPF Authority.

9. Copy of CORPORATE ACTION to be preserved & details of shareholders whose shares have been transferred to DEMAT account of the IEPF Authority to be maintained

10. All benefits accruing on such shares e.g., bonus shares, split, consolidation, fraction shares, dividend etc., except right issue shall also be credited to such DEMAT account of the IEPF Authority

FORMS TO BE FILED

Sr. No.	PURPOSE	FORMS	TIMELINE
1	The details of Unpaid Dividend transferred to IEPF shall be furnished through a Statement in Form No. IEPF 1 containing details of such transfer to the IEPF Authority (similar to Form 1INV)	Form No IEPF -1	30days from the date due for Transfer to IEPF
2	Statement of unclaimed and unpaid Amounts due to be transferred to IEPF as on the date of AGM (similar to Form 5INV)	Form No IEPF -2	90 days after the holding of AGM
3	Details of shares and unpaid dividend where any specific order of Court or Tribunal or statutory Authority restraining any transfer of such shares and payment of dividend or where such shares are pledged or hypothecated under the provisions of the Depositories Act, 1996 or shares already been transferred under Rule 6(1) to the IEPF Authority	Form No IEPF -3	30 days from the end of financial year.
4	Statement of shares transferred to IEPF	Form No IEPF -4	30 days from the date of transfer of shares to IEPF
5	Shareholders/Claimant can claim the shares from IEPF Suspense Account under Form IEPF- 5 from IEPF Authority with a copy to Company	Form No IEPF -5	
6	Statement of unclaimed and unpaid amounts to be transferred to the IEPF and statement with reasons of deviation of actual amount transferred with amount mentioned above in File Form no. 6 after Closure of Unpaid Dividend Account on transfer to IEPF	Form No IEPF -6	30 days from the end of financial year and 30days of the closure of its accounts

Note: Prior to the notification of the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Amendment Rules, 2017 on 28th February, 2017 many companies had issued letter to shareholders intimating about the due date transfer of shares in respect of which dividend has / have remained unpaid or unclaimed for consecutive seven years or more to the Investor Education and Protection Fund (IEPF) Suspense Account since the Proviso to Rule 6 (3)(a) of the IEPF Rules stated that “in cases where the seven years as provided under sub-section (5) of section 124 have been completed or are being completed within three months from the date of coming into force of these rules, the company shall initiate the aforesaid procedure immediately and transfer the shares on completion of three months”. There was no clarity on the dividend year to be considered for the purpose of transfer of shares since the words “have been completed” were used. So it was interpreted that prior to 7th September, 2016 all such dividends which have been remained unpaid and unclaimed for consecutive seven years or more shall also be considered for transfer of such shares to IEPF Suspense Account.

However, the amended rules have brought clarity vide second proviso to the revised Rule 6(1) which has clearly stated that in cases where the period of seven years provided under sub-section (5) of section

124 has been completed or being completed during the period from 7th September, 2016 to 31st May, 2017, the due date of transfer of such shares shall be deemed to be 31st May, 2017. By this amendment the dividends which remained unpaid and unclaimed for a period of seven years and transferred to IEPF before 7th September, 2016 will remain out of the purview while determining the list for shares due for transfer to Demat Account of IEPF Authority. **Another important aspect to be noted** is that the voting rights on shares transferred to the IEPF shall remain frozen until the rightful owner claims the shares. However, for the purpose of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, the shares which have been transferred to the IEPF Authority shall not be excluded while calculating the total voting rights. **The Rules prescribes** for a detailed procedure for Companies to be followed while transferring amounts to the Fund and strict compliance has to be adhered to as noncompliance would attract penalty under Section 124(7) of the Act, wherein a company shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees. Also, every officer of the company who is in default shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

MCA amends Audit Rules and MBP Rules: its impact and analysis



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The Ministry of Corporate Affairs ('MCA') has come up with amendments in the Companies (Audit and Auditors) Rules, 2014 ("ADT Rules") and the Companies (Meetings of Board and its Powers) Rules, 2014 ("MBP Rules") vide notification(s) G.S.R. 307(E) and G.S.R. 309(E) dated 30th March, 2017. The same shall come into force from the date of their publication in the Official Gazette viz, 30th March, 2017. In this write up both the amendments has been covered along with its implications.

Companies (Audit and Auditors) Amendment Rules, 2017

Rule Reference	Description	Remarks
In Rule 11 after clause (c), clause (d) to be inserted	<p>Rule 11: Other matters to be included in auditors report-</p> <p>The auditor's report shall also include their views and comments on the following matters, namely:-</p> <p>"(d) whether the company had provided requisite disclosures in its financial statements as to holdings as well as dealings in Specified Bank Notes during the period from 8th November, 2016 to 30th December, 2016 and if so, whether these are in accordance with the books of accounts maintained by the company."</p>	<p>After the insertion of the adjacent provision, the responsibility of the statutory auditors has been increased.</p> <p>The amendment is primarily linked to the move of the Government of India on "Demonitization of Specified Bank Notes ('SBN') (Rs. 500 and Rs. 1,000 notes) on 8th November, 2016.</p> <p>As per the newly inserted clause d; auditors have to certify in their audit report whether the disclosures done by the company in its financial statements as to holdings as well as dealings in SBN during the period from 8th November, 2016 to 30th December, 2016 ("demonitization period") are in accordance with the books of accounts maintained by the company.</p> <p>Simultaneous amendments have also been made in Schedule III of the Act.</p>

1. The Companies (Audit and Auditors) Amendment Rules, 2017: <http://egazette.nic.in/WriteReadData/2017/175074.pdf> enforced w.e.f 30th March, 2017

2. The Companies (Meetings of Board and its Powers) Amendment Rules, 2017.: <http://egazette.nic.in/WriteReadData/2017/175078.pdf> enforced w.e.f 30th March, 2017

COMPANY SECRETARIES BENEVOLENT FUND

"Saathi Haath Badhana"

Members are requested to pay a small amount of Rs. 10,000/- as a onetime contribution for your life membership to the Company Secretaries Benevolent Fund. Further details are available on the link given below:

<https://www.icsi.edu/csbf/Home.aspx>

Come! Join hands for the noble cause.

Companies (Meetings of Board and its Powers) Amendment Rules, 2017

Rule Reference	Description	Remarks	
Rule 15(3) (a)- in item (i), item (ii), item (iii) and item (iv) to be substituted	Rule 15: Contract or arrangement with a related party-		
	Item (i): sale, purchase or supply of any goods or materials, directly or through appointment of agent, exceeding ten per cent. amounting to ten per cent. or more of the turnover of the company or rupees one hundred crore, whichever is lower, as mentioned in clause (a) and clause (e) respectively of sub-section (1) of section 188;	In terms of the said Rule read with section 188, prior approval of the company by means of an ordinary resolution is required, if the transaction crosses a certain limits as prescribed thereunder.	
	Item (ii): selling or otherwise disposing of or buying property of any kind, directly or through appointment of agent, exceeding ten per cent. amounting to ten per cent. or more of net worth of the company or rupees one hundred crore, whichever is lower, as mentioned in clause (b) and clause (e) respectively of sub-section (1) of section 188;	(i) sale, purchase or supply of any goods or materials directly or through appointment of agents-	Lower of the following- (a) 10% or more of the turnover; or (b) Rs. 100 crore
	Item (iii): leasing of property of any kind exceeding ten per cent. amounting to ten per cent. or more of the net worth of the company or ten per cent. or more of turnover of the company or rupees one hundred crore, whichever is lower, as mentioned in clause (c) of sub-section (1) of section 188;	(ii) selling or otherwise disposing of, or buying, property of any kind directly or through appointment of agents	Lower of the following- (a) 10% or more of the net worth; or (b) Rs. 100 crore
	Item (iv): availing or rendering of any services, directly or through appointment of agent, exceeding ten per cent. amounting to ten per cent. or more of the turnover of the company or rupees fifty crore, whichever is lower, as mentioned in clause (d) and clause (e) respectively of sub-section (1) of section 188:	(iii) Leasing of property of any kind	Lower of the following- (a) 10% or more of the net worth; or (b) 10% or more of the turnover; or (c) Rs. 100 crore
	(iv) availing or rendering of any services directly or through appointment of agents	Lower of the following- (a) 10% or more of the net worth; or (b) Rs. 50 crore.	
		Earlier the threshold limited was triggered when the turnover or net worth as the case may be was exceeding 10%. As per the amended provisions the threshold limits will trigger as soon as the turnover or net worth as the case may be will amount to 10%. This may lead companies to revisit their existing policies framed for RPTs.	

FAQ's On Secretarial Standard On Meetings Of The Board Of Directors



CS Alka Khetawat
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Q. What is the effective date of SS-1?

Ans: 1st July, 2015 is the effective date.

Q. Who has issued SS-1?

Ans: SS-1 is issued by the Institute of Company Secretaries of India and approved by the Central Government.

Q. Is SS-1 applicable to all type of Companies?

Ans: It is applicable to all Companies incorporated under the Act except One Person Company (OPC).

Q. Is SS-1 applicable to Meetings of Committee(s) of the Board?

Ans: It is applicable unless otherwise stated herein or stipulated by any other Guidelines, Rules or Regulations.

Q. What would happen if due to subsequent changes in the Act, particular Standard or any part becomes inconsistent with the Act?

Ans: The Provision of the Act shall prevail.

Q. Would SS-1 be applicable to Meetings held after 1st July, 2015 but in respect of which Notices have already been issued before 1st July, 2015?

Ans: No. It shall apply only to Meetings, in respect of which Notices are issued on or after 1st July, 2015.

Q. Who can summon a meeting of the Board?

Ans: Any Director of a Company may, at any time summon a meeting.

Q. Who will convene the meeting of the Board?

Ans: The Company Secretary (CS) or where there is no Company Secretary, any person authorized by the Board, on the requisition of a Director, in consultation with the Chairman or in his absence, the Managing Director or in his absence, the Whole-time Director, where there is any unless otherwise mentioned in the Articles.

Q. When a Board Meeting can be convened?

Ans: A Board Meeting may be convened at any time and place, on any day, excluding a National Holiday.

Q. Can the Companies conduct the Meeting of the Committee and Meetings of the Board on the same day?

Ans: Yes. There is no such restriction.

Q. Can an adjourned meeting be held on a National Holiday?

Ans: A Meeting adjourned for want of Quorum shall not be held on a National Holiday.

Q. Can a Director participate through electronic mode in a meeting?

Ans: Unless the Act or any other law specifically does not allow such participation through electronic mode in respect of any item of business, a Director can participate if the company provides such facility.

Q. What are the modes for giving notice?

Ans: A notice shall be given to every Director by hand or by speed post or by registered post or by courier or by facsimile or by email or any other electronic means.

Q. Who will issue the notice of the Board Meeting?

Ans: The Company Secretary or where there is no Company Secretary, any Director or any other person authorized by the Board.

Q. What contents are required in a notice?

Ans: It shall specify the serial number, day, date, time and full address of the venue of the Meeting.

Q. What is the serial no. of Board Meeting?

Ans: Every Company has to give serial no. to their meeting, but suppose if a company is incorporated in the year 1990 and is unable to count and give continuous numbering since incorporation then those companies may start giving serial numbers from Meetings held on or after 1st July, 2015.

Q. Who will be members in attendance & invitees?

Ans: Only CS and Directors will be members in attendance and others as invitees.

Q. In case of sending notice, agenda and other related papers by hand how one can keep its proof?

Ans: Company has to maintain registers and take signatures as an acknowledgement on the office copy.

Q. In case of sending notice, agenda and other related papers electronically how one can keep its proof?

Ans: Any document sent through electronic mode should be sent through such means where proof of delivery can be received. Eg: Electronic Mail

Q. What is Time Stamp?

Ans: It is the current time of an event that is recorded by a Secured Computer System.

Q. Whether Notice is to be given for the meetings held on pre-determined dates or at pre-determined intervals?

Ans: Yes.

Q. When Notice for Board Meetings is to be given?

Ans: It shall be given at least seven days before the date of the Meeting.

Q. Can an item not included in Agenda be discussed?

Ans: Yes, but with the permission of the Chairman and with the consent of a majority of the Directors present in the Meeting, which shall include at least one Independent Director, if any.

Q. Can a notice be given at shorter period of time?

Ans: To transact urgent business, notice may be given at shorter period of time, if at least one Independent Director, if any, shall be present at such meeting.

Q. What will happen if there is no Independent Director in the Company?

Ans: In that case, the decisions shall be final on ratification thereof by a majority of the Directors.

Q. What is the frequency of the Board Meeting?

Ans: The Board shall meet at least once in every calendar quarter, with a maximum interval of one hundred and twenty days between any two consecutive Meetings of the Board.

Q. What is the frequency of the Committee Meeting?

Ans: Committees shall meet subject to minimum number and frequency stipulated by the Board or prescribed by any law.

Q. What is the frequency of the Independent Directors Meeting?

Ans: Independent Directors shall meet at least once in a Calendar Year.

Q. Presence of Quorum in the meeting?

Ans: Quorum shall be present throughout the meeting. It shall be present not only at the time of commencement of the Meeting but also while transacting business.

Q. What are the particulars of the Attendance Registers?

Ans: It shall contain the serial number and date of the Meeting. In case of a Committee Meeting name of the Committee, place, time, names of the Director and signature of Directors present, name and signature of the Company Secretary and the invitees.

Q. Can the Attendance Register be maintained by the Company in electronic form?

Ans: No. It should be maintained in physical form since it needs to be signed by the persons attending the meeting.

Q. Who cannot inspect the Attendance Register/ Minutes/Any other Records?

Ans: The Members of the Company cannot inspect the Attendance Register.

Q. Who can be the Chairman of the Board?

Ans: The Chairman of the Company shall be the Chairman of the Board. If the Company does not have a Chairman, the Directors may elect one of themselves to be the Chairman of the Board.

Q. Whether minutes can be maintained in electronic form?

Ans: Minutes in electronic form shall be maintained with Timestamp.

Q. What if minutes are maintained in loose-leaf form?

Ans: It shall be bound periodically depending on the size and volume and coinciding with one or more financial years of the Company.

Q. Who has the absolute discretion to exclude matters from the Minutes which are irrelevant, immaterial or detrimental to the interest of the Company?

Ans: The Chairman.

Q. What if an earlier resolution or decision is superseded or modified?

Ans: It shall contain a reference to such earlier resolution or decision.

Q. Within how many days draft minutes is to be circulated?

Ans: Within fifteen days from the date of the conclusion of the Meeting of the Board or Committee.

Q. Within how many days Directors shall give their comment?

Ans: Within seven days from the date of circulation.

Q. Within how many days Minutes are to be finalized and entered in the Minutes Book?

Ans: Within thirty days from the date of conclusion of the Meeting of the Board or Committee.

Q. Whether minutes can be altered if once entered in the Minutes Book?

Ans: Any alteration shall be made only by way of express approval of the Board at its subsequent meeting in which such minutes are sought to be altered.

Q. Who can sign the minutes?

Ans: The Chairman of the Meeting or by the Chairman of the next Meeting.

Q. In case of minutes maintained in electronic form, how should the signature of the Chairman be affixed?

Ans: The Chairman shall sign the minutes digitally. Scanned signature of the Chairman cannot be affixed.

Q. Minutes shall be preserved for how many years?

Ans: Minutes shall be preserved permanently in physical or electronic form with Timestamp.

Q. Notice, Agenda and other related papers shall be preserved for many years?

Ans: It should be preserved in physical or electronic form for as long as they remain current or for eight financial years, whichever is later and may be destroyed thereafter with the approval of the Board.

Q. In whose custody minutes shall be kept?

Ans: In the custody of Company Secretary or where there is no Company Secretary any Director duly authorized.

Q. Is the observance of Secretarial Standard issued by ICSI mandatory?

Ans: As per Sec 118(10) every Company shall observe Secretarial Standards with respect to General and Board meetings specified by the Institute of Company Secretaries of India constituted under Section 3 of the Company Secretaries Act, 1980, and approved as such by the Central Government.

Q. What if the default is made in complying with the Secretarial Standards in respect of the meeting?

Ans: The Company shall be liable to a penalty of twenty-five thousand rupees and every officer of the company who is in default shall be liable to a penalty of five thousand rupees.



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Activity Report of Chapters of ICSI of EIRC in MARCH 2017

Bhubaneswar Chapter

	Celebration of Women's Day
8th March, 2017	Celebration of Swachhata Pledge Plantation drive initiative
20th March, 2017	Investor Awareness Programme
22nd March, 2017	Management Skills Orientation Programme commencement
24th March, 2017	Evening talk on "Return filing under GST scenario"
31st March, 2017	Open house discussion on the topic "Companies (Removal of names of companies from the register of companies) Rules, 2016"

Dhanbad Chapter

4th March, 2017	Study Circle Meet
8th March, 2017	International Women's Day Celebration
19th March, 2017	Full Day Seminar
25th March, 2017	Study Circle Meet

Hooghly Chapter

8th March, 2017	Celebration of Foundation Day of Hooghly Chapter Celebration of Foundation Day of Hooghly Chapter in association with EIRC of ICSI
19th March, 2017	Investor Awareness Programme
26th March, 2017	1st & 2nd Half Day Workshop of 2017

North-Eastern (Guwahati) Chapter

3 CAREER AWARENESS PROGRAMME were organized during this period.

Ranchi Chapter

22nd March, 2017 & 23rd March, 2017	4th 2-days Induction Programme
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Patna Chapter

11th March, 2017	Study Circle Meeting & Holi Milan
25th March, 2017	Professional Development Programme

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Edited and Published by Mr. DNVS Sarma, Regional Director (EIRO), on behalf of
ICSI-EIRC House, 3A, Ahiripukur 1st Lane, Kolkata-700 019

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