

The Companies Act, 2013 has provided various new definitions and new provisions which did not exist in the erstwhile Companies Act, 1956. Such new concepts have been introduced in view of the global corporate governance trends and to make the Companies accountable for their stakeholders.

InSync in this edition aims at explaining the latest circulars and notification passed by the MCA and SEBI affecting the corporate world.

Companies (Indian Accounting Standards) (Amendment) Rules, 2017

The Ministry of Corporate Affairs has issued the Companies (Indian Accounting Standards) (Amendment) Rules, 2017 vide its notification dated 17.03.2017. These Rules shall come into force from April 1st, 2017.

Key Points

1. **Amendment to Indian Accounting Standard ("AS") 102, share based payment:** The aforesaid notification has, *inter alia*, substituted the paragraph 19 of AS 102. The new amendment states that Vesting conditions, other than market conditions, shall not be taken into account when estimating the fair value of the shares or share options at the measurement date, Instead, vesting conditions, other than market conditions, shall be taken into account by adjusting the number of equity instruments included in the measurement of the transaction amount so that, ultimately, the amount recognised for goods or services received as consideration for the equity instruments granted shall be based on the number of equity instruments that eventually vest.

2. **Treatment of vesting and non-vesting conditions:** The aforesaid Amendment Rules, *inter alia*, has prescribed that Market conditions, such as a target share price upon which vesting (or exercisability) is conditioned, as well as non-vesting conditions, shall be taken into account when estimating the fair value of the cashsettled share-based payment granted and when remeasuring the fair value at the end of each reporting period and at the date of settlement.

These Rules shall come into force w.e.f 01.04.2017

The Rules prescribe that a grant of equity instruments might be conditional upon satisfying specified vesting conditions

The Rules further prescribe that for cash-settled share-based payment transactions, the entity shall measure the goods/services acquired and the liability incurred at the fair value of the liability.

One way to fulfil the disclosure requirement in paragraph 44A is by providing a reconciliation between the opening and closing balances in the balance sheet for liabilities arising from financing activities

3. Amendment to Indian AS 7, Statement of Cash Flows:

The aforesaid notification, *inter alia*, has inserted certain paragraphs after paragraph 44 under Indian AS 7. Paragraph 44A states that "An entity shall provide disclosures that enable users of financial statements to evaluate changes in liabilities arising from financing activities, including both changes arising from cash flows and non-cash changes."

The aforesaid amendment rules has inserted paragraphs from 44 A to 44 E.

The Circular is applicable on the schemes of arrangements filed after the date of the Circular i.e. after 10th March, 2017

Up to 20% of the shares held by the promoters of the post merger paid up share capital of the unlisted issuer will be locked-in for 3 years from the date of listing

The New Circular provides the format for a Detailed Compliance Report which has to be duly certified by the CS, CFO, and MD

The fees to be paid to SEBI in respect of sanctioning of Scheme, is subject to a cap of INR 500,000

Schemes of Arrangement by Listed Entities and (ii) Relaxation under Sub-rule (7) of rule 19 of the Securities Contracts (Regulation) Rules, 1957.

The Securities and Exchange Board of India ("SEBI") has issued a circular dated 10 March 2017, which lays down detailed requirements that listed entities need to comply with while undertaking schemes of arrangements.

Scheme of arrangement between a listed entity and unlisted entity:

There was a grave concern for SEBI that certain large unlisted entities had in the past merged into small listed companies without going through the IPO route and complying with the disclosure requirements under the SEBI ICDR Regulations.

As a result SEBI has prescribed certain rules which are to be followed by listed entities while merging with an unlisted entity:-

- a) Unlisted entities can be merged with a listed entity only if the listed entity is listed on a Stock Exchange having nationwide trading terminals,
- b) The percentage of shareholding of pre-scheme public shareholders of the listed entity and the Qualified Institutional Buyers (QIBs) of the unlisted entity, in the post scheme shareholding pattern of the "merged" company shall not be less than 25%.

Merger of a wholly owned subsidiary ("WOS")

with its parent

SEBI considered the need to ease the procedure for Schemes involving the merger of a WOS with its parent company. To this effect, an amendment was made to the Listing Regulations on 15 February 2017 which stipulated that Schemes which provide for merger of a WOS with its parent will need to be filed directly with stock exchanges for the limited purpose of disclosures. Such Schemes will not require the prior approval of SEBI.

The New Circular has recognised this relaxation and has clarified that the requirements contained therein will not be applicable to a Scheme which solely provides for merger of a WOS with its parent.

Fees payable to SEBI

The listed entity shall pay a fee to SEBI at the rate of 0.1% of the paid-up share capital of the listed / transferee / resulting company, whichever is higher, post sanction of the proposed scheme, subject to a cap of Rs.5,00,000.

Mandatory requirement of providing e-voting facility to the shareholders of the listed entities

The Listed entities shall ensure that the Scheme of Arrangement submitted with the NCLT for sanction, provides for voting by public shareholders through e-voting, after disclosure of all material facts in the explanatory statement sent to the shareholders in relation to such resolution.

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