

First Notes



MCA revised the definition of listed companies

8 March 2021

First Notes on

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Sector

All

Banking and insurance

Information, communication, entertainment

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Relevant to

All

Audit committee

CFO

Others

Transition

Immediately

Within the next three months

Post three months but within six months

Post six months

Forthcoming requirement

Introduction

Certain amendments have been made to the Companies Act, 2013 (2013 Act) through the Companies (Amendment) Act, 2020 (2020 Amendment Act). The 2020 Amendment Act received the assent of the President of India on 30 September 2020. Many sections of the 2020 Amendment Act were notified on 21 December 2020, 22 January 2021 and 11 February 2021 by the Ministry of Corporate Affairs (MCA).

These amendments mainly relate to the decriminalisation of certain compoundable offences and rationalisation of penalties under the 2013 Act as well as those aimed at improving the ease of doing business by corporates in India.

Among those amendments that are aimed at improving the ease of doing business, is an amendment to the definition of a listed company under Section 2(52) of the 2013 Act. The amended definition empowers the Central Government (in consultation with the Securities and Exchange Board of India (SEBI)) to exclude, certain listed companies and private companies with the intention of getting listed certain class of its securities, from the category of 'listed companies'.



New development

On 19 February 2021, MCA amended the Companies (Specification of definitions details) Rules, 2014 (Rules). The amendment inserts new Rule 2A with effect from 1 April 2021. This rule excludes following class of companies from the definition of listed companies:

- i. Public companies which have not listed their equity shares on a recognised stock exchange but have listed their:
 - o Non-Convertible Debt Securities (NCDs) issued on private placement basis in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008 (Debt Regulations)
 - o Non-Convertible Redeemable Preference Shares (NCRPs) issued on private placement basis in terms of SEBI (Issue and Listing of NCRPs) Regulations, 2013 (NCRPs Regulations)
 - o NCDs and NCRPs issued on private placement basis in terms of Debt Regulation or NCRPs Regulation respectively.
- ii. Private companies which have listed their NCDs on private placement basis on a recognised stock exchange in terms of Debt Regulations.
- iii. Public companies which have not listed their equity shares on a recognised stock exchange but whose equity shares are listed on a stock exchange in permissible foreign jurisdiction as specified in Section 23(3)¹ of the 2013 Act.

¹ Section 23(3) has been introduced by 2020 Amendment Act. However, the same has not been notified yet. Section 23(3) empowers the Central Government to allow certain classes of public companies to list classes of securities in foreign jurisdictions.

Our comments

The amendment to the listed company definition is with an aim to promote capital market transactions and boost listing of debt securities, with a strong focus on ease of doing business for Indian companies. This change would relax the definition of a listed company to provide relief from various compliance requirements of the 2013 Act to closely held companies that have listed their debt securities on private placement basis.

Under the current statute, listed companies are subject to more stringent requirements as compared to unlisted private companies. For instance, a listed company is required to adhere to norms such as filing of annual returns, maintenance of records, appointment of auditors, appointment of independent directors and woman director, constitution of board committees, filing reports of annual general meetings, etc. Thus, covering such private companies with debt securities offered on a private placement within the definition of 'listed companies' casts stricter obligations and makes compliance requirements disproportionately burdensome for such companies. Additionally, it dis-incentivises private companies from seeking listing of their debt securities. Therefore, the Company Law Committee (CLC) suggested this amendment in November 2019.

While these amendments reduce the burden from compliances from the 2013 Act, these companies should look at the SEBI requirements. These have been explained below:

- **Applicability of SEBI Listing Regulations:** The SEBI (Listing Obligations and Disclosures Requirements) Regulations, 2015 (Listing Regulations) defines a listed entity as an entity which has listed, on a recognised stock exchange(s), the designated securities issued by it or designated securities issued under schemes managed by it, in accordance with the listing agreement entered into between the entity and the recognised stock exchange(s).

The relaxation provided by the 2013 Act and rules thereunder will not be applicable under the requirements of the Listing Regulations. The Listing Regulations provide separate compliance requirements under Chapter V of the Listing Regulations for listed entities which have listed their NCDs and NCRPs or both on a recognised stock exchange in accordance with Debt Regulations or NCRPs Regulations. Therefore, private companies with listed debt securities offered on a private placement would continue to follow the Listing Regulations.

- **Applicability of PIT Regulations:** The SEBI (Prohibition of Insider Trading) Regulations, 2015 (PIT Regulations) are applicable to a listed company and securities of an unlisted company which are proposed to be listed. However, the PIT Regulations do not define the term 'listed company' and it refers to the Securities and Exchange Board of India Act, 1992, the Securities Contracts (Regulation) Act, 1956, the Depositories Act, 1996 or the Companies Act, 2013 and rules and regulations made thereunder for the definition of words and expressions in PIT regulations.

As there is a change in the definition of a listed company under the 2013 Act but not under the SEBI regulations and PIT Regulations are framed to be applicable to listed companies, SEBI should provide a clarification on the applicability of PIT Regulations to the companies that have been scoped out of the definition of 'listed company' under the 2013 Act.

- **Exemption for foreign listed companies:** The 2020 Amendment Act amended Section 23 to empower the Central Government to allow certain classes of public companies to list classes of securities in permissible foreign jurisdictions. This enables domestic companies to list their securities on a stock exchange in a permissible foreign jurisdiction, without having to undertake a prior or simultaneous listing in India, or alternatively through incorporating foreign holding companies. This notification also provides relief to such foreign listed companies from the compliance requirements applicable to listed companies under the 2013 Act. However, Section 23 of the 2013 Act has not been notified yet. Additionally, MCA would prescribe the rules specifying class or classes of public companies and securities and permissible foreign jurisdictions that would be governed by this section.

The relaxation provided by MCA paves the way for overseas listing by domestic companies. Further, such foreign listed domestic companies would be required to comply with the requirements of the relevant stock exchanges of the foreign jurisdictions.

- **Applicability:** The new Rule 2A which provides the list of exempted listed companies is applicable from 1 April 2021. The companies covered under the recently released relaxation would be exempt from the compliance requirements from next financial year.

The bottom line

The intent of law is to provide relaxation from stringent and detailed compliance of corporate governance requirements that are applicable to listed companies under the 2013 Act. However, as these instruments are listed on stock exchanges and are in public domain, they continue to be regulated by SEBI Listing Regulations. The SEBI regulations provide a graded set of compliances depending on the type of instrument that is listed on the stock exchanges. Therefore, the companies that have been provided relaxations under the 2013 Act should continue to comply with the SEBI Listing Regulations and closely monitor any updates by SEBI with regard to these regulations.



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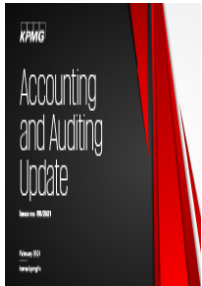


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Issue no. 55 – February 2021



The topics covered in this issue are:

- US GAAP: SEC and PCAOB developments
- The Integrated Reporting Framework: Revisions 2021
- IAASB discussion paper on expectation gap
- Regulatory updates.

MCA notified the Companies (Amendment) Act, 2020

12 February 2021



The Ministry of Corporate Affairs (MCA) issued certain amendments to the Companies Act, 2013 (2013 Act through the Companies (Amendment) Act, 2020 (2020 Amendment Act) which received the assent of the President of India on 30 September 2020.

Further, MCA through its notification dated 21 December 2020 notified certain sections of the 2020 Amendment Act. The notified amendments were mainly relating to decriminalisation of certain compoundable offences and rationalisation of penalties.

Recently on 22 January 2021 and 11 February 2021, MCA notified certain other sections of the 2020 Amendment Act.

This issue of the First Notes provides an overview of the recently notified sections of the 2020 Amendment Act.

Voices on Reporting



KPMG in India is pleased to present Voices on Reporting (VOR) – a series of knowledge sharing calls to discuss current and emerging issues relating to financial reporting.

On 18 January 2021, KPMG in India released the VOR – Quarterly updates publication. The publication provides a summary of key updates from the Securities and Exchange Board of India (SEBI), the Ministry of Corporate Affairs (MCA), the Institute of Chartered Accountants of India (ICAI) and the Reserve Bank of India (RBI) that are expected to be relevant for stakeholders for the quarter ended 31 December 2020.

To access the publication, please click [here](#).

Feedback/queries can be sent to aaupdate@kpmg.com

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