



15.05.2018

Shri Piyush Goyal

Hon'ble Minister of Company Affairs
Ministry of Company Affairs
A Wing, Shastri Bhawan
Dr. Rajendra Prasad Road
New Delhi – 110 001

Subject- Representation on the Companies (Amendment) Act, 2017

Dear Sir,

The Ministry of Corporate Affairs brought the Companies (Amendment) Act, 2017 which was notified on the 3rd of January, 2018. We would like to submit the following representations which, we feel, might facilitate in rendering smooth implementation of the Amendment Act.

1. Section 23 of the Amendment Act –

Amendment with regard to Annual Return (Section 92 of the Companies Act, 2013) requiring to place copy of Annual return on website -

Earlier an extract of the Annual Return (MGT-9) was provided in the Board's Report and the Annual Return (MGT-7) could be filed within 60 days of the occurrence of the AGM. The requirement of the Extract of Annual return (form MGT-9) is proposed to be withdrawn by the Amendment Act 2017 (but not yet implemented). Instead, now the amendment requires the company to "place copy of the Annual Return on the website of the company, if any, and the web-link of such annual return shall be disclosed in the Board's report."

This amendment will cause a procedural difficulty and the following questions arise:

- a) How will the companies who do not have a website comply with this requirement? (Only listed companies are required to have a website)
- b) Whether companies must prepare the Annual Return and have it signed and certified by a Practicing Company Secretary or before the date of the Board meeting where the Board Report is approved, so that the Annual Return can be "disclosed in the Board's report"

Suggestions : Since the Annual Return is required to be filed within 60 days of the date on which AGM is held [section 92(4)], the same may be placed on the website after

2. Section 46 of the Amendment Act

Re-defining the definition of "pecuniary relationship "

- Pecuniary relationship in case of Independent Director – A clarification is sought on the following :
 - with respect to the "total income" to be taken into consideration whether it is
 - the aggregate global income i.e. all income received by the person from the company and its holding company etc including income received in India and from abroad.
 - Whether the total income is to be defined as total income under income tax law or gross receipts or any other method of calculation
 - Whether the remuneration as a director will exclude the sitting fees paid to him?
 - Whether remuneration of director will exclude his remuneration in professional capacity and in other capacity approved by the Nomination & remuneration committee? [Proviso to sub-section (4) of section 197]
- Holding of security or interest in the company of face value not exceeding fifty lakh rupees or two per cent of the paid-up capital of the company – Clarification is sought whether the calculation of 2% will be on aggregate basis for all the relatives put together or whether it is to be considered individually i.e. if any single relative holds 2% or more then the director is not independent. The language states that the limit is 2% per "relative" and therefore leaves scope for alternate interpretation.

3. Section 50 of the Amendment Act

Non-applicability of the deposit of amount for prescribed class of Directors

To appoint a director (other than retiring director) a deposit of Rs 1 lakh is to be given which will be refunded on conditions (section 160). The Amendment Act waives the deposit for appointment of independent directors and directors recommended by the Board of Nomination & Remuneration committee.

The Amendment does not mention appointment of Small Shareholder Director.

Suggestions : We believe that for the appointment of Small shareholder Director also the Deposit of Rs 1 lakh should be waived.

4. Section 51 of the Amendment Act :

Regularizing the appointment of a director who was appointed on Casual Vacancy

The Amendment to subsection (4) of section 161 creates an irregular situation.

The proviso states that the director appointed in Casual Vacancy will hold office upto the date to which the director in whose place he is appointed would have held office if it had not been vacated. This is the same and in accordance with the previous company law. The Amendment states that the appointment of the Casual Vacancy director "shall be subsequently approved by the members in the immediately next general meeting". This is contradictory to the proviso and the previous company law procedure.

Suggestions :

- We request that this anomaly to be clarified.
- If the Casual Vacancy director is to be appointed at the immediate next general meeting then a modification of form DIR-12 is requested as it does not contain any such option which will depict the correct picture.

5. Other Issues –

- a. The name approval is done through the Central Registration Centre (CRC). They do not entertain any verbal conversation or separate submissions through email or otherwise to clarify the situation or give explanations. Whom should we approach to give clarifications, get clarification or even seek redressal if the CRC rejects the name on grounds that are not justified?
- b. Can there be a quasi-judicial authority who can address the grievances for filing and other related issues where no such authority has been prescribed?

We shall be grateful if you kindly consider favourably the suggestions made on the issues highlighted above.

Thanking you,

Yours faithfully,


(Ramesh Agarwal)
President