

CONSTITUTION OF AUDIT COMMITTEE (Transit period of one year may be reduced if ID is appointed)

In terms of section 177(1) of the Companies CA 2013, 2013 (**CA 2013**) read with rule 6 of the Companies (Meetings of Board and its Powers) Rules, 2014 (**Rules**), following companies are required to constitute an audit committee:

- (i) Listed companies; and
- (ii) All public companies meeting the following criteria:
 - (a) paid up capital of INR 10 Crore or more;
 - (b) turnover of INR 100 Crore or more; and
 - (c) aggregate of outstanding loans or borrowings or debentures or deposits exceeding INR 50 Crore or more.

In term of section 177(3) of the CA 2013, every company which was required to constitute an audit committee under section 292A of the Companies Act,1956 (**CA 1956**) (i.e public companies having paid up capital of more than 5 Crores) was required to reconstitute the audit committee in accordance with sub section 2 of section 177 of CA 2013 **within one year I.e by or before 31st March 2015,** (where the committee to have minimum 3 directors with Independent Director (ID) forming a majority).

Published and not Gazetted Notification

Now, the Ministry of Corporate Affairs (MCA) has published and not Gazetted Notification on Companies (Meetings and Powers of Board) Amendment Rules, 2014 dated 12 June 2014 (**Published Notification**, which states that public companies covered under Rule 6 of the Rules which were not required to constitute audit committee under Section 292A of the 1956 Act are obliged to constitute audit committee **within one year** from the commencement of Originally published Rules i.e. published on 01.04.2014 **or appointment of independent directors** by them, **whichever is earlier.**

As per Section 292A of the CA 1956 , only public companies having paid-up capital of not less than INR 5 Crore. However under Section 177 of the 2013 CA 2013 read with rule 6 of the Rules, following companies requires to have Independent Director (ID) and Audit Committee (AC) :

- (i) Listed companies; and
- (ii) All public companies meeting the following criteria:
 - (a) paid up capital of INR 10 Crore or more;
 - (b) turnover of INR 100 Crore or more; and
 - (c) aggregate of outstanding loans or borrowings or debentures or deposits exceeding INR 50 Crore or more.

Thus, under the CA 2013, those public companies which were having paid-up capital of more than 5 Crore but less than 10 Crores and not having Turnover of 100 Crore and Borrowings more than 50 Crore are outside the purview of having ID and AC.

However the companies mentioned above as (ii) (a) (b) and (c) are covered by the Published Notification and which are required to have AC in one year from the commencement of the Rule notified on 01.04.2014 or appointment of independent directors by them, whichever is earlier.

Accordingly , the obligation to constitute an AC within one year is triggered at the time of happening of following, **whichever is earlier:**

- (i) One year from the commencement of the Rules notified on 01.04.2014; or
- (ii) Appointment of independent directors.

Hence, the companies mentioned above as (ii) (a) (b) and (c), if appoints Independent Director (ID) before 31st March 2015 (as Transit period of one year is given), then it shall be obliged to have AC as soon as they appoint ID .
