

# Amita Desai & Co., Company Secretaries, Mumbai

## Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2020

On January 03, 2020, Ministry of Corporate Affairs (MCA) had notified the Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2020 pursuant to which Rule 8A & Rule 9 (1) has been substituted and amended respectively.

### **Rule 8A substituted --- appointment of Whole Time Company Secretary in Companies which are not covered under Rule 8:**

The substituted Rule 8A reads as follow:

*Every private company which has a paid up share capital of **ten crore** rupees or more shall have a whole-time company secretary.*

Accordingly, now all Private Limited Company having paid-up share capital of Rs. 10 crore or more require to appoint a Whole-time Company Secretary. As per the existing provision, this was applicable to every company (private and public) having paid up share capital of Rs.5 crore or more and now the limit has been increased to Rs.10 crore or more.

### **Rule 9(1) – Amended --- Secretarial Audit Report:**

The amended Rule 9 (1) reads as follow:

- a) *Every public company having a paid-up share capital of Rs. 50 crore or more; or*
- b) *Every public company having a turnover of Rs. 250 crore or more; or*
- c) *Every company having outstanding loans or borrowings from banks or public financial institutions of Rs. 100 crore or more.*

**Explanation:** *For the purposes of this sub-rule, it is hereby clarified that the paid up share capital, turnover, or outstanding loans or borrowings as the case may be, existing on the last date of latest audited financial statement shall be taken into account.*

Accordingly, now the Secretarial Audit Report is required not only by Public Company having paid up share capital of Rs.50 crore or more OR having turnover of Rs.250 Crore or more but by every company (**including private limited company also**) having outstanding loans or borrowings from banks or public financial institutions of Rs. 100 Cr. or more.

The link for these Rules is as mentioned below:

[http://www.mca.gov.in/Ministry/pdf/AmdtRules\\_06012020.pdf](http://www.mca.gov.in/Ministry/pdf/AmdtRules_06012020.pdf)

**Conclusion:** Corporate Governance is must for the success of any business and in turn growth of the economy and the country. The Company Secretary (CS) plays an important role in good corporate governance by ensuring compliance under laws. CS plays vital role between the management and public at large. He is considered to be a Gate-Keeper for good governance. The need of hour is to have realistic criteria for the appointment of the CS such

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as turnover and borrowings, where public interest is involved and not just the paid up share capital. However it's a welcoming move of MCA to extend the scope of the secretarial audit to all the companies (including private companies) on the basis new criteria of borrowing of Rs.100 crores or more.

This amendment is going to affect the Company Secretaries in employment with the companies ( both private and public) having paid up capital more than Rs. 5 crore but less than Rs. 10 crore as they may get unemployed. As per the MCA data available as of 31 December, 2014 there are 11,532 such companies so it is quite a noteworthy number. Considering the current job market scenario the timing does not seem to be appropriate and will have even worse impact. Even for the budding company secretaries, this move seems to be quite de-motivating.

ICSI has submitted to MCA following two suggestions to consider and gave the justification that the active companies have proper and significant business operations which triggers compliance with various laws. In absence of services of Whole-Time Company Secretaries, these active companies may be exposed to greater regulatory risk and non-compliance. Further, in such companies, public interest is also involved and following good governance practices becomes more significant:

## Suggestion 1:

Every company which has a paid up share capital of more than Rs.5 Crores & upto Rs.10 Crore **and**

- (a) turnover of Rs.100 crore or more; or
- (b) outstanding loans or borrowings from banks or public financial institutions of Rs.100 crore or more;

shall have a Whole-Time Company Secretary.

## Suggestion 2:

Every company which has:

- (a) a paid up share capital of Rs.10 crore or more; or
- (b) turnover of Rs.100 crore or more; or
- (c) outstanding loans or borrowings from banks or public financial institutions of Rs.100 crore or more;

shall have a Whole-Time Company Secretary.

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