



SEBI TIGHTENS THE NOOSE ON CORPORATE GOVERNANCE FURTHER AND MANDATES ANNUAL SECRETARIAL AUDIT

March 2019

SEBI tightens the noose on corporate governance further and mandates annual secretarial audit

Section 204 of the Companies Act mandates annual secretarial audit for listed companies, public companies having a paid-up share capital of fifty crores or more or turnover of two hundred fifty crores or more. The Circular, while reiterating this mandate for listed companies extends its application and brings their material unlisted Indian subsidiaries too within the ambit. Material subsidiaries, as the SEBI (Listing Obligations and Disclosure Requirements) Regulations define are those subsidiaries whose income or net worth exceeds twenty percent of the consolidated income or net worth respectively, of the listed company and its subsidiaries, in the immediately preceding accounting year. The secretarial audit has to be conducted by a practicing company secretary and the audit report has to be filed before the concerned stock exchange latest by May 30, every year. The Circular shall be effective this year on March 31, 2019.

PSA view – Secretarial functions are critical to efficient board functioning and extending the requirement to subsidiaries will strengthen group oversight as well as improve compliance at a group level too.

Advertisement of shifting of registered office made more cost effective

Rule 30(5) of the Rules requires companies to make an advertisement in case of shifting of registered office from one State or Union Territory to another State or Union Territory, in e-Form INC-26 in English language in an English newspaper and in principal vernacular language in a vernacular newspaper, with the widest circulation in the State in which the registered office of the company is situated. “Widest circulation” would mean that advertisement has to be given in newspapers having widest circulation in the State in terms of number of copies sold. This adds to the cost of shifting registered office as cost of advertisement is very high in well circulated newspapers, leave alone widest circulated newspapers. MCA has now relaxed this rule by substituting words “widest circulation” with the words ‘wide circulation’. Now, shift in registered office will require publication in a newspaper having wide circulation and not the widest. This amendment has been effective from March 6, 2019.

PSA view – While an advertisement in “widest circulated” newspaper would definitely have a greater outreach, the amendment definitely brings in more practicality from a costs standpoint considering information about a company’s registered office is, in any event, available online on MCA’s portal.

By:

Mansi A. Gambhir



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