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GOVERNMENT OF KERALA

Planning & Economic Affairs (BPE) Department

PLGEA-BPE3/34/2020-PLGEA Thiruvananthapuram, Dated : 26/02/2020

CIRCULAR

Sub: The Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2020-instructions issued.

Ref: Circular No. PLGEA-BPE3/49/2019-PLGEA dated 08.04.2019.

Through the Circular referred above, all listed companies, every public company having paid-up share capital of Rs. 10 Cr. or more and every other company having paid-up share capital of Rs. 5 Cr. or more were directed by the Government to appoint whole-time Company Secretary, as per the provisions of Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014.

2. Now the Ministry of Corporate Affairs (MCA) has made certain rules to amend the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 prescribed under the Companies Act, 2013, in order to regulate the overall management of body corporates and their adherence of corporate law and governance. These rules called the Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2020 were notified by the MCA on 3rd January, 2020 and shall be applicable in respect of financial years commencing on or after 1st April, 2020.

3. The amendment substituted Rule 8A to provide that every private company which has a paid-up share capital of Rs. 10 crore rupees or more shall have a whole-time Company Secretary. The amendment added sub-rule C to Rule 9, thereby mandating that every company having outstanding loans or borrowings from banks or public financial institutions of Rs. 100 crore or more, shall annex

with its Board's report a Secretarial Audit report given by a Company Secretary in practice, made in Form No. MR.3.

The amendments made and the effects thereof are explained below:

Rule 8A - Appointment of whole-time Company Secretaries

Rule 8A has been substituted as: *"Every private company which has a paid-up share capital of ten crore rupees or more shall have a whole-time company secretary."*

Effect of Amendment

The threshold of paid up share capital for the purpose of appointment of whole-time Company Secretary in a private limited company has been increased to Rs. 10 crores. Previously, companies with a paid-up share capital of Rs. 5 crores or more were mandated to appoint a whole-time Company Secretary.

Rule 9 - Secretarial Audit - Applicability

In the said rules, in rule 9 of the said rules, in sub-rule (1), after clause (b), at the end the word "or" shall be inserted. Further, after clause (b), the following clause shall be inserted, namely: *"(c) every company having outstanding loans or borrowings from banks or public financial institutions of one hundred crore rupees or more."*

The following explanation has been inserted, namely - *"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."*

Effect of Amendment

Earlier every listed company and every public company having a paid-up share capital of Rs. 50 crore or more or having a turnover of Rs. 250 crore or more only were covered under the ambit of Rule 9 and required to carry out a secretarial audit. The amended rules have extended the ambit of Rule 9 to every company that has outstanding loans and borrowings from banks or public financial institutions of Rs.100 crore or more. Secretarial audit will lead to better

compliance with the Companies Act and would lead to early detection of non-compliances which would enable authorities to take corrective action.

4. The Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2020 have thus expanded the scope of mandatory secretarial audit covering all companies where loans or borrowings is Rs. 100 crore or more. At the same time, provisions related to mandatory appointment of whole-time Company Secretary has been relaxed and henceforth companies with paid-up share capital of Rs. 10 crore or more only would be mandatorily required to appoint a whole-time Company Secretary. Chief Executive Officers/Managing Directors of all State Public Sector Undertakings are directed to take note of the above amendments for compliance.

**DR. A JAYATHILAK IAS
PRINCIPAL SECRETARY**

To

All Administrative Departments in Government Secretariat.
The Managing Directors/Chief Executive Officers of
all Public Sector Undertakings.
✓ Information & Public Relations (Web & New Media) Department
(For uploading in the official website).
Stock File/Office copy.

Forwarded/ By Order,



Section Officer.