

INDEPENDENT DIRECTORS

The Ministry of Corporate Affairs (MCA) came out with some clarifications in relation to the rules governing appointment of independent directors under the Companies Act, 2013 (Act). These deal primarily with the interpretation of the term 'pecuniary relationship' and clarify the provisions regarding term of appointment under the Act.

The clarifications are as summarized below:

- i. **Meaning of 'pecuniary relationship'**: The MCA has clarified that any pecuniary relationship based on transactions entered into on par with any member of the general public with the company, and at the same price paid / to be paid as such member, would not be considered as a 'pecuniary relationship' for the purpose of section 149(g)(c) of the Act. Similarly, any remuneration received from the company in relation to services provided, expenses incurred by the independent director would not be considered as a 'pecuniary relationship' for the purpose of section 149(g)(c) of the Act.
- ii. **Appointment of independent directors**: In relation to queries whether independent directors appointed prior to April 1, 2014 would have to remit office and be re-appointed in terms of the Act, it was held that any such appointment would have to be made expressly in terms of section 149(10) and section 149(11) of the Act, read with Schedule IV to the Act, compliant with all eligibility and other conditions. On the issue of appointment, it was also clarified that although section states that an independent director may be appointed for a term of not more than 5 consecutive years, an appointment for any term is to be treated as one term under section 149(10) of the Act, and no independent director may be appointed for more than two such consecutive terms, except after the requisite three-year cooling off period. Further, any appointment of independent directors would have to be through an appointment letter setting out the terms and conditions thereof, under Para IV(4) of Schedule IV to the Act.