

# Article

## Decoding section 12(3)(c) of The Companies Act, 2013

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## Article

The Companies Act, 2013 (“Act, 2013”) is very interesting in its own accord. Various new provisions and rules have found their due place into the Act, 2013 which makes it a new corporate game altogether. However, certain issues raised by the Act, 2013, are ambiguous despite the enforcement of allied rules and compliance requirements. Just as a judge refers to previous judgments to give a judgement, in line with the law of land, we need to refer to the Companies Act, 1956 (“Act, 1956”) and even some of the recommendations and interpretations provided by certain well known committees like the Cohen Committee Report, on which the Act, 1956 was largely based, to resolve these ambiguities.

One such issue faced currently is sub-section 3(c) of Section 12 of the Act, 2013. As per the provisions of this sub section:

*“Every Company shall –*

*XXX*

*get its name, address of its registered office and the Corporate Identity Number along with telephone number, fax number, if any, e-mail and website addresses, if any, printed in all its business letters, billheads, letter papers and in all its notices and **other official publications**;*

*XXX*

*Provided that where a company has changed its name or names during the last two years, it shall paint or affix or print, as the case may be, along with its name, the former name or names so changed during the last two years.”*

[Emphasis supplied]

Although most of the documents where the information has to be printed are stated in the section, the words “*other official publications*” leave a room for various interpretations and value-judgments. The same has not been clarified either in the Act, 2013 or in the Rules prescribed for the Act, 2013.

Since the provision of this section has been incorporated from Act, 1956 and no specific rule has been prescribed for the same, the intent of the provision shall be constructed on similar lines as it was in Act, 1956. Hence, to sort out the confusion, as to what would comprehensively be included under and form part of “*other official publication*,” we need to take resort to interpretations as provided under the Act, 1956 and various clarifications and committee reports.

### **Section 147 of Companies Act, 1956**

It is observed that even as per the requirements of sub-section (1)(c) of Section 147, a company is required to publish its name and the address of its registered office in “*other official publications*”, amongst various other documents. In a clarification,



## *Article*

regarding the given section, the Department of Company Affairs expressed the view, “As the expression, “notice” has not been defined in the Companies Act, 1956 or in the General Clauses Act, the word “notice” should be liberally constructed in the context of Section 147.” (*Company News & Notes, dated 1<sup>st</sup> July, 1963*).

### **Cohen Committee Report**

The Cohen Committee was appointed in the year 1943 for the reformation of the Company Law of the United Kingdom. Amongst its various recommendations, it conceded the view that the word “advertisement” should be deleted from the provisions of Section 93 of the English Act, 1929 as it had been disregarded in practice and no likely harm was to be caused by such a practice.

### **Construing the meaning of “official publication”**

Making reference to the Cohen Committee report, the Companies Act Amendment Committee, 1957, pointed out that the requirement of sub-section (1)(c) of Section 147 of Act, 1956 to mention the details of name and the address of registered office, in full in all sort of advertisements causes inconvenience to the business houses, who use their trade mark or the brand name to increase the sales.

The Committee noted that in practice, companies advertised using the brand name of their products or the trade-mark and avoided the usage of the complete registered name of the company or the publication of the address of its registered office in advertisements other than the press releases. However, commercial advertisements, such as dealer aids, display material hoardings, posters, mobile advertisements, radio, cinema slides, etc. were kept out the purview. Moreover, the phrase “*notices and other official publications*” were wide enough to include important business advertisements.

Imbibing the views expressed by the Companies Act Amendment Act, 1957, it may be interpreted that the phrase “*other official publications*” shall not include any type of commercial advertisements which include product brochures, hoarding boards, signage, television commercials, radio announcements, pamphlets, etc. Also, as visiting cards do not fall into the category of official publications, printing all the required information in it is not necessary.

However, the meaning of the phase “*other official publications*” remains open for debate until any concrete rules are enforced by the Ministry of Corporate Affairs or a clarification is issued by the Department. Hence, if any company prints the above mentioned information in its commercial advertisements, it shall not be considered as a violation of the law.

## *Article*

### **Conclusion**

Section 12 (3)(c) of the Act, 2013 has come into force from 1<sup>st</sup> April, 2014. Hence, as per the provisions, companies need to get their business letters, bill heads and letter heads reprinted to incorporate the changes in them, to comply with the provisions of Act, 2013. A change shall also be needed in the email signature of the company to include the various information requirements of the Act, 2013.

Moreover, if a company has changed its name at any time in the preceding two years, it shall print its former name in all its documents. This will again need a reprint after the expiry of two years from the change of name, as the company shall no longer require to comply with the proviso to the sub-section.

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