

# Info Capsule

## **MCA ADVISED PERSON WHO ARE DISQUALIFIED u/s 164(2) (a) NOT TO ACT AS A DIRECTOR<sup>1</sup>**

Ministry Of Corporate Affairs has advised that *any person who has been disqualified under section 164(2) of the Companies Act, 2013, not to act as director during the period of the disqualification.*

The ministry has also advised that *such person shall not file any document or application with MCA as the same shall be summarily rejected.*

Furthermore, the MCA has also stated that this shall be without prejudice to the liability of the said person for violation of section 164(2) read with section 167 of the Companies Act, 2013 including the action under section 448 read with 447 of the wherever warranted.

## **MCA ISSUED CLARIFICATION REGARDING DEFINITION OF “JOINT VENTURE” UNDER COMPANIES (APPOINTMENT AND QUALIFICATION OF DIRECTORS) AMENDMENT RULES, 2017<sup>2</sup>**

Ministry Of Corporate Affairs vide its *General Circular No.1,/22/2013-CL-Y* dated **5th September, 2017** has issued a clarification regarding meaning of the term “Joint Venture” for the purposes of availing exemption under Rule 4 of the Companies (Appointment and Qualification of Directors) Amendment Rules, 2017.

The Ministry, vide notification number G.S.R. 839(E) dated 5th July, 2017 issued the Companies (Appointment and Qualification of Directors) Amendment Rules, 2017 inter-alia amending Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014.

The said amended Rule 4 inter-alia provided that an unlisted public company which is a joint venture, a wholly owned subsidiary or a dormant company will not be required to appoint Independent Directors.

*The stakeholders have sought clarifications* from the Ministry with regard to the meaning of joint venture for the purposes of availing exemption under Rule 4 of the aforesaid Rules as such a term is not defined in the Companies Act 2013.

***The issue has been examined in the Ministry and it has been clarified that-***

*“A “Joint Venture” would mean a joint arrangement, entered into in writing, whereby the parties that have joint control of the arrangement, have rights to the net assets of the arrangement. The usage of the term is similar to that under the Accounting Standards. ”*

<sup>1</sup>Available at: <http://www.mca.gov.in/>

<sup>2</sup>Available at: [http://www.mca.gov.in/Ministry/pdf/GeneralCircular\\_05092017.pdf](http://www.mca.gov.in/Ministry/pdf/GeneralCircular_05092017.pdf)

## **STRICTER NORMS FOR CORPORATE GOVERNANCE: PUNISHMENT FOR SIPHONING OFF MONEY FROM BANK ACCOUNTS OF “STRUCK OFF” COMPANIES; DISQUALIFICATION OF DIRECTORS FROM BEING APPOINTED OR REAPPOINTED IN COMPANIES<sup>3</sup>**

In continuation of the Government’s resolve to strengthen the rules and procedures of Corporate Governance, the Government took some major decisions to further strengthen these norms.

It has been decided that in case the Director or authorized signatory of any “struck off” company tries to unauthorized siphon-off money from its bank account, he/she may attract punishment of imprisonment of not less than six months extendible to 10 years. If it is found that the fraud involves public interest, the punishment shall not be less than 3 years and fine may also be imposed which would be three times the amount involved.

Consequent to instructions issued by Department of Financial Services (DoFS) to all the Banks on 5th September 2017, the Directors (ex-) or their authorized signatories had been restricted from operating the Bank accounts of such companies and they cannot siphon off money from the accounts of these “struck off” companies. However, even prior to such action, if they have siphoned off any money, strict action would still be taken against them.

In a Review Meeting chaired by the Minister of State for Corporate Affairs, Shri P.P. Chaudhary, it was also decided that the Directors of such shell companies which have not filed returns for three or more years, will be disqualified from being appointed in any other company as Director or from being reappointed as Director in any of the companies where they had been Directors, thereby compelling them to vacate office. It is expected that as a result of this exercise, at least two to three lakh of such disqualified Directors shall get debarred.

Apart from the action restricting the operation of bank accounts of these companies and consequential effect on the Directors, all efforts are also being made to identify the actual beneficiaries and persons behind such Shell Companies. Profiles of Directors such as their background, antecedents and their role in the operations/functioning of these companies are being compiled in collaboration with enforcement agencies. Identification of more Shell Companies is also in progress.

The Professionals, Chartered Accountants/ Company Secretaries/ Cost Accountants associated with such Shell Companies and involved in illegal activities have been identified in certain cases and the action by Professional Institutes such as ICAI, ICSI and ICAoI are being monitored.

The MoS (Corporate Affairs) Shri Chaudhary said that as a result of the exercise of weeding out shell companies, it would not only help in checking the menace of black money but also would promote an ecosystem of “Ease of Doing Business” and enhancing investors’ confidence to which the present Government is fully committed. He said that the financial status of the companies would be reflected in a true and fair manner which would minimize the possibility of frauds and tax evasion. Further, the availability of funds for illegal purposes will also be choked. Shri Chaudhary concluded that the interest of stakeholders would be fully protected and the image of the country in the global business arena and fora would substantially improve.

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<sup>3</sup> Available at: <http://www.pib.gov.in/newsite/erelease.aspx>

Earlier, pursuant to the action of the Ministry of Corporate Affairs of removing/striking-off and consequent cancellation of the registration of around 2,09,032 shell companies, the Department of Financial Services, Ministry of Finance had directed all the Banks to restrict operations of bank accounts of such companies by the Directors of such companies or their authorized representatives.

The decision to restrict the operation of the bank accounts of such shell companies was also taken in a Review Meeting held by the Minister of State for Corporate Affairs Shri. Chaudhary, immediately after taking over the charge of the Ministry. In the meeting, the Minister had stressed upon the need of taking holistic steps and expeditious action for addressing the menace of the shell companies and their role in money laundering and black money circulation. He had then asked the Secretary, Ministry of Corporate Affairs to take-up the issue immediately with DoFS, Ministry of Finance to ensure that banks are instructed to restrict operations of bank accounts of shell companies. DoFS, in turn, took prompt action in this regard and advised the Banks to take expeditious action accordingly.

### ***Team ICSI***

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