

RECENT MCA CIRCULARS AND NOTIFICATIONS

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Topics of Discussion

2

- ❑ The Companies (Amendment) Ordinance, 2018
- ❑ Declaration at the time of commencement of business
- ❑ Transfer of Certain Powers from NCLT to Central Government (RD)
- ❑ Changes in Registration of Charges
- ❑ Companies (Adjudication of Penalties) Amendment Rules, 2019
- ❑ Form DPT-3
- ❑ Form MSME-I
- ❑ Form INC-22A - ACTIVE
- ❑ Companies (Significant Beneficial Owners) Amendment Rules, 2019
- ❑ Dematerialisation of Shares in Unlisted Public Companies
- ❑ New Requirements for filing Form STK-2
- ❑ New Rules on Name Reservation
- ❑ Other Changes in respect of Incorporation
- ❑ Other Circulars and Notifications

The Companies (Amendment) Ordinance, 2018

3

- Based on the Recommendations of the Committee to Review Offences headed by the Secretary to MCA released in August, 2018
- Replaced by the Companies (Second Amendment) Ordinance, 2019
- Provisions take effect from 02.11.2018
- Major amendments:
 - Re-introduction of declaration of commencement of business
 - Reducing burden on NCLT by transferring certain powers of NCLT under Section 2(41) and Section 14
 - Removal of the option to apply for condonation of delay for registration of creation and modification of charges
 - Introduction of ad-valorem fees in certain cases of delay, besides levy of additional fees
 - Reclassification of 16 types of corporate offences as defaults on which penalties are imposed instead of fines
 - Strengthening of in-house adjudication mechanism

Declaration for commencement of business

4

- **Applicability:** Companies incorporated on or after 02.11.2018 and having a share capital; Pre-requisite for commencement of business or exercise of borrowing powers.
- **Companies (Incorporation) Fourth Amendment Rules, 2018 dated 18.12.2018** provides for the details in this regard.
- Declaration shall be filed by a director in **Form No. INC-20A within 180 days** of incorporation and shall be certified by a practising professional, stating that every subscriber to the memorandum has paid the value of the shares and that verification of its registered office is done.
- Approval from sectoral regulators, if any, shall be obtained and attached.
- Default attracts penalty of Rs. 50,000 for companies and Officers in Default are liable for a penalty of Rs.1,000 for each day of delay.
- **Non-compliance with the aforesaid provisions becomes a ground for striking-off of the company's name from the Register of Companies.**

Transfer of Certain Powers from NCLT to Central Government (RD)

5

- Following the Ordinance, Companies (Incorporation) Fourth Amendment Rules, 2018 were issued on 18.12.2018 to provide for the procedure.
- **New Rule 40 – Application under sub-section (41) of section 2 for change in financial year** - Shall be made in e-form RD-1 along with specified documents and grounds for application.
- **New Rule 41 – Application for conversion of public companies to private companies** - Application shall be made, within 60 days from the date of passing of special resolution, be filed with RD in e-Form No. RD-1.
- **General Circular No. 03/2019 dated 11.03.2019** clarifies that till the revised Form RD-1 is deployed, **RDs shall process the above applications if ‘others’ is selected** for the aforesaid applications and shall not be rejected merely because ‘others’ is selected.

Changes in Registration of Charges

6

- For charges created before the Ordinance, the Registrar can permit extension up to 300 days from the date of creation; or within six months from the date of commencement of the Ordinance.
- For charges created after the Ordinance, the Registrar can permit extension up to 60 days from the date of creation. In case of default, the Registrar may, on an application, allow such registration to be made within a further period of 60 days after payment of such *ad valorem* fees as may be prescribed.
- The **Companies (Registration of Charges) Amendment Rules, 2019** were issued **on 30th April, 2019** to prescribe additional and ad valorem fees.
- The Forms CHG-1, CHG-8 and CHG-9 are also being amended.
- **Option for condonation of delay by RD is applicable only for satisfaction of charges (beyond 300 days) and not in respect of creation or modification;** condonation is also available for rectification of details in respect of creation/modification/satisfaction of charges.

Additional / Ad-valorem Fee Structure for Creation or Modification of Charges

7

- **Charges created or modified before 02.11.2018:**
 - ▣ Up to 30 days - 2 times of normal fees
 - ▣ More than 30 days and up to 60 days - 4 times of normal fees
 - ▣ More than 60 days and up to 90 days - 6 times of normal fees
 - ▣ More than 90 days and up to 180 days - 10 times of normal fees
 - ▣ More than 180 days - 12 times of normal fees
- **Charges created or modified on or after 02.11.2018:**
 - ▣ **Payable up to 31.07.2019, by all companies**
 - Up to 30 days - 2 times of normal fees
 - More than 30 days and up to 60 days - 4 times of normal fees
 - More than 60 days and up to 90 days - 6 times of normal fees
 - ▣ **With effect from 01.08.2019:**
 - Up to 30 days - 3 times of normal fees (small companies and OPC) - 6 times of normal fees (Others)
 - More than 30 days and up to 90 days - 3 times of normal fees + **0.025 %** of the charge amount maximum Rs. 1 Lakh (small companies and OPC) - 6 times of normal fees + **0.05 %** of the charge amount maximum Rs. 5 Lakh (Others)

Companies (Adjudication of Penalties) Amendment Rules, 2019

8

- In order to strengthen the in-house adjudication mechanism and pursuant to the Recommendations of the Committee to Review Offences, MCA has issued the amendment to the **Companies (Adjudication of Penalties) Amendment Rules, 2019 on 19.02.2019.**
- The maximum period to be allowed for replying to show cause notice issued by the adjudicating officer has been reduced from 45 days to 30 days.
- Reply to such notice shall only be in electronic mode once the e-adjudication platform is set up.
- Time limits for passing of order by the adjudicating officer are given to make it a time-bound process.
- The adjudicating officer may require physical appearance of any person; however, the reasons for requiring such physical appearance shall be clearly stated in his order.

Form DPT-3 – Filing of Exempt amounts under Rule 2(1)(c)

9

- **Companies (Acceptance of Deposits) (Amendment) Rules, 2019 dated 22.01.2019** mandated filing of Form DPT-3 in respect of exempt amounts under Rule 2(1)(c) of the Deposits Rules for all Companies other than Government Companies.
- **Rule 16A(3):** One-time return was required to be filed for the outstanding exempt amounts under Rule 2(1)(c) as on 22.01.2019 (now changed to as on 31.03.2019)
- **Explanation to Rule 16:** Annual return is also required in respect of exempt amounts to be filed on or before 30th June, every year containing information as on preceding 31st March.
- **General Circular No. 05/2019 dated 12th April, 2019** extended due date to 30 days from the deployment of the Form.
- **Companies (Acceptance of Deposits) Second Amendment Rules, 2019 issued on 30.04.2019** provides that:
 - the information for one-time return shall be in respect of outstanding receipt of exempt amounts from **01.04.2014 to 31.03.2019** (instead of the date of original notification) and
 - extending the date of filing the Form to **90 days from 31.03.2019** i.e. 29.06.2019.

Form DPT-3 – Filing of Exempt amounts under Rule 2(1)(c)

10

Important exempt amounts under Rule 2(1)(c):

- ❑ Any amount received from a director by any company or from directors' relatives by a private company;
- ❑ Any unsecured loan advanced by promoter on stipulation of a bank or financial institution;
- ❑ Any amount received from another company (inter-corporate deposits);
- ❑ Any amount received from any Government or local authority, or from foreign sources subject to compliance with FEMA Regulations;
- ❑ Any amount received as application money for securities issued by a company and allotted within 60 days or refunded within 15 days thereafter;
- ❑ Amount received on debentures/bonds secured by 1st charge/compulsorily convertible within 10 years of issue/listed;
- ❑ Security deposit received from employees or any amount held in trust (non-interest bearing);
- ❑ Amount received as advance from customers.

Form MSME-I

11

- MCA issued the Specified Companies (Furnishing of information about payment to micro and small enterprise suppliers) Order, 2019 on 22.01.2019.
- All companies who get supplies of goods or services from micro and small enterprises suppliers and whose payments to such suppliers exceed 45 days from the date of acceptance (or deemed acceptance) of the goods or services are covered under “**Specified Companies**” for the purpose of this disclosure.
- The disclosure shall be made in MSME Form I and is to be filed as follows:
 - ▣ **one-time return for the amount outstanding as on 22.01.2019 and**
 - ▣ **subsequently for every half-year within 30 days from the end of the half-year.**
- The form was deployed on 01.05.2019 and shall be filed within 30 days from the date of deployment i.e. **by 30.05.2019**. (vide General Circular No. 01/2019 dated 21.02.2019)
- Information is required invoice-wise with details of name of the supplier, PAN, date from which the amount became due and the financial year to which it pertains, along with reasons for delay in payment.

Form INC-22A - ACTIVE

12

- **Rule 25A was inserted vide Companies (Incorporation) Amendment Rules, 2019 w.e.f. 25.02.2019 to provide for filing of Form INC-22A ACTIVE.**
- **Applicability:** Every company incorporated on or before 31.12.2017.
- **Exempt companies:** struck-off / under process of striking off / under liquidation / amalgamated / dissolved companies.
- **Original due date:** 25.04.2019; **Extended to: 15.06.2019** (vide Companies (Registration Offices and Fees) 2nd Amendment Rules, 2019 on 25.04.2019).
- **Pre-requisites:** Up-to-date filing of financial statements and annual return; Directors must have “Approved” DIN status, and other appointments must be made; Photos of registered office and directors in registered office and details of latitude longitude of the registered office is required.
- **General Circular No. 06/2019 dated 13.05.2019:** If **Form GNL-2 was used to file Form ADT-1 for appointment of auditors** for the period from 2014-15 to 2018-19 during 01.04.2014 to 20.10.2014, re-filing of ADT-1 is permitted, with fee relaxation till 15.06.2019.

Form INC-22A - ACTIVE

13

Consequences of non-filing of Form ACTIVE:

- A company which has not filed the form shall be marked **“ACTIVE-non-compliant”** after **15.06.2019** and shall be liable for action under Section 12(9) of the Act.
- The company shall be marked **“ACTIVE-compliant”** if the form is filed with a fee of Rs.10,000.
- **“ACTIVE-non-compliant”** companies shall not be allowed to file Forms **SH-07, PAS-03, DIR-12 (except for cessation), INC-22 and INC-28 (amalgamation, demerger).**
- As per the Companies (Appointment and Qualification of Directors) Second Amendment Rules, 2019 dated 16.05.2019, Directors shall be marked as ‘Director of ACTIVE non-compliant company’ till the Form is filed in respect of all companies in which they are directors.

Companies (Significant Beneficial Owners) Amendment Rules, 2019

14

- Requirement introduced by **Companies (Amendment) Act, 2017** in new Section 90. Companies (SBO) Rules, 2018 were issued on 14.06.2018.
- **The Companies (SBO) Amendment Rules, 2019 dated 08.02.2019 was issued to give more clarity for identification of significant beneficial owners and their reporting.**
- **New definitions** have been given in respect of significant beneficial owner, majority stake, control, significant influence, circumstances under which individuals are deemed to be “acting together”, and reporting company.
- **Widened list of exemptions in respect of shares held by:** IEPF Authority, a holding reporting company (subject to reporting in Form No. BEN-2), the Central/State Government or any local authority or by any reporting company/entity controlled by the Government, SEBI registered investment vehicles, investment vehicles regulated by RBI, PFRDA and IRDAI.

Companies (Significant Beneficial Owners) Amendment Rules, 2019

15

- **Significant Beneficial Owner is an individual** who satisfies any of the following criteria:
 - ▣ holds at least 10% of shares/voting rights (indirectly, taken together with any direct holdings)
 - ▣ right to receive or right to participate in at least 10% of the total distributed dividend (through indirect holdings, taken together with any direct holdings)
 - ▣ has right to exercise or actually exercises of significant influence or control (other than through direct holdings alone)

- **“Direct holdings”** shall include both the shares held in the individual’s name as well as those held by way of beneficial interest and in respect of which Form MGT-5 as mandated under Section 89 is filed.

Companies (Significant Beneficial Owners) Amendment Rules, 2019

16

Identification of indirect holdings involves analysis of the persons controlling the members of the reporting company. **If the member is:**

- ❑ **A body corporate (BC) (other than LLP):** The **individual** who holds **majority stake** (having more than 50% of shares or voting rights or access to dividends) in that BC or in the ultimate holding company of the BC.
- ❑ **A partnership firm (through itself or a partner):** The **individual** who is a partner of the firm / holds majority stake in BC which is a partner of the firm / ultimate holding company of the BC which is a partner of the firm.
- ❑ **A HUF (through Karta):** The **individual** who is the Karta of the HUF.
- ❑ **Trust (through trustees):** The **individual** who is a Trustee in case of a discretionary trust or a charitable trust, a Beneficiary in case of a specific trust and an Author in case of a revocable trust
- ❑ **A pooled investment vehicle or an entity controlled by it :** The **individual** who is a general partner, an investment manager or a CEO where the Investment manager of such pooled vehicle is a BC or a firm.

Companies (Significant Beneficial Owners) Amendment Rules, 2019

17

- **Duty of Reporting Company – Rule 2A:**
 - Take necessary steps to find out if there is any individual who is an SBO.
 - In all cases where its member (other than an individual), holds not less than 10% of its shares/voting rights/access to dividends, give notice to such member, seeking information as per Sec. 90(5), in Form No. BEN-4.
 - Mandatorily apply to the Tribunal for suspension of rights on such shares, in case reply to Form BEN-4 is not received.
- **Duty of Significant Beneficial Owner – Rule 3:** Every existing SBO must file a declaration in Form No. BEN-1 to the company within 90 days from commencement (i.e. by 08.05.2019).
- New SBOs and any changes must be reported within 30 days of becoming SBO / change.
- **Filing of Form BEN-2 by reporting company:** Reporting company shall file a return in Form No. BEN-2 on receipt of Form BEN-1, within 30 days from the date of receipt of declaration (30 days from the date of deployment of form – General Circular No. 07/2018 dated 06.09.2018).

Compulsory Dematerialization of Shares

18

- ❑ **Section 29** of the Act provides that listed companies and such other prescribed classes of companies shall issue securities only in demat form.
- ❑ Companies (Prospectus and Allotment of Securities) Third Amendment Rules, 2018 dated 10.09.2018 w.e.f. 02.10.2018:
Mandating the requirement to issue securities in dematerialized mode for all unlisted public companies, by **inserting Rule 9A**.
- ❑ Companies (Prospectus and Allotment of Securities) Amendment Rules, 2019 dated 22.01.2019:
Exemption to Nidhis, Government companies and wholly-owned subsidiaries from the above requirement.
- ❑ Companies (Prospectus and Allotment of Securities) Third Amendment Rules, 2019 dated 22.05.2019 w.e.f. 30.09.2019:
Instead of the Reconciliation of Share Capital Audit Report under Regulation 55A, every unlisted public company governed by this rule shall **submit Form PAS-6 to the Registrar within 60 days from the conclusion of each half year duly certified by a company secretary in practice or chartered accountant in practice.**

New Requirements for Form STK-2

19

- **Companies (Removal of Names of Companies from the Register of Companies) Amendment Rules, 2019** - issued on 08.05.2019, w.e.f. 10.05.2019
- **Filing of pending returns:**
 - No application in Form No. STK-2 shall be filed by a company unless it has filed overdue returns in Form No. AOC-4 or AOC-4 XBRL, as the case may be, and Form No. MGT-7, up to the end of the financial year in which the company ceased to carry its business operations;
 - In case a company intends to file Form No. STK-2 after the action under sub-section (1) of section 248 has been initiated by the Registrar, it shall file all pending overdue returns before filing Form No. STK-2.
- **Filing fee** for Form STK-2 shall be Rs.10,000/- instead of Rs.5,000/-
- **Format of statement of accounts** shall be in new Form No. STK-8.
- Once notice in Form No. STK-7 is issued by the Registrar pursuant to action initiated under Section 248(1), a company shall not be allowed to file Form No. STK-2.

New Name Reservation Rules

20

- ❑ **MCA issued the Companies (Incorporation) Fifth Amendment Rules, 2019 on 10.05.2019.**
- ❑ Various new illustrations to explain the name reservation restrictions have been added to provide more clarity.
- ❑ Names covered under the provisions of Emblems and Names (Prevention and Improper Use) Act, 1950 shall be permitted if previous permission has been obtained under that Act. Before amendment, these names were altogether prohibited.
- ❑ The provisions related to the name restrictions were all contained in Rule 8 of the Companies (Incorporation) Rules, 2014. Now, Rule 8 has been substituted with a new Rule 8 and these provisions have been split into three different Rules as follows:

Description	Before	After
Undesirable names	Rule 8(2)	New Rule 8A
Names too nearly resembling with existing co.	Rule 8(1)	New Rule 8
Words requiring previous approval of CG	Rule 8(6)	New Rule 8B

Other Changes in respect of Incorporation

21

- MCA issued the Companies (Incorporation) Third Amendment Rules, 2019 dated 29.03.2019: The application (SPICe) for incorporation of a company shall be accompanied by a linked e-form AGILE (INC-35) **w.e.f. 31.03.2019.**

As per the Rules, the facility for application shall be made available as follows: (a) GSTIN with effect from 31.03.2019; (b) EPFO with effect from 08.04.2019 and (c) ESIC with effect from 15.04.2019.

- Companies (Incorporation) Sixth Amendment Rules, 2019 dated 07.06.2019 w.e.f.15th August, 2019: Application for **Section 8 licence** for new companies shall be made through SPICe Form. Form INC-12 shall be used only in respect of existing companies.
- **Manufacturing and allied activities were restricted in LLPs** vide OM No. CRC/LLP/e-Forms dated 06.03.2019. Now, in response to representations, **MCA has withdrawn the aforesaid OM.** Hence, now it is possible for incorporating LLPs for carrying on manufacturing and allied activities also.

Other Circulars and Notifications

22

- NCLT (Second Amendment) Rules, 2019 dated 08.05.2019 provides for the eligibility criteria for members to initiate **class action suits** under Section 245.
- Companies (Appointment and Qualification of Directors) Amendment Rules, 2019 dated 30.04.2019 - The **due date for DIR-3 KYC** has been changed to **30th June** from 30th April of every year.
- Companies (Cost Records and Audit) Amendment Rules, 2018 as notified vide G.S.R. I 157(E) dated 03.12.2018 brought companies belonging to a few more sectors under the purview of cost audit. **General Circular No. 4/2019** dated **04.04.2019** was issued **to extend the last date for filing of e-form CRA-2-** Form of Intimation of appointment of cost auditor by the company to Central Government in the abovementioned cases without payment of additional fees upto 31.05.2019, in response to the representations received.

Thank You!

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