

Info Capsule

MCA NOTIFIES COMPANIES (APPOINTMENT AND QUALIFICATION OF DIRECTORS) AMENDMENT RULES, 2017¹

Ministry of Corporate Affairs notifies Companies (Appointment and Qualification of Directors) Amendment Rules, 2017 dated July 5, 2017. As per the notification, amendment has been made in Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014, wherein-

A. Rule 4 shall be numbered as sub-rule (1) and after sub-rule (1) as so renumbered, the following sub-rule shall be inserted namely:-

"(2) The following classes of unlisted public company shall not be covered under sub-rule (1), namely:-

- (a) a joint venture;
- (b) a wholly owned subsidiary; and
- (c) a dormant company as defined under section 455 of the Act."

After this notification, Rule 4 shall be read as follows: -

RULE 4: Number of Independent Directors

(1) The following class or classes of companies shall have at least two directors as independent directors -

- (i) the Public Companies having paid up share capital of ten crore rupees or more; or
- (ii) the Public Companies having turnover of one hundred crore rupees or more; or
- (iii) the Public Companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding fifty crore rupees:

Provided that in case a company covered under this rule is required to appoint a higher number of independent directors due to composition of its audit committee, such higher number of independent directors shall be applicable to it:

Provided further that any intermittent vacancy of an independent director shall be filled-up by the Board at the earliest but not later than immediate next Board meeting or three months from the date of such vacancy, whichever is later:

Provided also that where a company ceases to fulfil any of three conditions laid down in sub-rule (1) for three consecutive years, it shall not be required to comply with these provisions until such time as it meets any of such conditions;

Explanation. - For the purposes of this rule, it is here by clarified that, the paid up share capital or turnover or outstanding loans, debentures and deposits, as the case may be, as existing on the last date of latest audited financial statements shall be taken into account:

Provided that a company belonging to any class of companies for which a higher number of independent directors has been specified in the law for the time being in force shall comply with the requirements specified in such law.

(2) The following classes of unlisted public company shall not be covered under sub-rule (1), namely:-

- (a) A joint venture;
- (b) A wholly owned subsidiary; and
- (c) A dormant company as defined under section 455 of the Act.

B. In the Annexure of Companies (Appointment and Qualification of Directors) Rules, 2014, Form DIR-5 shall be substituted by the Form DIR-5 as provided in the notification.

MCA NOTIFIES NATIONAL COMPANY LAW TRIBUNAL (AMENDMENT) RULES, 2017²

Ministry of Corporate Affairs notifies National Company Law Tribunal (Amendment) Rules, 2017 dated July 5, 2017. The amendment has been made in National Company Law Tribunal Rules, 2016, wherein-

After rule 87, the following rule shall be inserted, namely:-

“87A. Appeal or application under sub-section (1) and sub-section (3) of section 252 -

- (1) An appeal under sub-section (1) or an application under subsection (3) of section 252, may be filed before the Tribunal in Form No. NCLT 9, with such modifications as may be necessary.
- (2) A copy of the appeal or application, shall be served on the Registrar and on such other persons as the tribunal may direct, not less than fourteen days before the date fixed for hearing of the appeal or application, as the case may be.
- (3) Upon hearing the appeal or the application or any adjourned hearing thereof, the Tribunal may pass appropriate order, as it deems fit.
- (4) Where the Tribunal makes an order restoring the name of a company in the register of companies, the order shall direct that-
 - (a) the appellant or applicant shall deliver a certified copy to the Registrar of Companies within thirty days from the date of the order;
 - (b) on such delivery, the Registrar of Companies do, in his official name and seal, publish the order in the Official Gazette;
 - (c) the appellant or applicant do pay to the Registrar of Companies his costs of, and occasioned by, the appeal or application, unless the Tribunal directs otherwise; and

- (d) the company shall file pending financial statements and annual returns with the Registrar and comply with the requirements of the Companies Act, 2013 and rules made thereunder within such time as may be directed by the Tribunal.
- (5) An application filed by the Registrar of Companies for restoration of name of a company in the register of companies under second proviso to sub-section (1) of section 252 shall be in Form No. NCLT 9 and upon hearing the application or any adjourned hearing thereof, the Tribunal may pass an appropriate order, as it deems fit."

CORRIGENDUM

This has reference to the Info Capsule released on June 27, 2017³. The following correction may please be noted by all the members:

Existing Para

[Para 3 pertaining to Companies (Audit and Auditors) Second Amendment Rules, 2017]

"All private limited companies having paid up share capital of rupees fifty crore or more shall not be required to comply with the provisions of Section 139(2) regarding rotation of auditors."

Substituted as under

"The requirement of Section 139(2) shall not be applicable to private companies having paid up share capital of less than 50 crore."

Team ICSI

Disclaimer: The information in the Info Capsules is developed according to the information available in public domain and for academic purposes only. Any person wishing to act on the basis of this document should do so only after cross checking with the original source.

³ Available at: https://www.icsi.edu/docs/webmodules/InfoCapsule/INFOCAPSULE_27062017.pdf