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15 days time for re-submission in case of reservation of name through RUN

A new provision has been inserted vide MCA notification dated 7th May, 2018 under Rule 10(3) providing that Registrar shall allow fifteen days time for re-submission in case of reservation of name through web service RUN for rectification of defects if any. Earlier re-submission was not allowed in case of re-submission of application through RUN.



Companies (Registration offices & Fees) Second Amendment Rules, 2018

MCA made an amendment in Annexure I of the Companies (Registration Office and Fees) Rules w.e.f 7th May, 2018 prescribing additional fee of Rs. 100 per day effective from July 1, 2018 for delay in filing of annual return and financial statements. The additional fee shall also be applicable to revised financial statement or board report as well as Secretarial audit report.

- In case the due date of filings under Section 92 (Annual Return) or 137 (Annual Financial Statement) of the Companies Act, 2013 expires after 30/06/2018, the additional fee @Rs.100 per day shall become payable in respect of MGT-7, AoC-4, AoC-4 XBRL and AoC-4 CFS.
- In all other cases where the belated annual returns or balance sheet/financial statement which were due to be filed whether under the Companies Act, 1956 (23AC, 23ACA, 23AC XBRL, 23ACA XBRL, 20B, 21A) or the Companies Act, 2013 (MGT-7, AoC-4, AoC-4 XBRL and AoC-4 CFS) additional fee as per the applicable slab for the

period of delay up to 30th June 2018 plus @Rs.100 per day w.e.f. 1st July 2018 shall become payable.

- In forms other than above the following Table of additional fee shall be applicable for delay in filing of forms other than for increase in Nominal Share Capital or forms under section 92(Annual Return) /137 Annual Financial Statement) of the Act.

TABLE

S. No	Period of delays	Forms including charge documents
1	Upto 15 days (sections 139 & 157)	One time
2	More than 15 days & upto 30 days (Sections 139 & 157) & upto 30 days in remaining forms.	2 times of normal filing fees
3	More than 30 days & upto 60 days	4 times of normal filing fees
4	More than 60 days & upto 90 days	6 times of normal filing fees
5	More than 90 days & upto 180 days	10 times of normal filing fees
6	Beyond 180 days	12 times of normal filing fees

Note- The belated filing of documents/forms (including increasing in nominal capital and delay caused thereon) which were due to be filed whether in Companies Act, 1956 Act or the Companies Act, 2013 Act i.e due for filing prior to notification of these fee rules , the fee payable at the time of actual filing shall be applicable.



Companies (Audit and Auditors) Amendment Rules, 2018

MCA vide its notification dated 7th May, 2018 and also date of enforcement has made following amendments:

➤ NO ratification of appointment of Auditor : Proviso to sub-rule (7) i.e now the requirement of ratification of appointment of Auditor in every annual general meeting (AGM) till the conclusion of sixth AGM by way of passing ordinary resolution has been removed.

➤ Rule 9 of the said rule has also been omitted which earlier prescribed that in case of criminal liability of any audit firm, the liability other than the fine, shall devolve only on the concerned partner or partners who acted in a fraudulent manner or abetted or as the case may be, colluded in any fraud.

➤ Explanation as given in rule 3 has been omitted which earlier provided that in case appointment is not ratified by members of the company, the Board shall appoint another individual or firm as auditor after following the procedure as laid down.

➤ Rule 10A has been substituted as follows:

For the purpose of clause (i) of sub-section (3) of section 143 for the financial years commencing on or after 1st April, 2015, the report of the auditor shall state about existence of adequate internal financial controls with reference to financial statements and its operating effectiveness.

Earlier in place of the word "internal financial controls with reference to financial statements" "adequate internal financial controls system", were used



➤ In the principal rules, in rule 14 in clause (a) and (b) for the words, "who is a cost accountant in practice", the words "who is a cost accountant" shall be substituted.

Companies (Share Capital and Debentures) Second Amendment Rules, 2018

MCA has amended the definition of "Employee" as given in rule 8 [Issue of sweat equity shares], in sub-rule (1), in the Explanation, in clause (i) in sub-clause (a) of Companies (Share Capital and Debentures) rules which is as follows:

"Employee" means:

(a) a permanent employee of the company who has been working in India or outside India.

The words "for atleast last one year" at the end of sub-clause (a) above have been removed.

Companies (Meetings of Board and its Powers) Amendment Rules, 2018

MCA vide its notification dated 7th May, 2018 and also date of enforcement has:

➤ Inserted the following proviso in rule 4 for matters not to be dealt with in a meeting through video conferencing or other audio visual means:

"Provided that where there is quorum in a meeting through physical presence of directors, any other director may participate through video conferencing or other audio visual means."

➤ In rule 6 related to Committees of the Board, for the words "every listed company", the words "every listed public company" shall be substituted.

➤ For rule 13, the following rule shall be substituted, namely:-

“13. Special Resolution.- A resolution passed at a general meeting in terms of sub-section (3) of section 186 to give any loan or guarantee or investment or providing any security or the acquisition under sub-section (2) of section 186 shall specify the total amount up to which the Board of Directors are authorised to give such loan or guarantee, to provide such security or make such acquisition. Provided that the company shall disclose to the members in the financial statement the full particulars in accordance with the provisions of sub-section (4) of section 186.”



Companies (Appointment & Qualification of Directors) Second Amendment Rules, 2018

MCA have been brought amendments in rules Appointment and qualification of Directors Rules, 2014 .

These rules may be called the Companies (Appointment and Qualification of Directors) Second Amendment Rules, 2018.

These rules have come into force w.e.f 7th May, 2018. The amendment aims to restrict the qualifications of an independent director and one more criteria to be satisfied for the qualification of an independent director which are as follows:

➤ Rule 5 [Qualification of independent director] shall be numbered as sub-rule (1) thereof, and after sub-rule (1) as so numbered, the following sub-rule shall be inserted, namely:-

“(2) None of the relatives of an independent director, for the purposes of sub-clauses (ii) and (iii) of clause (d) of sub- section (6) of section 149:-

(i) is indebted to the company, its holding, subsidiary or associate company or their promoters, or directors; or
 (ii) has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, its holding, subsidiary or associate company or their promoters, or directors of such holding company, for an amount of fifty lakhs rupees, at any time during the two immediately preceding financial years or during the current financial year.”



➤ In the principal rules, in rule 16 [Copy of resignation of director to be forwarded by him], for the word “shall”, the word “may” shall be substituted.

Earlier it was mandatory for a director to furnish a copy of his resignation to the Registrar within 30 days from the date of resignation along with reasons for his resignation in Form DIR-11. But now it is optional for the Director to forward a copy of his resignation to the Registrar.

Companies (Specification of Definitions Details) Amendment Rules, 2018

In the Companies (Specification of Definitions Details) Rules, 2014, definition related to “Total Share Capital” has been omitted.

Enforcement of provisions of the Companies Act 2017

Ministry of Corporate Affairs in its notification appointed 7th May 2018, as the date from when the below mentioned provisions of the Companies (Amendment) Act 2017 shall come into force.

Section no. of the Companies	Corresponding section of the Companies
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(Amendment) Act, 2017	Act, 2013
Clause (i) and clause (xiii) of Section 2	Sec 2(6)- Definition of 'associate company' Sec 2(87)- Definition of 'subsidiary company'
Section 8	Sec 26- Matters to be stated in Prospectus
Section 13	Sec 54- Issue of Sweat Equity Shares
Section 18	Sec 77- Duty to register charges, etc.
Section 19	Sec 78- Application for Registration of charge
Clause (i) & (ii) of Section 21	Sec 89- Declaration in respect of beneficial interest in any share
Clause (iii) & (iv) of Section 23	Sec 92- Annual Return
Section 30	Sec 117- Resolutions and Agreements to be filed
Section 31	Sec 121- Report on annual general meeting
Section 33	Sec 129- Financial Statement
Section 39	Sec 137- Copy of Financial Statement to be filed with Registrar
Section 40	Sec 139- Appointment of Auditors
Section 46	Sec 149- Company to have Board of Directors
Section 49	Sec 157- Company to inform Director

	Identification Number to Registrar
Section 52	Sec 164 Disqualifications for appointment of director
Section 54	Sec 167- Vacation of office of director
Section 55	Section 168- Resignation of director
Section 56	Section 173- Meetings of Board
Section 57	Section 177- Audit Committee
Section 58	Section 178- Nomination & remuneration Committee & Stakeholders Relationship committee
Section 61	Section 185- Loan to directors, etc.
Section 62	Section 186- Loan and investment by company
First proviso to clause (i) and (ii) of Section 80	Section 403- Fee for Filings, etc.
Section 83	Section 410- Constitution of Appellate Tribunal
Section 86	Section 435- Establishment of Special Court
Section 87	Section 438- Application of Code to proceedings before Special Court
Section 88	Section 439- Offences to be non-cognizable
Section 89	Section 440- Transitional provisions

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