



Inside this edition

- Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014
- Applicability of Section 139 of Companies Act, 2013
- Amendment of the Companies (Cost Records and Audit) Rules, 2014
- Applicability of Section 381 of Companies Act, 2013 on a Foreign Company
- Amendment of the Companies (Share Capital and Debentures) Rules, 2014
- Amendment of the Companies (Accounts) Rules, 2014
- Amendment of the Companies (Incorporation) Rules, 2014

COMPANIES (APPOINTMENT AND REMUNERATION OF MANAGERIAL PERSONNEL) RULES, 2014

Ministry of Corporate Affairs, vide notification dated 30th June, 2016, in exercise of the powers conferred by sub-section (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, namely:-



1. (1) These rules may be called the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014.

They shall come into force on the date of their publication in the Official Gazette.

2. In the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 (herein referred to as the principal rules),-

(i) in rule 3, the expression "Chief Executive Officer (CEO), Company Secretary and Chief Financial Officer (CFO) " shall be omitted.

3. in rule 5 of the principal rules,-

(a) in sub-rule(1),"clause (v), (vi), (vii), and (ix) to (xi) shall be omitted.

(b) in sub-rule (2),-

(a) for the words " the name of every employee of the company, who-"
" the words "the names of the top ten employees in terms of

remuneration drawn and the name of every employee, who-" shall be substituted;

(b) in sub-clause (i) for the words "sixty lakh rupees", the words "one crore and two lakh rupees" shall be substituted;

(c) in sub-clause (ii) for the words "five lakh rupees per month" the words " eight lakh and fifty thousand rupees per month" shall be substituted.

APPLICABILITY OF SECTION 139 OF COMPANIES ACT, 2013

In exercise of the powers conferred by sub-section (1) of section 470 of the Companies Act, 2013 (18 Of 2013), the Central Government hereby makes the following Order namely:-

1. Short title and commencement –

(1)This Order may be called the Companies (Removal of Difficulties) Third Order, 2016.

(2)It shall be deemed to have come into force from 1st April, 2014.

2. In the Companies Act, 2013, in section 139, in sub-section (2), for the third proviso which earlier stated that every company, existing on or before the commencement of this Act which is required to comply with provisions of this sub-section, shall comply with the requirements of this sub-section within three years from the date of commencement of this Act, the following proviso shall be substituted, namely:-

"Provided also that every company, existing on or before the commencement of this Act which is required to comply with the provisions of this sub-section, shall comply with requirements of this

sub-section within a period which shall not be later than the date of the first annual general meeting of the company held, within the period specified under sub-section (1) of section 96, after three years from the date of commencement of this Act”.

AMENDMENT OF THE COMPANIES (COST RECORDS AND AUDIT) RULES, 2014

Ministry of Corporate Affairs vide notification dated 14.07.2016, published in the Gazette of India, Extraordinary Part-II, Section -3, Sub-section(i). In exercise of the powers conferred by sub-section (1) and (2) of section 469 and section 148 of the Companies Act,2013 (18 of 2013), (hereinafter referred as the Act), the Central Government hereby makes the following rules further to amend the Companies (cost records and audit) Rules, 2014, namely:-



1. (1) These rules may be called the Companies (cost records and audit) Amendment Rules, 2016.

(2) They shall come into force on the date of their publication in the official Gazette.

2. In the Companies (cost records and audit) Rules, 2014 (hereinafter referred to as the Principal Rules)-

(i) in rule 2, for clause (d), the following clause shall be substituted, namely:-

"(d) "cost audit report" means the duly signed cost auditor's report on

the cost records examined and cost statements which are prepared as per these rules, including attachment, annexure, qualifications or observations attached with or included in such report;"

(ii) in rule 3, for Table (A) and Table (B), the Industry/ Sector/ Product/ Services as per the Regulated Sector has been substituted as per the applicability of the Central Excise Tariff Act.

(iii) in rule 4, in sub-rule (3), after clause (ii), following clause shall be inserted, namely:- "(iii) which is engaged in generation of electricity for captive consumption through Captive Generating Plant. For this purpose, the term "Captive Generating Plant" shall have the same meaning as assigned in rule 3 of the Electricity Rules, 2005".

(iv) in rule 6, in sub-rule (1), the following proviso shall be inserted, namely:- "Provided that before such appointment is made, the written consent of the cost auditor to such appointment, and a certificate from him or it, as provided in sub-rule (1.A), shall be obtained".

(v) In rule 6, after sub-rule (1), the following sub-rule shall be inserted, namely:-

"(1A) The cost auditor appointed under sub-rule (1) shall submit a certificate that-

(a) the individual or the firm, as the case may be, is eligible for appointment and is not disqualified for appointment under the Act, the Cost and Works Accountants Act, 1959 (23 of 1959) and the rules or regulations made thereunder.

(b) the individual or the firm, as the case may be, satisfies the criteria provided in section 141 of the Act, so far as may be applicable.

(c) the proposed appointment is within the limits laid down by or under the authority of the Act.

(d) the list of proceedings against the cost auditor or audit firm or any partner of the audit firm pending with respect to professional matters of conduct, as disclosed in the certificate, is true and correct."

(vi) in rule 6, in sub-rule (3), the following provisos shall be inserted, namely:

-

"Provided that the cost auditor appointed under these rules may be removed from his office before the expiry of his term, through a board resolution after giving a reasonable opportunity of being heard to the Cost Auditor and recording the reasons for such removal in writing.

Provided further that the Form CRA-2 to be filed with the Central Government for intimating appointment of another cost auditor shall enclose the relevant Board Resolution to the effect.

Provided also that nothing contained in this sub-rule shall prejudice the right of the cost auditor to resign from such office of the company."

(vii) In rule 6, after sub-rule (3A), following sub-rule shall be inserted, namely:-

“(38) The cost statements, including other statements to be annexed to the cost audit report, shall be approved by the Board of Directors before they are signed on behalf of the Board by any of the director

authorised by the Board, for submission to the cost auditor to report thereon.”

(viii) In rule 6, for sub-rule (5), the following sub-rule shall be substituted, namely:-

"(5) Every cost auditor shall forward his duly signed report to the Board of Directors of the company within a period of one hundred and eighty days from the closure of the financial year to which the report relates and the Board of Directors shall consider and examine such report, particularly any reservation or qualification contained therein."

(ix) in rule 6, for sub-rule (6), the following sub-rule shall be substituted, namely:-

"(6) Every company covered under these rules shall, within a period of thirty days from the date of receipt of a copy of the cost audit report, furnish the Central Government with such report alongwith full information and explanation on every reservation or qualification contained therein, in Form CRA-4 in Extensible Business Reporting Language format in the manner as specified in the Companies (Filing of Documents and Forms in Extensible Business Reporting language) Rules, 2015 alongwith fees specified in the Companies (Registration Offices and Fees) Rules, 2014."

APPLICABILITY OF SECTION 381 OF COMPANIES ACT, 2013 ON A FOREIGN COMPANY

1. Ministry of Corporate Affairs, vide notification dated 19th July, 2016, states in exercise of the powers conferred by sub-section (1) of section 381 of the Companies Act, 2013 (18 of 2013) (hereinafter referred to as "the Act") and in supersession of the notification number G.S.R 59, dated 06.01.1959 issued under sub-section (1) of section 594 of the Companies Act, 1956 (1 of 1956), in so far as it relates to the foreign company which is an airlines company.



The Central Government hereby directs that the requirement of clause (a) of sub-section (1) of section 381 of the Act shall apply to a foreign company which is an airlines company (hereinafter referred to as "the company") having a share capital, subject to the following exceptions and modifications, namely:-

2. It shall be deemed sufficient compliance of the provisions of clause (a) of sub-section (1) of section 381 of the Act, if in respect of the period ending on or after the 31st March, 2016, a company submits to the appropriate Registrar of Companies in India,-

(i) documents relating to copies of latest consolidated financial statements of the parent foreign company, as submitted by it to the prescribed authority in the country of its incorporation under the provisions of the law for the time being in force in that country.

Provided that where such documents are not in English language, there shall be annexed to it a certified translation thereof in the English language.

(ii) in respect of its Indian Business operations, a statement of receipts and payments for the financial year, duly authenticated by a practicing Chartered Accountant in India or a firm or a Limited Liability Partnership of practicing Chartered Accountants in India.

(iii) the documents required to be filed with Registrar of Companies under sub-rule (2) of rule 4 of the Companies (Registration of Foreign Companies) Rules, 2014.

3. Notwithstanding anything contained in the above paragraphs, the company shall, if so required by notice in writing from the Central Government, furnish to the Central Government such information with regard to its accounts as the Central Government may require.

4. This notification shall come into force on the date of its publication in the Official Gazette.

AMENDMENT OF THE COMPANIES (SHARE CAPITAL AND DEBENTURES) RULES, 2014

Ministry of Corporate Affairs, vide notification dated 19th July, 2016, states in exercise of the powers conferred by sub-section (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013) the Central Government hereby makes



the following rules further to amend the Companies (Share Capital and Debentures) Rules, 2014 namely-

1. (1) These rules may be called the Companies (Share Capital and Debentures) Third Amendment Rules, 2016
(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Companies (Share Capital and Debentures) Rules 2014 (herein after referred to as the principal rules), in rule 4, in sub-rule (1)' after sub clause (g), the following proviso shall be inserted, namely'-
"Provided that a company may issue equity shares with differential rights upon expiry of five years from the end of the financial Year in which such default was made good."

3. In the principal rules, in rule 8, in sub-rule (4), after the first proviso' the following proviso shall be inserted, namely:-
"Provided further that a startup company, as defined in notification number GSR 180(E) dated 17th February, 2016 issued by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, Government of India, may issue sweat equity shares not exceeding fifty percent of its paid up capital upto five years from the date of its incorporation or registration."



4. In the principal rules, in rule 12, in sub-rule(1), in clause (c), after sub clause (ii), the following proviso shall be inserted, namely-

"Provided that in case of a startup company, as defined in notification number GSR 180(E) dated 17m February, 2016 issued by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry Government of India,, Government of India, the conditions mentioned in sub-clause (i) and (ii) shall not apply upto five years from the date of its incorporation or registration."

5. In the principal rules, in rule 13, in sub-rule (2)-
(i) clause (c) shall be omitted.
(ii) for clause (h), the following clause shall be substituted, namely:-
"(h) where convertible securities are offered on a preferential basis with an option to apply for and get equity shares allotted, the price of the resultant shares pursuant to conversion shall be determined-
(i) either upfront at the time when the offer of convertible securities is made, on the basis of valuation report of the registered valuer given at the stage of such offer, or
(ii) at the time, which shall not be earlier than thirty days to the date when the holder of convertible security becomes entitled to apply for shares, on the basis of valuation report of the registered valuer given not earlier than sixty days of the date when the holder of convertible security becomes entitled to apply for shares:
Provided that the company shall take a decision on sub-clauses (i) or (ii) at the time of offer of convertible security itself and make such disclosure under sub-clause (v) of clause (d) of sub-rule (2) of this rule."

6. In the principal rules, in rule 15, after the words "or a company redeems any redeemable preference shares", the words "or a

company not having share capital increases number of its members" shall be inserted.

7. In the principal rules, in rule 18,-

(A) in sub-rule (1),-

(a) for clause (b), the following clause shall be substituted, namely:-

"(b) Such an issue of debentures shall be secured by the creation of a charge on the properties or assets of the company or its subsidiaries or its holding company or its associates companies, having a value which is sufficient for the due repayment of the amount of debentures and interest thereon."

(b) in clause (d), for sub-clause (i), the following sub-clause shall be substituted, namely:-

"(i) any specific movable property of the company or its holding company or subsidiaries or associate companies or otherwise."

(B) in sub-rule (7).

(a) in clause (b), in sub-clause (ii) and (iii) for the words "of the value of debentures" wherever they occur, the words "of the value of outstanding debentures" shall be substituted;

(b) in clause (b), after sub-clause (iii), the following proviso shall be inserted, namely:-

"Provided that where a company intends to redeem its debentures prematurely, it may provide for transfer of such amount in Debenture Redemption Reserve as is



necessary for redemption of such debentures even if it exceeds the limits specified in this sub-rule."

AMENDMENT OF THE COMPANIES (ACCOUNTS) RULES, 2014

Ministry of Corporate Affairs, vide notification dated 19th July, 2016, states in exercise of the powers conferred by sub-sections (1) and (3) of section 128, sub section (3) of section 129, section 133, section 134 and section 138 read with section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Accounts) Rules, 2014, namely: -



1. (1) These rules may be called the Companies (Accounts) Amendment Rules, 2016.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Companies (Accounts) Rules, 2014, (hereinafter referred to as principal rules), in rule 6, for the second proviso, the following proviso shall be substituted namely:-

"Provided further that nothing in this rule shall apply in respect of preparation of consolidated financial statements by a company if it meets the following conditions:-

(i) it is a wholly-owned subsidiary, or is a partially-owned subsidiary of another company and all its other members, including those not

otherwise entitled to vote, having been intimated in writing and for which the proof of delivery of such intimation is available with the company, do not object to the company not presenting consolidated financial statements.

(ii) it is a company whose securities are not listed or are not in the process of listing on any stock exchange, whether in India or outside India.

(iii) its ultimate or any intermediate holding company files consolidated financial statements with the Registrar which are in compliance with the applicable Accounting Standards."

3. In rule 8 of the principal rules, in sub-rule (1), for the words "and the report shall contain a separate section wherein a report on the performance and financial position of each of the subsidiaries, associates and joint venture companies included in the consolidated financial statement is presented", the words and shall report on the highlights of performance of subsidiaries, associates and joint venture companies and their contribution to the overall performance of the company during the period under report" shall be substituted.

4. In rule 13 of the principal rules, in sub-rule (1),- (a) in the opening portion, the words nor a firm of internal auditors', the words "which may be either an individual or a partnership firm or a body corporate" shall be substituted.

(b) In the Explanation, for item (ii), the following item shall be substituted namely:

(ii) the term "Chartered Accountant" or "Cost Accountant" shall mean a

"Chartered Accountant" or a "Cost Accountant", as the case may be, whether engaged in practice or not'.

AMENDMENT OF THE COMPANIES (INCORPORATION) RULES, 2014

Ministry of Corporate Affairs, vide notification dated 27th July, 2016, states in exercise of the powers conferred by sub-sections (1) and (2) of section 469 of the companies Act, 2013 (18 of 2013), the central Government hereby makes the following rules further to amend the Companies (Incorporation) Rules, 2014, namely:-



1. (1) These rules may be called the Companies (Incorporation) Third Amendment Rules, 2016.
(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Companies (Incorporation) Rules, 2014 (hereinafter referred to as the principal rules), in rule 3, for sub-rule (2), the following shall be substituted, namely:-
“(2) A natural person shall not be member of more than a One Person Company at any point of time and the said person shall not be a nominee of more than a One Person Company”.

3. In the principal rules, in rule 8,-in (a) in sub-rule (2) for clause (ii), the following shall be substituted namely:-

Provided that the change of name shall be allowed upon filing necessary documents or payment or repayment of matured deposits or debentures or interest thereon as the case may be."

9. In the principal rules, in rule 30,-

(A) in sub-rule (1), after clause (i), the following shall be inserted namely:-

"(j) a copy of the No Objection Certificate from the Reserve Bank of India where the applicant is a registered Non-Banking Financial Company"

(B) in sub-rule (6), in clause (c) the words "and to the Securities and Exchange Board in the case of listed companies" shall be omitted;

(C) in sub-rule (10), after the proviso, the following Explanation shall be inserted, namely:-

"Explanation- On completion of such inquiry, inspection or investigation as a consequence of which no prosecution is envisaged or no prosecution is pending, shifting of registered office shall be allowed."

10. In the principal rules, after rule 36, the following rule shall be inserted, namely:-

37. Conversion of unlimited liability company into a limited liability company by shares or guarantee.-

(1) Without prejudice to any other provision in the Companies Act for effecting the conversion of an unlimited liability company with or without share capital into limited liability company by shares or guarantee, such a company shall pass a special resolution in a general

meeting and thereafter, an application shall be filed in Form No. INC-27 in the manner provided in sub-rules (2) and (3).

(2)The Company shall within seven days from the date of passing of the special resolution in a general meeting, publish a notice, in Form No. INC-27A of such proposed conversion in two newspapers (one in English and one in vernacular language) in the district in which the registered office of the company is situate and shall also place the same on the website of the Company, if any, indicating clearly the proposal of conversion of the company into a company limited by shares or guarantee, and seeking objections if any, from the persons interested in its affairs to such conversion and cause a copy of such notice to be dispatched to its creditors and debentures holders made as on the date of notice of the general meeting by registered post or by speed post or through courier with proof of dispatch. The notice shall also state that the objections, if any, may be intimated to the Registrar and to the company within twenty-one days of the date of publication of the notice, duly indicating nature of interest and grounds of opposition.

(3)The Company shall within forty five days of passing of the special resolution file an application as prescribed in sub rule (1) for its conversion into a company limited by shares or guarantee alongwith the fees as provided in the Companies (Registration offices and Fees) Rules, 2014, by attaching the following documents, namely:-

- a. notice of the general meeting along with explanatory statement
- b. copy of the resolution passed in the general meeting

- c. copy of the newspaper publication
- d. a copy of altered Memorandum of Association as well as Articles of Association duly certified by any one of the Directors duly authorized in this behalf or Company Secretary of the Company, if any.
- e. declaration signed by not less two Directors of the Company, including Managing Director, if any, that such conversion shall not affect any debts, liabilities, obligations or contracts incurred or entered into by or on behalf of the Company before conversion (except to the extent that the liability of the members shall become limited).
- f. a complete list of creditors and debenture holders, to whom individual notices have been sent under sub-rule (2) setting forth the following details, namely:-
 - (i) the names and address of every creditor and debenture holder of the Company;
 - (ii) the nature and respective amounts due to them in respect of debts, claims or liabilities
 - (iii) Declaration by a Director of the Company that notice as required under sub-rule (2) has been dispatched to all the creditor and debenture holders with proof of dispatch.
- g. a declaration signed by not less than two Directors of the Company, one of whom shall be a Managing Director where there is one, to the effect that they have made a full enquiry into the affairs of the Company and, having done so, have formed an opinion that the list of creditors is correct, and that the estimated value as given in the list of the debts or claims payable on a contingency are proper estimates of the values of such debts and claims and that there are no other debts or claims against the company to their knowledge.

- h. a declaration of solvency signed by at least two Directors of the Company, one of whom shall be the Managing Director, where there is one to the effect that the Board of Directors of the Company have made a full inquiry into the affairs of the company, as a result of which they have formed an opinion that it is capable of meeting its liabilities and will not be rendered insolvent within a period of one year from the date of declaration, through a resolution, passed in a duly convened meeting or by circulation.
- i. The company shall also obtain a certificate from the Auditors that the company is solvent and that it is a going concern as on the date of passing of resolution by the Board certifying solvency as per clause (h) above.
- j. No Objection Certificate from sectoral regulator, if applicable.
- k. No Objection Certificate from all secured creditors, if any.

(4). Declaration signed by not less than two Directors including Managing Director, where there is one, that no complaints are pending against the company from the members or investors and no inquiry, inspection or investigation is pending against the company or its Directors or officers.

(5)The Registrar shall, after considering the application and objections if any, received by the Registrar and after ensuring that the company has satisfactorily addressed the objections received by the company, suitably decide whether the approval for conversion should or should not be granted.

(6) The certificate of incorporation consequent to conversion of unlimited liability company to into a company limited by shares or guarantee be in Form INC-11A issued to the company upon grant of approval for conversion.

(7) Conditions to be complied with subsequent to conversion.-

(1) Company shall not change its name for a period of one year from the date of such conversion.

(2) The company shall not declare or distribute any dividend without satisfying past debts, liabilities, obligations or contracts incurred or entered into before conversion.

Explanation: For the purpose of this clause, past debts, liabilities, obligations or contracts does not include secured debts due to banks and financial institutions.

(8) An Unlimited Liability Company shall not be eligible for conversion into a company limited by shares or guarantee in case-

(a) its networth is negative, or

(b) an application is pending under the provisions of the Companies Act 1956 or the Companies Act, 2013 for striking off its name, or

(c) the company is in default of any of its Annual Returns or Financial Statements under the provisions of the Companies Act, 1956 or the Companies Act, 2013, or

(d) a petition for winding up is pending against the company, or

(e) the company has not received amount due on calls in arrears, from its directors, for a period of not less than six months from the due date; or

(f) an inquiry, inspection or investigation is pending against the company.

(9) The Registrar of Companies shall take a decision on the application filed under these rules within thirty days from the date of receipt of application complete in all respects.

(10) In the principal rules, Form No. INC-10 shall be omitted.

RELAXATION OF ADDITIONAL FEES AND EXTENSION OF LAST DATE OF IN FILING AOC-4, AOC-4 (XBRL), AOC-4 (CFS) AND MGT -7 UNDER THE COMPANIES ACT, 2013

The Ministry have revised form AOC-4 which would be deployed shortly. Further, Form AOC-4 (XBRL) and Form AOC-4 (CFS) are also under revision and this may be available for deployment by end of August, 2016.

As per the relevant provisions of the Companies Act, 2013, the financial statements and Annual Returns will have to be filed by the Companies within 30 days and 60 days of conclusion of AGM or the last day by which AGM ought to have been held, as the case may be.

Ministry of Corporate Affairs, vide general circular no 08/ 2016, has allowed companies to file financial statements and Annual Returns on or before 29.10.2016 where due date for holding of the Annual General Meeting is on or after 01.04.2016, without payment of additional filing fee.

SPECIAL COURT FOR SPEEDY TRIAL

MCA vide notification dated 27th July, 2016, in exercise of the powers conferred by sub-section (1) of section 435 of the Companies Act, 2013 (18 of 2013), the Central Government hereby, with the concurrence of the Chief Justice of the High Court of Delhi, designates the following Court as Special Court for the purposes of providing speedy trial of offences punishable under the Companies Act, 2013 with imprisonment of two years or more under the Companies Act, 2013, namely:-



TABLE

Sl. No.	Existing Court	Jurisdiction as Special Court
(1)	Court of Additional Sessions Judge-03, South-West District, Dwarka	National Capital Territory of Delhi

The aforesaid Court mentioned in column number (2) shall exercise the jurisdiction as Special Court in respect of jurisdiction mentioned in column number (3).

VERENDRA KALRA & CO

CHARTERED ACCOUNTANTS

CONTACT DETAILS:

Head Office

75/7 Rajpur Road, Dehradun

T +91.135.2743283, 2747084, 2742026

F +91.135.2740186

E info@vkalra.com

W www.vkalra.com

Branch Office

80/28 Malviya Nagar, New Delhi

E info@vkalra.com

W www.vkalra.com



© 2016 Verendra Kalra & Co. All rights reserved.

This publication contains information in summary form and is therefore intended for general guidance only. It is not a substitute for detailed research or the exercise of professional judgment. Neither VKC nor any member can accept any responsibility for loss occasioned to any person acting or refraining from actions as a result of any material in this publication. On any specific matter, reference should be made to the appropriate advisor.