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## Enforcement of provisions of the Companies Act 2017

MCA in its notification appointed 27<sup>th</sup> July 2018, as the date from when the below mentioned provisions of the Companies (Amendment) Act 2017 shall come into force.

Section of the Companies (Amendment) Act, 2017	Amended Section of Companies Act, 2013	Title & Amendment
Section 5	Item (c) of sub-section (1) of section 7	<p><b>Incorporation of a Company:</b></p> <p>The requirement of an affidavit from first subscribers and directors has been replaced with a declaration therefrom</p>
Section 6	Sub-section (1) and (4) of section 12	<p><b>Registered Office of the Company:</b></p> <p>The time limit for having a registered Office for a company and communication of the change of situation of registered office with the ROC has been enhanced from 15 days to 30 days from the date of incorporation and the date of change respectively.</p>

## Rs. 5000/- late fee for delay in submission of e-form DIR-3 KYC for KYC of Directors and Designated Partners

MCA has notified the Companies (Registration Offices and Fees) Third Amendment Rules, 2018, which shall come into force with effect from 10.07.2018.

In the Companies (Registration Offices and Fees) Rules, 2014, in the Annexure, after item VI relating to Fees for Removal of Names of Companies from the Registrar of Companies under section 248 (2) of the Act, in the Annexure, the following item shall inserted, namely:-  
 “VII. FEE FOR FILING e- Form DIR-3 KYC under rule 12A of the Companies (Appointment and Qualification of Directors) Rules, 2014.



S.No	Particulars	Fees
i	Fee payable till the 30th April of every financial year in respect of e-form DIR-3 KYC as at the 31st March of immediate previous year.	----
ii	Fee payable (in delayed case).	Rs.5000

**Note:** For the current financial (2018-2019), no fee shall be chargeable till the 31st August, 2018 and fee of Rs.5000 shall be payable on or after the 1st September, 2018”.

## Companies (Registration of Charges) Amendment Rules, 2018

MCA vide its notification dated 5<sup>th</sup> July, 2018 has amended the time of filing form for satisfaction of charge without condonation from 30 days to 300 days with payment of additional fees. Thereafter, the

company is required to seek approval of Central Government for condonation of delay as provided in Section 87.

### **Companies (Authorised to Register) Second Amendment Rules, 2018**

MCA in its notification dated 5th of July, 2018 has introduced the Companies (Authorised to Register) Second Amendment Rules, 2018.

These shall come into force with effect from 15th August 2018.

Refer link for further details:

[http://www.mca.gov.in/Ministry/pdf/CompaniesAuthorisedRegister\\_06072018.pdf](http://www.mca.gov.in/Ministry/pdf/CompaniesAuthorisedRegister_06072018.pdf)



### **Companies (Appointment and Qualification of Directors) Fourth Amendment Rules, 2018**

MCA vide its notification dated 5th July, 2018 has introduced Companies (Appointment and Qualification of Directors) Fourth Amendment Rules, 2018.

1. They shall come into force from 10th July, 2018.
2. In the Companies (Appointment and Qualification of Directors) Rules, 2014:

(i) Rule 11 shall be renumbered as sub-rule (1) thereof and after sub-rule(1) as so renumbered, the following sub-rules shall be inserted, namely:-

"(2) The Central Government or Regional Director (Northern Region), or any officer authorised by the Central Government or Regional Director (Northern Region) shall, deactivate the Director



Identification Number (DIN), of an individual who does not intimate his particulars in e-form DIR-3-KYC within stipulated time in accordance with Rule 12A.

The de-activated DIN shall be re-activated only after e-form DIR-3-KYC is filed along with fee as prescribed under Companies (Registration Offices and Fees) Rules, 2014.

(ii) after rule 12, the following shall be inserted, namely:-

“12A Directors KYC:- Every individual who has been allotted a Director Identification Number (DIN) as on 31st March of a financial year as per these rules shall, submit e-form DIR-3-KYC to the Central Government on or before 30<sup>th</sup> April of immediate next financial year.

Provided that every individual who has already been allotted a Director Identification Number (DIN) as at 31st March, 2018, shall submit e-form DIR-3 KYC on or before 31st August, 2018.”

### **Companies (Acceptance of Deposits) Amendment Rules, 2018**

MCA vide notification dated 5<sup>th</sup> July, 2018 has issued Companies (Acceptance of Deposits) Amendment Rules, 2018.

They shall come into force on 15th August, 2018.

Following amendments have been introduced for Acceptance of Deposits by Companies:

- The amount remaining deposited in Deposit repayment reserve account shall not at any time fall below twenty per cent. of the amount of deposits maturing during the financial year (Rule 13- substituted).
- Deposit Insurance no longer required (Rule 5 &



in rule 14, in sub-rule (1), clause (k) shall be omitted;- omitted).

➤ Eligibility for defaulting companies has now been defined as if company makes good the default and 5 years elapsed from last date of making good the default.

(a) in rule 4, in sub-rule (1), after the proviso, the following proviso shall be inserted, namely:—

“Provided further that a certificate of the statutory auditor of the company shall be attached in Form DPT-1, stating that the company has not committed default in the repayment of deposits or in the payment of interest on such deposits accepted either before or after the commencement of the Act and in case a company had committed a default in the repayment of deposits accepted either before or after the commencement of the Act or in the payment of interest on such deposits, a certificate of the statutory auditor of the company shall be attached in Form DPT-1, stating that the company had made good the default and a period of five years has lapsed since the date of making good the default as the case may be.”



### **Companies (Incorporation) Third Amendment Rules, 2018**

MCA vide notification dated 27<sup>th</sup> July, 2018 has issued Companies (Incorporation) Third Amendment Rules, 2018.

Below are the key changes:

➤ The term "resident in India" means a person who has stayed in India for a period of not less than one hundred and eighty two days during the immediately preceding financial year.



➤ While counting the number of days of stay of a director in India for the financial year 2018-2019, any period of stay between 01.01.2018 till the date of notification of this rule shall also be counted".

➤ Declaration shall be submitted by each of the subscribers to the memorandum and each of the first directors named in the articles in Form No.INC-9.

➤ In Form No. INC-9, for the word 'Affidavit', the word 'Declaration' shall be substituted.

### **Companies (Accounts) Amendment Rules, 2018**

MCA has notified the Companies (Accounts) Amendment Rules, 2018 incorporating additional disclosure requirements for financial statements of the Companies, including status of maintenance of cost records, measures to prevent sexual harassment of women, certain disclosures by OPC/ Small companies in abridged Financial Statements, etc.



In the Companies (Accounts) Rules, 2014, in rule 8,

(i) In sub-rule (5), after clause (viii) the following clauses shall be inserted, namely:-

“(ix) a disclosure, as to whether maintenance of cost records as specified by the Central Government under sub-section (1) of section 148 of the Companies Act, 2013, is required by the Company and accordingly such accounts and records are made and maintained

(x) a statement that the company has complied with provisions relating to the constitution of Internal Complaints Committee under

the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 [14 of 2013]

(ii) after sub-rule (5), the following rule shall be inserted, namely:-

“(6) This rule shall not apply to One Person Company or Small Company”.



(iii) after rule 8, the following rule shall be inserted, namely:-

“8A. Matters to be included in Board’s Report for One Person Company and Small Company.-

(1) The Board’s Report of One Person Company and Small Company shall be prepared based on the stand alone financial statement of the company, which shall be in abridged form and contain the following:-

- (a) the web address, if any, where annual return referred to in sub-section (3) of section 92 has been placed;
- (b) number of meetings of the Board;
- (c) Directors’ Responsibility Statement as referred to in sub-section (5) of section 134;
- (d) details in respect of frauds reported by auditors under sub-section (12) of section 143 other than those which are reportable to the Central Government;
- (e) explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the auditor in his report;

(f) the state of the company’s affairs;

(g) the financial summary or highlights;

(h) material changes from the date of closure of the financial year in the nature of business and their effect on the financial position of the company;

(i) the details of directors who were appointed or have resigned during the year;

(j) the details or significant and material orders passed by the regulators or courts or tribunals impacting the going concern status and company’s operations in future.

(2) The Report of the Board shall contain the particulars of contracts or arrangements with related parties referred to in sub-section (1) of section 188 in the Form AOC-2.”

### NCLT Chennai approves Amalgamation of Indian LLP with a Company

The Chennai Bench of the National Company Law Tribunal (NCLT) recently approved a scheme of amalgamation between an Indian Limited Liability Partnership (LLP) and an Indian private limited company. The Companies Act, 2013 and the LLP Act, 2008 do not contain any express provisions which provide for such cross-entity amalgamation.

However, the NCLT held that the intent of these legislations is to facilitate ‘ease of doing business’ and to ‘create a desirable business atmosphere’, and hence it would be wrong to presume that a



merger of an Indian LLP with an Indian company is prohibited.

#### **Order of the NCLT**

The NCLT held that under section 394(4)(b) of the Companies Act, 1956 an LLP (included in the definition of 'body corporate') could be a transferor company in a scheme of arrangement. The NCLT noted that similar provisions under section 234 of the Companies Act, 2013 are not prescribed. The NCLT held it as a case of casus omissus because the Companies Act, 1956 categorically allowed a transferor to be a body corporate (including an LLP).

The NCLT further observed that the Companies Act, 2013 allows under section 234 of the Companies Act, 2013 a foreign company to merge with a company registered under the Companies Act, 2013 and vice versa. Foreign company is inter alia defined to include a foreign LLP.

The NCLT thus held that if the intention of the lawmakers is to permit a foreign LLP to merge with an Indian company, then it would be incorrect to presume that the merger of an Indian LLP with a company is prohibited in the absence of an express statutory bar.

#### **Splitting the positions of the Chairperson and Managing Director in listed companies**

The Securities and Exchange Board of India (SEBI), based on the recommendations of Kotak Committee on Corporate Governance, has amended the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 splitting the positions of the Chairperson and Managing Director, to start with, for top 500 listed companies on the basis of market capitalization effective from 01.04.2020.



The first proviso to section 203(1) of Companies Act, 2013 provides that an individual shall not be appointed/ reappointed as the chairperson of a company as well as its MD/CEO at the same time unless the articles of such company provide otherwise or the company does not undertake multiple businesses.

The time-frame for implementation is to allow adequate transition time to companies to comply with the new requirement.

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