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## Companies (Incorporation) Fifth Amendment Rules, 2016

Ministry of Corporate Affairs vide its notification no G.S.R. (E) dated 29<sup>th</sup> December, 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 (Incorporation) Rules, 2014 namely:-



1. (1) These rules may be called the Companies (Incorporation) Fifth Amendment Rules, 2016
- (2) They shall come into force on the 1<sup>st</sup> day of January, 2017
2. In the Companies (Incorporation) Rules, 2014 (hereinafter referred to as the principal rules),
3. In the principal rules,
  - (a) In rule 4, in sub-rule (2), for the words and figures such nomination in Form No. INC-2 along with consent of such nominee obtained in Form No. INC-3' the words and figures 'such nomination in Form No. INC-32 (SPICe) along with consent of such nominee obtained in Form No. INC-3' shall be substituted.
  - (b) in rule 10 for the words and figures 'Form No- INC-7' the words and figures 'Form No INC-7 or Form INC-32 (SPICe) shall be substituted.
    - (a) in rule 12, for the words and figures 'Form No- INC-2(for One Person Company) and Form No INC-7 (other than One Person Company)' the words and figures 'Form No INC-7 (Part I company and company with more than seven subscribers) and Form INC-32 (SPICe)' shall be substituted.
    - (b) For Rule 38 following rule shall be substituted:-

“38. Simplified Proforma for Incorporating Company Electronically (SPICe).-

(1) The application for incorporating a company under this rule shall be in Form No INC No 32 (SPICe) alongwith e-Memorandum of Association (e-MOA) in Form No INC-33 and e-Articles of Association (e-AOA) in Form no INC-34

Provided that in case of incorporation of a company falling under section 8 of the Act Form INC No 32 (SPICe) shall be filled along with Form No INC-13 (Memorandum of Association) and Form No INC- 31 (Articles of Association) as attachments.

(1) For the purpose of sub-rule (1), the application for allotment of Director Identification Number upto three Directors, reservation of name, incorporation of company and appointment of Director of the proposed for One Person Company , Private company , public Company and a company falling under section 8 of the Act , shall be filed in the Form No. INC-32 (SPICe), with the Registrar within whose Jurisdiction the registered office of the company is proposed to be situated along with the fee of rupees five hundred in addition to the registration fee as specified in the Companies (Registration of Offices and Fees) Rules, 2014.

Provided that where an applicant has applied for reservation of a name under Rule 9 and which has been approved therein, he may fill the reserved name as proposed name of the company.

(2) For the purpose of filling SPICe Form, the particulars of the maximum of three directors shall be allowed to be filled in Form No. INC 32 (SPICe) and allotment of Director Identification Number of maximum of three proposed directors shall be permitted in Form No INC-32 (SPICe) in

Simplified Proforma for  
Incorporating Company electronically  
(SPICe)

case of directors not having approved Director Identification Number.

(3) The promoter or applicant of the proposed company shall propose only one name in FORM No INC-32 (SPICe)

(4) The promoter or applicant of the proposed company shall prepare Memorandum of Association (e-MOA) in Form No. INC-33 and Articles of Association (e-AOA) in Form No. INC-34, in accordance with the rule 13 i.e signing of memorandum and articles.

Provided that the subscribers and witness or witnesses shall affix their digital signatures to the e-MOA and e-AOA .



(5) For incorporation using application as provided in this rule, provisions of the sub-clause (i) of sub section (5) of section 4 of the Act, rule 9 and clause (a) of the sub-rule (1) of rule 16 to the extent of affixing recent photograph shall not apply

(6) A company using the provisions of this rule may furnish verification of its registered office under sub-section (2) of section 12 of the Act by filling Form no INC-32 (SPICe) in which case the company shall attach along with such Form No 32 (SPICe), any of the documents referred to in sub –rule (2) of rule 25 i.e Verification of registered office.

(7) Form INC-22 shall not be required to be filled in case the proposed company maintains its registered office at the given correspondence address.

(8) (a) Where the Registrar, on examining Form No INC-32 (SPICe) finds that it is necessary to call for further information or finds such application or document to be defective or incomplete in any respect, he shall give intimation to the applicant to remove the

defects and re-submit the e-form within fifteen days from the date of such intimation given by the registrar.

(b) After the resubmission of the document, if the registrar still finds that the document is defective or incomplete in any respect he shall give one more opportunity of fifteen days to remove such defects or deficiencies.

Provided that the total period for re-submission of documents shall not exceed thirty days.

(9) The Certificate of Incorporation of company shall be issued by the Registrar in Form No INC-11.

4. In the principle rules:-

(a) Form INC-2 shall be omitted;

(b) Form No INC-7 shall be submitted for incorporation of company with more than seven subscribers:-

## Removal of Names of Companies from the Register of Companies

Ministry of Corporate Affairs vide its notification G.S.R 1174 (E) dated 26<sup>th</sup> December, 2016, in exercise of the powers conferred by sub-section (1), (2) and (4) of section 248 read with section 469 of the Companies Act, 2013 (18 of 2013) and in suppression of the Companies (Central Government) General Rules and Forms, 1956 except as respect things done or omitted to be done before such suppression, the Central Government hereby makes the following rules namely:-



1. Short title and commencement- (1) These rules may be called the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016.

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

2. Definitions- (1) In these rules, unless the context otherwise requires, -

(a) "Act" means the Companies Act, 2013 (18 of 2013);

(b) "Form" or "e-Form" means a non-electronic form or an electronic form annexed to these rules.

(2) Words and expressions used in these rules but not defined and defined in the Act or in the Companies (Specification of Definitions Details) Rules, 2014, shall have the same meanings respectively assigned to them in the Act or in the said rules.

3. Removal of name of company from the Register on suo-motu basis.- (1) The Registrar of Companies may remove the name of a company from the register of companies in terms of sub-section (1) of section 248 of the Act:

Provided that following categories of companies shall not be removed from the register of companies under this rule and rule 4, namely:-

- (i) listed companies;
- (ii) companies that have been delisted due to non-compliance of listing regulations or listing agreement or any other statutory laws;
- (iii) vanishing companies;
- (iv) companies where inspection or investigation is ordered and being carried out or actions on such order are yet to be taken up or were completed but prosecutions arising out of such inspection or investigation are pending in the Court;

Registrar of Companies  
**STRIKE (ROC) OFF**  
Name Removal U/s 248 of  
Companies Act 2013

(v) companies where notices under section 234 of the Companies Act, 1956 (1 of 1956) or section 206 or section 207 of the Act have been issued by the Registrar or Inspector and reply thereto is pending or report under section 208 has not yet been submitted or follow up of instructions on report under section 208 is pending or where any prosecution arising out of such inquiry or scrutiny, if any, is pending with the Court;

(vi) companies against which any prosecution for an offence is pending in any court;

(vii) companies whose application for compounding is pending before the competent authority for compounding the offences committed by the company or any of its officers in default;

(viii) companies, which have accepted public deposits which are either outstanding or the company is in default in repayment of the same;

(ix) companies having charges which are pending for satisfaction; and

(x) companies registered under section 25 of the Companies Act, 1956 or section 8 of the Act.

Explanation.- For the purposes of clause (iii), the expression "vanishing company" means a company, registered under the Act or previous company law or any other law for the time being in force and listed with Stock Exchange which has failed to file its returns with the Registrar of Companies and Stock Exchange for a consecutive period of two years, and is not maintaining its registered office at the address notified with the Registrar of Companies or Stock Exchange and none of its directors are traceable.

**STRIKE OFF**

(2) For the purpose of sub-rule (1), the Registrar shall give a notice in writing in Form STK 1 which shall be sent to all the directors of the company at the addresses available on record, by registered post with acknowledgement due or by speed post.



(3) The notice shall contain the reasons on which the name of the company is to be removed from the register of companies and shall seek representations, if any, against the proposed action from the company and its Directors along with the copies of relevant documents, if any, within a period of thirty days from the date of the notice.

4. Application for removal of name of company.—(1) An application for removal of name of the company under sub-section (2) of section 248 shall be made in Form STK-2 along with the fee of five thousand rupees.

(2) Every application under sub-rule (1) shall accompany a no objection certificate from appropriate Regulatory Authority concerned in respect of following companies, namely :-

- (i) companies which have conducted or conducting non-banking financial and investment activities as referred to in the Reserve Bank of India Act, 1934 (2 of 1934) or rules and regulations thereunder;
- (ii) housing finance companies as referred to in the Housing Finance Companies (National Housing Bank) Directions, 2010 issued under the National Housing Bank Act, 1987 (53 of 1987);
- (iii) Insurance companies as referred to in the Insurance Act, 1938 (4 of 1938) or rules and regulations thereunder;

(iv) companies in the business of capital market intermediaries as referred to in the Securities and Exchange Board of India Act, 1992 (15 of 1992) or rules and regulations thereunder;

(v) companies engaged in collective investment schemes as referred to in the Securities and Exchange Board of India Act, 1992 (15 of 1992) or rules and regulations thereunder;

(vi) asset management companies as referred to in the Securities and Exchange Board of India Act, 1992 (15 of 1992) or rules and regulations thereunder;

(vii) any other company which is regulated under any other law for the time being in force.

(3) The application in Form STK 2 shall be accompanied by -

- (i) indemnity bond duly notarized by every director in Form STK 3;
- (ii) a statement of accounts containing assets and liabilities of the company made up to a day, not more than thirty days before the date of application and certified by a Chartered Accountant;
- (iii) An affidavit in Form STK 4 by every director of the company;
- (iv) a copy of the special resolution duly certified by each of the directors of the company or consent of seventy five per cent of the members of the company in terms of paid up share capital as on the date of application;
- (v) a statement regarding pending litigations, if any, involving the company.

5. Manner of filing of application— (1) The application in Form STK 2 shall be signed by a director duly authorized by the Board in their behalf.



(2) Where the director concerned does not have a registered digital signature certificate, a physical copy of the form

duly filled in shall be signed manually by the director duly authorized in that behalf and shall be attached with the Form STK 2 while uploading the form.

6. Form to be certified.- The Form STK 2 shall be certified by a Chartered Accountant in whole time practice or Company Secretary in whole time Practice or Cost Accountant in whole time practice, as the case may be.

7. Manner of publication of notice – (1) The notice under sub-section (1) or sub-section (2) of section 248 shall be in Form STK 5 or STK 6, as the case may be, and be-

(i) placed on the official website of the Ministry of Corporate Affairs on a separate link established on such website in this regard;

(ii) published in the Official Gazette;

(iii) published in English language in a leading English newspaper and at least once in vernacular language in a leading vernacular language newspaper, both having wide circulation in the State in which the registered office of the company is situated.

Provided that in case of any application made under sub-section (2) of section 248 of the Act, the company shall also place the application on its website, if any, till the disposal of the application.

(2) The Registrar of Companies shall, simultaneously intimate the concerned regulatory authorities regulating the company, viz, the Income-tax authorities, central excise authorities and service-tax authorities having jurisdiction over the company, about the proposed action of removal or striking off the names of such companies and seek objections, if any, to be furnished within a period of thirty days from the date of issue of the letter of intimation and if no objections are received within thirty days from the respective authority, it shall



be presumed that they have no objections to the proposed action of striking off or removal of name.

8. Manner of notarization, apostilisation or consularisation of indemnity bond and declaration in case of foreign nationals or non-resident Indians:- For the purposes of these rules, if the person is a foreign national or non-resident Indian, the indemnity bond, and declaration shall be notarized or apostilised or consularised.

9. Notice of striking off and dissolution of company. - The Registrar shall cause a notice under subsection (5) of section 248 of striking off the name of the company from the register of companies and its dissolution to be published in the Official Gazette in Form STK 7 and the same shall also be placed on the official website of the Ministry of Corporate Affairs.

10. Applications or forms pending before Central Government. – Any application or pending proceeding for striking off or Form-FTE filed with the Registrar of Companies prior to the commencement of these rules but not disposed of by such authority for want of any information or document shall, on its submission, to the satisfaction of the authority, be disposed of in accordance with the rules made under the Companies Act, 1956 (1 of 1956).

### **Procedure for Reduction of Share Capital of Company Rules, 2016**

Ministry of Corporate Affairs vide its notification G.S.R 1147 (E) dated 15<sup>th</sup> December, 2016, in exercise of the powers conferred by sub-section (1) and (2) of section 469 read with section 66 of the Companies Act, 2013 (18 of 2013) the Central Government hereby makes the following rules



namely:-

1. Short title and Commencement.—(1) These rules may be called the National Company Law Tribunal (Procedure for reduction of share capital of Company) Rules, 2016.

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

(3) The words and expressions used in these rules but not defined and defined in the Companies Act, 2013 (hereinafter referred to as the Act) or in the Companies (Specification of Definitions Details) Rules, 2014 or the National Company Law Tribunal Rules, 2016 shall have the meanings respectively assigned to them in the Act or the said rules.



2. Form of application or petition for Reduction of share capital under section 66.—(1) An application to the Tribunal to confirm a reduction of share capital of a company shall be in Form No. RSC-1 and fee shall be, as prescribed in the Schedule of fee to these rules.

(2) An application to confirm a reduction of share capital of a company shall be accompanied with –

(a) the list of creditors duly certified by the Managing Director, or in his absence, by two directors, as true and correct, which is made as on a date not earlier than fifteen days prior to the date of filing of an application showing the details of the creditors of the company, class-wise, indicating their names, addresses and amounts owed to them;

(b) a certificate from the auditor of the company to the effect that the list of creditors referred to in clause (a) is correct as per the records of the company verified by the auditor;

(c) a certificate by the auditor and declaration by a director of the company that the company is not, as on the date of filing of the application, in arrears in the repayment of the deposits or the interest thereon; and

(d) a certificate by the company's auditor to the effect that the accounting treatment proposed by the company for the reduction of share capital is in conformity with the accounting standards specified in section 133 or any other provisions of Act.

3. Issue of notice and directions by the National Company Law Tribunal.—(1) The Tribunal shall, within fifteen days of submission of the application under rule 2, give notice, or direct that notice be given to –

(i) the Central Government, Registrar of Companies, in all cases, in Form No. RSC-2;

(ii) the Securities and Exchange Board of India, in the case of listed companies in Form No. RSC-2;

(iii) the creditors of the company, in all cases in Form No. RSC-3; seeking their representations and objections, if any.

(2) The notice under clause (iii) of sub-rule (1) shall be sent, within seven days of the direction given under that sub-rule or such other period as may be directed by the Tribunal, to each creditor whose name is entered in the list of creditors submitted by the company about the presentation of the application and of the said list, stating the amount of the proposed reduction of share capital and the amount or estimated value of the debt or the contingent debt or claim or both for which such creditor's name is entered in the said list, and the time within which the creditor may send his representations and



objections.

(3) The Tribunal shall along with directions under sub-rule (1) give directions for the notice to be published, in Form No. RSC-4 within seven days from the date on which the directions are given, in English language in a leading English newspaper and in a leading vernacular language newspaper, both having wide circulation in the State in which the registered office of the company is situated, or such newspapers as may be directed by the Tribunal and for uploading on the website of the company (if any) seeking objections from the creditors and intimating about the date of hearing.



(4) The notice under sub-rule (3) shall state the amount of the proposed reduction of share capital, and the places, where the aforesaid list of creditors may be inspected, and the time as fixed by the Tribunal within which creditors of the company may send their objections:

Provided that the objections, if any, shall be filed in the Tribunal within three months from the date of publication of the notice with a copy served on the company.

(5) The company or the person who was directed to issue notices and the publication in the newspaper under this rule shall, as soon as may be, but not later than seven days from the date of issue of such notices, file an affidavit in Form No. RSC- 5 confirming the dispatch and publication of the notice.

(6) Where the Tribunal is satisfied that the debt or claim of every creditor has been discharged or determined or has been secured or his consent is obtained, it may dispense with the requirement of

giving of notice to creditors or publication of notice under this rule or both.

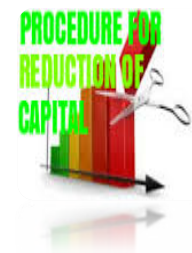
4. Representation by Central Government, Registrar etc. under sub-section (2) of section 66.—If the authorities or the creditors of the company referred to in clause (i), clause (ii) and clause (iii) of sub-rule (1) of rule 3 desire to make any representation under sub-section (2) of section 66, the same shall be sent to the Tribunal within a period of three months from the date of receipt of notice and copy of such representation shall simultaneously be sent to the company and in case no representation has been received within the said period by the Tribunal it shall be presumed that they have no objection to the reduction.

5. Procedure with regard to representations and objections received.—(1) The company shall submit to the Tribunal, within seven days of expiry of period upto which representations or objections were sought, the representations or objections so received along with the responses of the company thereto.

(2) The Tribunal may give such directions as it may think fit with respect to holding of any enquiry or adjudication of claims or for hearing the objection or otherwise.

(3) At the hearing of the application, the Tribunal may, if it thinks fit, give such directions as may deem proper with reference to securing the debts or claims of creditors who do not consent to the proposed reduction, and the further hearing of the petition may be adjourned to enable the company to comply with such directions.

6. Order on application and Minute thereof.—(1) Where the Tribunal makes an order confirming a reduction, the order confirming the reduction and





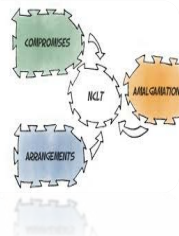
approving the minute may include such directions or terms and conditions as the Tribunal deems fit.

(2) The order confirming the reduction of share capital and approving the minute shall be in Form No. RSC - 6 on such terms and conditions as may be deemed fit.

(3) The Certificate issued by the Registrar under sub-section (5) of section 66 shall be in Form No. RSC-7.

### Transfer of pending proceedings, all proceedings under the Companies Act, 1956

Ministry of Corporate Affairs vide its order no S.O 3676 (E) dated 7<sup>th</sup> December, 2016, whereas clause (c) of sub-section (1) of section 434 of the Companies Act, 2013 (hereinafter referred to as the 2013 Act) provides that on a date which may be notified by the Central Government for the purpose of transfer of pending proceedings, all proceedings under the Companies Act, 1956 (hereinafter referred to as the 1956 Act) including proceedings relating to arbitration, compromise, arrangements and reconstruction and winding up of companies, pending immediately before such date before any District Court or High Court, shall stand transferred to the Tribunal and the Tribunal may proceed to deal with such proceedings from the stage before their transfer;



And, whereas, the proviso thereof further provides that only such proceedings relating to the winding up of companies shall be transferred to the Tribunal that are at a stage as may be prescribed by the Central Government;

And, whereas, clause (c) of sub-section (1) of section 434 of the 2013 Act shall come into force from the 15<sup>th</sup> December, 2016 and whereas,

provisions of sections 6 to 32, 60 to 67 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the Code) have been brought into force on 1st December, 2016 and sections 33 to 54 of the Code and the provisions of Chapter XV and Chapter XX of the 2013 Act shall be notified to come into force from 15th December, 2016;

And, whereas, it has been decided that (i) proceedings under the 1956 Act with High Courts on all cases other than winding-up as on 15th December, 2016 shall stand transferred to the Benches of the Tribunals exercising respective territorial jurisdiction and (ii) all cases of winding up under the 1956 Act which are pending before the High Courts as on 15th December, 2016 and wherein petitions have not been served to the respondents as per rule 26 of Companies (Court) Rules, 1959 shall be transferred to Tribunal, and all remaining cases of winding up pending on that date would continue with the respective High Courts;

And, whereas, difficulties have arisen regarding continuation of provisions of the 1956 Act for (i) those proceedings relating to cases other than winding-up that are reserved for orders for allowing or otherwise and (ii) those winding up cases which would not be transferred to Tribunal and be proceeded with by High Courts on account of commencement of the corresponding provisions under the 2013 Act or under the Code;

And, whereas, difficulties have also arisen regarding transfer of proceedings relating to cases other than winding-up where hearings have been completed and only pronouncement of order is pending or is reserved since their transfer to

N - National  
C - Company  
L - Law  
T - Tribunal

Tribunal may result into delay and rights of parties to the proceedings are likely to be affected prejudicially;

Now, therefore, 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 to remove the above said difficulties, namely:-

1. Short title and commencement.- (1) This Order may be called the Companies (Removal of Difficulties) Fourth Order, 2016.

(2) It shall come into force with effect from the 15th December, 2016.

2. In the Companies Act, 2013, in Section 434, in sub-section (1), in clause (c), after the proviso, the following provisos shall be inserted, namely:-

“Provided further that only such proceedings relating to cases other than winding-up, for which orders for allowing or otherwise of the proceedings are not reserved by the High Courts shall be transferred to the Tribunal:

Provided further that –

(i) all proceedings under the Companies Act, 1956 other than the cases relating to winding up of companies that are reserved for orders for allowing or otherwise such proceedings; or

(ii) the proceedings relating to winding up of companies which have not been transferred from the High Courts; shall be dealt with in accordance with provisions of the Companies Act, 1956 and the Companies (Court) Rules, 1959”.

### **Applicability of the Provisions of the Companies Act, 2013**

Ministry of Corporate Affairs vide its notification no S.O 3677 (E) dated 7<sup>th</sup> December, 2016, in exercise of the powers conferred by

sub-section(3) of section 1 of the Companies Act, 2013 (18 of 2013), the Central Government hereby appoints the 15th day of December, 2016 as the date on which the following provisions of the said Act shall come into force, namely November, 2016, in exercise of the powers conferred by Sections 396, 398, 399, 403, 404 read with 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 (Registration Offices and Fees) Rules, 2014, namely:-



S.No	Sections	Description
1.	Clause (23) of section 2	Companies Liquidator
2.	Clause (c) and (d) of sub-section (7) of section 7	If a company furnishes any false information at the time of incorporation, then; <ul style="list-style-type: none"> <li>• Direct removal of companies name from the register</li> <li>• Pass an order for winding up of the company</li> </ul>
3.	Sub-section (9) of section 8	This section relates to Charitable Organizations. According to this if a company is registered under this section then on winding up after satisfaction of all debts if any asset is remained ,it will be transferred to another company registered

		under same section or else be sold in the market and the amount is credited to “Rehabilitation and Insolvency Fund”
4.	Section 48	Variations of Shareholders Rights
5.	Section 66	Reduction of Share Capital
6.	Sub-section (2) of section 224	If a company is liable to be wound up under this section and it appears to the Central Government from any such report made under section 213, then the Central Government Until the company is not wound up already by the Tribunal, cause the company to present itself in the Tribunal with the petition of winding up.
7.	Section 226	Voluntary winding of the company etc. not to stop the investigating proceedings
8.	Section 230 [except sub-section (11) and (12)],  Sections 231  Sections 232	<ul style="list-style-type: none"> <li>• Powers to make compromises and arrangements with the creditors and members</li> <li>• Power of Tribunal to enforce compromises and arrangements</li> <li>• Mergers and Amalgamations of Companies</li> </ul>

	Sections 233	<ul style="list-style-type: none"> <li>• Mergers and Amalgamations of certain companies</li> </ul>
9.	Sections 235  Sections 236  Sections 237  Sections 238  Sections 239  Sections 240	<ul style="list-style-type: none"> <li>• Power to acquire shares of shareholders dissenting from scheme or contract approved by the majority</li> <li>• Purchase of Minority Shareholdings</li> <li>• Power of Central Government to provide for amalgamation of Companies in public interest</li> <li>• Registration of offer of schemes involving transfer of shares</li> <li>• Preservation of books and papers of amalgamated companies</li> <li>• Liabilities of officers in respect of offences committed prior to Amalgamations and Mergers</li> </ul>

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