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**Major Amendments by Ministry of Corporate Affairs (MCA) for the Calendar Year January to December 2016**



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**Mumbai Off :**

1005, Hubtown Solaris  
Off Western Express Highway  
East End of Andheri Flyover  
Andheri(East) Mumbai-400069

Landline : + 91-22-2684-5920/21

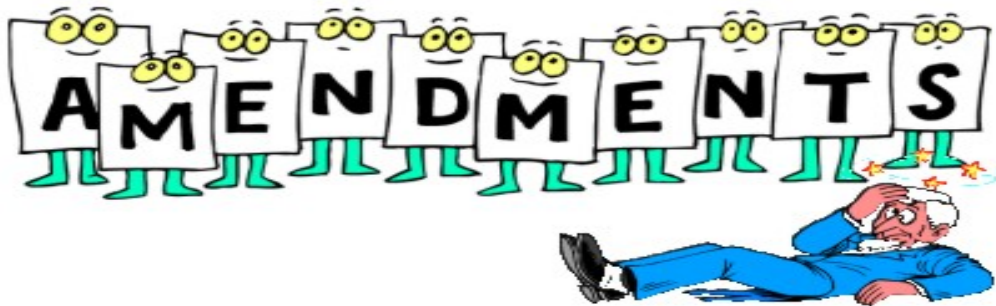
Fax: + 91-22-6678-7499

Mobile : + 91-982-017-7691

**Hyderabad Off :**

My Home Hub, 4th Floor, C Block, Madhupur,  
Hi-Tech City, Hyderabad, AP 500 081

## RECAP 2016



Its December Again!!! And as per our past practise, we have compiled the key notifications and Circulars issued by Ministry of Corporate Affairs (“MCA”) for our readers ready reference.

Year 2016 has been historic, the Companies Act, 2013 has finally entered into the final stage of its implementation. During this year, major provisions of Companies Act, 2013 pertaining to National Company Law Tribunal were notified. Ministry has issued over 100 notifications and circulars during 2016.

### **KEY HIGHLIGHTS**

#### **1. CENTRAL REGISTRATION CENTRE (CRC) FOR INCORPORATION OF COMPANIES:**

- The Ministry of Affairs vide its Circular dated 22<sup>nd</sup> January, 2016 had launched the Central Registration Centre (CRC) having territorial jurisdiction all over India with the specific objective of providing speedy incorporation related services within stipulated time frames which are in line with International best practices.
- As per Rule 8 of Companies (Incorporation) Rules, 2014, certain names were not allowed to be applied or considered undesirable, for incorporation of Companies under Companies Act, 2013 are now allowed to be applied vide this Circular.
- With the launch of the **Central Registration Centre (CRC)**, an application for reservation of name shall now be made in Form INC-1 to the Registrar, Central Registration Centre.
- This notification has come into force since 28<sup>th</sup> March, 2016.

## **2. GENERAL INSTRUCTIONS FOR THE PREPARATION OF FINANCIAL STATEMENT OF A COMPANY REQUIRED TO COMPLY WITH INDIA ACCOUNTING STANDARD (AS)**

- On 6<sup>th</sup> April, 2016, Ministry of Corporate Affairs vide its notification has amended **SCHEDULE III** of Companies Act, 2013 by inserting "Division II" comprising General Instructions for the preparation of financial statement of a Company who is required to comply with India Accounting Standard (AS).

The Amendments incorporated with the above notification inter alia includes the following:

- The disclosure requirements specified in this Schedule are in addition to the disclosure requirements specified in the Indian Accounting Standards which shall be made in the Notes or by way of additional statement or statements unless required to be disclosed on the face of the Financial Statements.
- Notes shall contain information in addition to that presented in the Financial Statements and shall provide where required-
  - (i) narrative descriptions or disaggregations of items recognised in those statements;
  - (ii) information about items that do not qualify/ for recognition in those statements.

Each item on the face of the Balance Sheet, Statement of Changes in Equity and Statement of Profit and Loss shall be cross-referenced to any related information in the Notes. In preparing the Financial Statements including the Notes, a balance shall be maintained between providing excessive detail that may not assist users of Financial Statements and not providing important information as a result of too much aggregation.

## **3. DESIGNATED THE SPECIAL COURTS FOR THE PURPOSES OF TRIAL OF OFFENCES IN TERMS OF COMPANIES ACT, 2013**

MCA vide its notification dated May 18, 2016 had enforced section 435 of the Companies Act, 2013 for establishment of Special Court. The **list of special courts** for the purposes of trial of offences punishable with **imprisonment of 2 years or more** was notified by MCA.

## **4. COMPANIES (CORPORATE SOCIAL RESPONSIBILITY POLICY) AMENDMENT RULES, 2016**

- Ministry of Corporate Affairs ("MCA") vide its notification dated May 23, 2016 had amended Companies (Corporate Social Responsibility Policy) Amendment Rules, 2016 and substituted the proviso in Rule 4(2).
- The Board of a Company may decide to undertake its CSR activities approved by the CSR Committee, through

- (a) a **Company established under section 8** of the Act or a registered trust or a registered society, established by the Company, either singly or along with any other Company, or
- (b) a Company established under section 8 of the Act or a registered trust or a registered society, established by the Central Government or State Government or any entity established under an Act of Parliament or a State legislature :

Provided that if, the Board of a Company decides to undertake its CSR activities through a Company established under section 8 of the Act or a registered trust or a registered society, other than those specified in this sub-rule, such Company or trust or society shall have an established **track record of 3 years** in undertaking similar programs or projects; and the **Company has specified the projects or programs** to be undertaken, the modalities of utilisation of funds of such projects and programs and **the monitoring and reporting mechanism**”.

## 5. **NATIONAL COMPANY LAW TRIBUNAL**

MCA vide its notification dated June 01, 2016 had notified the constitution of National Company Law Tribunal (“NCLT”) and National Company Law Appellate Tribunal (“NCLAT”). With the constitution of NCLT, the Company Law Board constituted under Companies Act, 1956 was dissolved. MCA vide its notification dated June 01, 2016 had also list out eleven Benches, its location and the territorial jurisdiction of the Benches.

Provisions and Sections of Companies Act, 2013 relating to NCLT which were notified with the aforesaid notification are detailed below:

<b>Sr. No.</b>	<b>Chapter No</b>	<b>Chapter Name</b>	<b>Section notified</b>	<b>Powers under Companies Act, 2013</b>
1	II	Incorporation of Company	7 (7) [except clause ( c ) and (d) ]	Legal action for false or incorrect information or representation in any of the document pursuant to incorporation except removal of name or winding up orders
2	II	Incorporation of Company	14 (1) and (2)	Conversion of status of the Company from Private to Public and Public to Private
3	IV	Share Capital and Debentures	55 (3)	Further issue of Redeemable Preference Shares to its Existing Preference Shareholder in case Company is not in position to Redeem its Preference Shares or

				pay dividend thereof ( roll over )
4	IV	Share Capital and Debentures	Proviso to 61(1) (b)	Consolidation and sub-division of shares resulting in change in voting percentage
5	IV	Share Capital and Debentures	62 (4) to (6)	Conversion or Change in Terms of Debentures where the Debenture holder is Government and such conversion is in public interest
6	IV	Share Capital and Debentures	71 (9) to (11)	Debenture Trustee can approach to the Tribunal for Redemption of Debentures in case of secured assets becomes insufficient
7	V	Acceptance of Deposits	75	Action against the Company in case it intends to defraud the depositors
8	VII	Management and Administration	97	Power to call AGM in case of failure of the Company to hold it
9	VII	Management and Administration	98	Power to call Meeting of Members other than AGM
10	VII	Management and Administration	99	Penal provision for non compliance with directions of Tribunal to call for AGM / Members Meeting
11	VII	Management and Administration	119 (4)	Order for inspection in case of default made by Company for not providing copy of Minutes of GM
12	IX	Accounts of Companies	130	Order for Re-Opening of Accounts if earlier Accounts are prepared in fraudulent manner or the affairs of Companies were mismanagement
13	IX	Accounts of Companies	131	Order for voluntary revision of Financial Statement or Director's Report filed by the Company

14	X	Audit and Auditors	140 (4) and (5)	Removal of Auditor without giving opportunity for representation and also suo moto order to change the Auditors in case Tribunal finds him involved in fraud
15	XI	Appointment and Qualification of Directors	169(4)	Order that representation need not be read out in case of removal of Director
16	XIV	Inspection, Inquiry and Investigation	213	Investigation into the Company's affairs
17	XIV	Inspection, Inquiry and Investigation	216(2)	Power to appoint Inspector for investigation
18	XIV	Inspection, Inquiry and Investigation	218	Power to approve taking of any action against the employees
19	XIV	Inspection, Inquiry and Investigation	221	Power to freeze assets of Company during investigation if prejudicial to the interest of the Company and other stakeholders
20	XIV	Inspection, Inquiry and Investigation	222	Power to freeze securities of Company during investigation
21	XIV	Inspection, Inquiry and Investigation	224 (5)	Power of Tribunal based on inspector's report to disgorgement of assets of the Company in case of fraud by the Director or KMP or other person and make them liable personally without any limitation of liability
22	XVI	Prevention of Oppression and Mismanagement	241, 242 [except Clause b(1), Clause ( c ) and (g) of Sub Section (2)], 243, 244 and 245	Oppression Mismanagement and Class Action suits
23	XXIV	Registration Office and Fees	399	No production of documents filed with Registrar relating to Courts Orders without permission of Tribunal or Court

24	XXVII	National Company Law Tribunal	415 to 433 both inclusive	Appointment, Removal, Power, Procedure for appeal etc of NCLT
25	XXVII	National Company Law Tribunal	434 (1)(a) and (b) and sub section (2)	Transfer provision for pending CLB cases
26	XXVIII	Special Courts	441	Power to compound certain offences which are punishable with Fine only
27	XXIX	Miscellaneous	466	Dissolution of Company Law Board

## 6. COMPANIES (ACCEPTANCE OF DEPOSITS) RULES, 2014

MCA vide notification dated June 29, 2016 had issued Companies (Acceptance of Deposits) Amendment Rule, 2016. In the Companies (Acceptance of Deposits) Rules, 2014 (hereinafter referred to as the principle rules) following major amendment were introduced:

### Following Receipts by the Company falls outside the ambit of Public Deposit

- i. Any amount raised by issue of secured CCDs (compulsorily convertible debenture) **convertible into shares of the Company within 10 years (earlier it was 5 year).**
- ii. Any amount raised by issue of **Listed unsecured NCD (non-convertible debenture)** on recognized stock exchange.
- iii. Any non-interest bearing amount **received and held in trust** (earlier it was any non-interest bearing amount **received or held in trust**)
- iv. Any amount received as an advance towards consideration for providing future services in the form of a **warranty or maintenance contract** as per **written agreement** or arrangement, if the period for providing such services does not exceed the period prevalent as per common business practice or 5 years from the date of acceptance of such service whichever is less.
- v. Any amount received as an advance and as allowed by **any sectoral regulator or in accordance with directions of Central or State Government.**
- vi. Any amount received as an advance for subscription towards **publication**, whether in **print or in electronic** to be adjusted against receipt of such publications
- vii. Any amount received by way of subscription in respect of a **chit under the Chit Fund Act, 1982**
- viii. Any amount received by the Company under any **collective investment scheme**

- ix. An amount of **25 lacs or more received by start up Company** by way of convertible note (Convertible into Equity Shares or repayable **within a period not exceeding 5 years** from the date of issue) in a **single trench from a person**.

Any amount received by a Company from **AIF (Alternate investment funds), domestic venture capital funds and MF (Mutual Funds)** registered with SEBI.

## **7. COMPANIES (APPOINTMENT AND REMUNERATION OF MANAGERIAL PERSONNEL) AMENDMENT RULES, 2016**

Ministry of Corporate Affairs (“MCA”) vide notification dated June 30, 2016 had amended Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2016.

1. **Form MR- 1 is not required to be filed** for appointment of following KMPs
  - i. Chief Executive Officer (CEO),
  - ii. Company Secretary (CS)
  - iii. Chief Financial Officer (CFO)
  
2. **Following disclosures are not required to be made in Board’s Report of Listed Companies:**
  - i. the explanation on the relationship between average increase in remuneration and company performance;
  - ii. comparison of the remuneration of the Key Managerial Personnel against the performance of the company;
  - iii. variations in the market capitalization of the company, price earnings ratio as at the closing date of the current financial year and previous financial year and percentage increase over decrease in the market quotations of the shares of the company in comparison to the rate at which the company came out with the last public offer in case of listed companies, and in case of unlisted companies, the variations in the net worth of the company as at the close of the current financial year and previous financial year;
  - iv. comparison of the each remuneration of the Key Managerial Personnel against the performance of the company;
  - v. the key parameters for any variable component of remuneration availed by the directors;
  - vi. the ratio of the remuneration of the highest paid director to that of the employees who are not directors but receive remuneration in excess of the highest paid director during the year.



3. **Discloser in Board Report of top ten employees in terms of remuneration** drawn and the name of every employee who is in receipt of remuneration of **Rs. 1.2 crore per annum or Rs. 8.5 Lac per month** is required . (Earlier the limit for such disclosure was remuneration of Rs.60 Lac per annum or Rs.5 Lac per month).

**8. CLARIFICATION FOR AUDITORS APPOINTMENT – COMPANIES (REMOVAL OF DIFFICULTIES) THIRD ORDER, 2016:**

MCA vide notification dated June 30, 2016 had provided clarification relating to section 139(2) of the Companies Act, 2013 with respect to appointment of statutory auditors as follows:

- i. Every Listed Company;
- ii. Unlisted public Company having paid up capital of Rs.10 crores or more;
- iii. Private Companies having paid up capital of Rs. 20 crores or more;
- iv. All Companies having paid up capital less than the aforesaid limits but having public borrowing form Financial Institution, Banks or public deposits of Rs. 20 crores or more

is required to comply with the provisions of the Section 139 (2) of the Companies Act, 2013 with respect to appointment of statutory auditors from the **first annual general meeting of the Company** held after **3 years** from the date of commencement of Companies Act, 2013 (which means by **30<sup>th</sup> September, 2017**) (Before this clarification it was mentioned three years from the date of commencement of the Act, which was considered as 1<sup>st</sup> April, 2017).

**9. COMPANIES (SHARE CAPITAL AND DEBENTURES) THIRD AMENDMENT RULES, 2016:**

MCA vide notification dated July 19, 2016 had issued Companies (Share Capital and Debentures) Third Amendment Rules, 2016.

In the Companies (Share Capital and Debentures) Third Amendment Rules, 2016 following major amendments were introduced:

- Sub Rule (1) of Rule (4) of Companies (Share Capital and Debentures) Rules, 2014 lays down various conditions to be complied with by the Company in order to issue equity shares with differential rights as to dividend, voting or otherwise. One of such condition is that there should be no default made by the Company in respect of the following:

- a. payment of the dividend on preference shares or;
- b. repayment of any term loan from a public financial institution or State level financial institution or scheduled Bank that has become repayable or interest payable thereon or; dues with respect to statutory payments relating to its employees to any authority or;
- c. default in crediting the amount in Investor Education and Protection Fund to the Central Government;

With the aforesaid amendment notification, a proviso has been inserted allowing Companies who have defaulted any of the aforesaid conditions, to issue equity shares with differential rights after expiry of 5 years from the end of financial year in which default was made good.

- As per the Companies (Share Capital and Debentures) Rules, 2014, Companies are permitted to issue sweat equity shares, higher of the following:
  - (i) 15% of the existing paid up equity capital in a year **or**
  - (ii) shares of issue value of Rs. 5 crores;

Now, a startup Company, as defined by Department of Industrial Policy and Promotion, can issue sweat equity shares upto maximum 50% of paid up capital, till 5 years from the date of its incorporation or registration.

This amendment is a stepping stone towards facilitating the startup Companies to attract and retain the best of the human resources available in the industry.

The amendment rules now permits the startup companies as defined by Department of Industrial Policy and Promotion to issue shares under a scheme of Employees' Stock Option ("ESOP") for a period of 5 years from the date of its incorporation or registration to the following:

- (i) an employee who is a promoter or a person belonging to the promoter group; or
- (ii) a director who either himself or through his relative or through any body corporate, directly or indirectly, holds more than 10% of the outstanding equity shares of the startup company.

The same was not permitted earlier as aforesaid employees / director were not included in the definition of the employee for the purpose of issuing shares under the scheme of ESOP.

- Companies can now allot partly paid securities on preferential basis as the mandatory requirement of issuing fully paid-up securities has been done away with this amendment rules.
- Companies issuing convertible securities on a preferential basis, now have the following two option to determine the price of the equity shares, to be issued upon conversion of the securities;

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 in the explanatory statement annexed to the notice of general meeting for issuing such convertible securities on preferential basis.

- Company not having a share capital and proposing to increase its number of members will now have to file Form SH-7 with the Office of Registrar of Companies for intimating such increase in number of members.
- Companies can now create a security by creating charge or mortgage on the properties / assets of its subsidiaries or its holding company or its associates company for securing the issue of secured Debentures. Prior to this amendment, the charge was allowed to be created only on the properties/assets of the Company issuing such secured Debentures.
- Now, for the NBFC's registered with RBI, Housing Finance Companies registered with National Housing Bank, Manufacturing and Infrastructure Companies, Debenture Redemption Reserve ("DRR") will be required to be created for an amount of 25% of the value of outstanding debentures as against the total value of the debentures. Also a proviso has been inserted which states that higher amount may be transferred to DRR as may be necessary in case of premature redemption of debentures even if it exceeds the limits prescribed i.e. 25%.

#### **10. COMPANIES (INCORPORATION) THIRD AMENDMENT RULES, 2016**

MCA vide its notification dated July 27, 2016 a new Rule 37 was inserted for conversion of unlimited liability Company into limited liability Company by shares or guarantee. Following are the provision prescribed under the said rule:

- Company has to pass Special Resolution in General Meeting, and then filed INC-27.
- The Company shall within 7 days from the date of passing of the special resolution, publish a notice in Form No. INC-27A in two newspapers (one in English and one in vernacular language).
- The company shall within 45 days of passing of special resolution file an application for its conversion into a company limited by shares or guarantee by attaching following documents:
  - i. Notice of General Meeting
  - ii. Copy of resolution passed in GM
  - iii. Copy of Newspaper publication
  - iv. Copy of altered Memorandum of Association and Articles of Association duly certified by any one of the Directors and Company Secretary.
  - v. Declaration that such conversion shall not affect any debts, liabilities, obligations or contracts.
  - vi. List of creditors and debenture holders.
  - vii. Declaration of enquiry of affairs of the Company.
  - viii. Declaration of solvency.
  - ix. Certificate from the Auditors that company is solvent and in going concern.
  - x. No objection Certificate from sectoral regulator
  - xi. No objection Certificate from all secured creditors.

- The Registrar after considering the application shall grant Certificate of Incorporation in Form INC-11A.
- There are certain conditions which a company has to comply after conversion:
  - i. Company shall not change its name for a period of one year from the date of such conversion.
  - ii. Company shall not declare or distribute any dividend without satisfying past debts, liabilities, obligations.
- In following cases an Unlimited Liability Company shall not be eligible for conversion into a Company Limited by shares or guarantee:
  - i. Having net worth in negative
  - ii. Whose application is pending for striking off its name
  - iii. Who is in default of any of its Annual Returns or Annual Accounts
  - iv. Whose petition for winding up is pending
  - v. Who 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
  - vi. Against whom an inquiry, inspection or investigation is pending

## **11. COMPANIES (ACCOUNT) AMENDMENT RULES, 2016**

MCA vide its notification dated July 27, 2016 had issued the Companies (Accounts) Amendment Rules, 2016.

Following were the amendments introduced with the above mentioned notification:

1. In Rule 6 relating to manner of consolidation of accounts, second proviso has been substituted providing exemption in respect of preparation of consolidated financial statement by a Company if it meets following three conditions:
  - i. it is a **wholly-owned subsidiary**, or is a partially-owned subsidiary of another company **and all its other members**, including members not entitled to vote, **intimated in writing and for which the proof of delivery of such intimation is available** with the company, and they have not objected to 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.
2. The Company 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 in Board's Report.

3. Rule 13, relating to appointment of Internal Auditor, has amended that **now individual or a partnership firm or a body corporate can also be appointed as Internal Auditor** of the Company, which includes Cost Accountant whether engaged in practice or not.
4. Now in **Form AOC- 1**, Companies having subsidiaries/ joint ventures/ associates required to disclose the **date of acquisition of such subsidiaries/ joint ventures/ associates**.

## **12. COMPANIES (MEDIATION AND CONCILIATION) RULES, 2016:**

MCA vide its notification dated September 9, 2016 had prescribed Companies (Mediation and Conciliation) Rules, 2016 in order to facilitate voluntary dispute resolution mechanism.

- Section 442 of the Companies Act, 2013 states that the Central Government (Powers are given to the Regional Director vide notification dated December 19, 2016) shall maintain a panel of experts to be called as the **Mediation and Conciliation Panel** which consists of such experts who possesses the requisite qualifications as prescribed. The said panel is required to be maintained for mediation between the parties during the pendency of any proceedings before the Central Government or the Tribunal or Appellate Tribunal (**hereinafter referred to as 'Respective Authorities'**), as the case may be.
- The mediation process will give faster remedy in 3 months and all proceedings and documents are confidential and are not exposed to the general viewing, which will encourage parties to initiate mediation with the help of professionals or experts in the subject matter. Mediation and Conciliation is giving a fair opportunity to business owners to arrive at easier, faster, simpler solutions and settlement of disputes at a very reasonable cost, efforts and time.

## **13. POWERS OF TRIBUNAL**

MCA vide its notification dated September 9, 2016 had notified few more section relating to powers of National Company Law Tribunal ("NCLT").

Following is the brief analysis of Sections Notified

### **1. Section 227 - Legal advisers and bankers not to disclose certain information**

This section relates to investigation, inspection or inquiry against the affairs of the Company by the Registrar/ **Tribunal**/ Inspector appointed by the Central Government on various grounds, the legal advisers and bankers of such companies shall not require to disclose some information such as-

- a) any privileged communication made to any legal advisers by virtue of being in that capacity;
- b) any information related to other customers of the bankers of the company under the process of investigation etc.

**2. Section 242(1) (b) and (g) - Powers of Tribunal in case application is made w.r.t oppression.**

Tribunal may with a view to bring to an end to the matters, pass orders of winding up, reduction of share capital or setting aside of any transfer, delivery of goods, payment, execution or other act relating to property made or done by or against the Company within three months before the date of the application.

**3. Section 246 and Section 337 to 341**

Penal provisions prescribed under section 337 to 341 would be applicable *mutatis mutandis* with respect to application made in case of oppression and in case of class action suits.

**14. REMUNERATION PAYABLE BY THE COMPANIES HAVING NO PROFIT OR INADEQUATE PROFIT WITHOUT CENTRAL GOVERNMENT APPROVAL:**

MCA vide its notification dated September 12, 2016 had made amendments to Schedule V of the Companies Act, 2013 which relates to Appointment and fixing of remuneration of Managing or Whole time Director or Manager without approval of Central Government.

According to the aforementioned notification following amendments were made with respect to Remuneration payable by the Companies having no profit or inadequate profit without Central Government approval.

Higher of the following limits under (A) and (B) shall be payable as remuneration to the managerial person in case of no profit or inadequate profit without approval of Central Government

(A)

<b>Where the effective capital is</b>	<b>Limit of yearly remuneration payable shall not exceed</b>
Negative or less than ₹5 crores	₹60 lacs
₹5 crores and above but less than ₹100 crores	₹84 lac
₹100 crores and above but less than ₹250 crores	₹120 lac
₹250 crores and above	₹120 lac + 0.01% of the effective capital in excess of ₹250 crores

(B) In case of managerial person who is functioning in a **professional capacity**, no approval of Central Government is required, if:

- i. such person is **not having any interest in the capital** of the Company or its holding Company or any of its subsidiary Company **during last 2 years before on or after date of appointment** and
- ii. **possesses graduate level qualification** and specialized knowledge in the field in which Company operates.

Provided that any employee of a Company who holds shares of the Company **not exceeding 0.5% of its paid up share Capital** under any Employee Stock Option Plan (ESOP) or by way of qualification shall be deemed to be a person not having any interest in the Capital of the Company.

#### **15. COMPANIES (INCORPORATION) FOURTH AMENDMENT RULES, 2016:**

MCA vide Notification dated October 1, 2016 amended Companies (Incorporation) Rules, 2014 (Principal Rules). Amendment is introduced in Rule 33 or Principal Rules for Conversion of Private Company into Public Company or vice versa.

1. As now **National Company Law Tribunal (NCLT) is authorised to issue order approving alteration of Articles in case of Convesion of Private Company into Public Company or vice versa**, the copy of order issued by NCLT shall be filed with Registrar in **Form INC-27** together with printed copy of Articles within 15 days from the date of receipt of Order from **NCLT**. Prior to this notification the abovemention Order were issued by Central Government.

In the Principal Rules, Rule 38 is inserted pertaining to Simplified Proforma for Incorporating Company Electronically (SPICE) which is also termed as **Sole, Simplified & Versatile form available for incorporation of a Company** in India.

**E-Form No 32** is introduced with the insertion of Rule 38 , which is also know as SPICE form (Simplified proforma for Incorporating Company Electronically) for Incorporation of a Company.

**E-Form INC-32** deals with the single application for **reservation of name, incorporation of a new Company** and/or **application for allotment of DIN**. This e-form is accompanied by supporting documents including details of Directors & subscribers, e-MoA (in Form No. **INC-33**) and e-AoA (in Form No. **INC-34**) and other documents.

#### **Key feature of the Form are as under:**

- Simplified and Completely Digital form for Company Incorporation.
- Standard format of e-Memorandum of Association and Articles of Association as per Companies Act, 2013
- Provision to apply for Company Incorporation with a pre-approved Company Name.

- Mandatory DSCs of Subscribers and Witnesses

2. Further in Principal Rules, Rule No 39 relating to **Conversion of Company Limited by Guarantee into a Company Limited by Shares** is inserted;

The Company Limited by Guarantee can Convert itself into a Company Limited by Shares on fulfillment of following conditions;

- The Company opting to Convert itself (hereinafter referred as “Such Company”) should be other than a Section 8 Company (Company with Charitable Objects).
- **Such Company should have Share Capital equivalent to the guarantee amount.**
- **Special Resolution** should be passed by the Shareholders for ;
  - Omitting the Guarantee Clause from its Memorandum of Association and;
  - Alteration of Articles of Association by inserting the provisions applicable to Company Limited by Shares.
- **Form MGT-14 and Form INC-27 need to be filed within 30 Days from the date of passing special resolution.**
- Upon Conversion Registrar of Companies shall issue Certificate of Incorporation in Form No INC-11B.

#### **16. ENFORCEMENT OF CERTAIN SECTIONS OF COMPANIES ACT, 2013 RELATED TO NATIONAL COMPANY LAW TRIBUNAL**

In continuation of phased implementation of National Company Law Tribunal (“Tribunal”) Ministry of Corporate Affairs (“MCA”) has issued notification no. S.O 3677 (E) dated December 7, 2016 enforcing certain more section and provision of Companies Act, 2013 (“the Act”) empowering Tribunal with respect to matters related **Winding up, Reduction of Capital, Compromise or arrangement , Merger and Amalgamation.**

With aforesaid notification below mentioned section of the Act will be enforced with effect from **December 15, 2016:**

<b>Sr. No.</b>	<b>Section</b>	<b>Particulars</b>	<b>Description</b>
1	2 (23)	Definition of Company Liquidator	Company Liquidator means a person appointed by <b><u>a) the Tribunal in case of winding up by Tribunal b) the Company or creditor in case of voluntary winding up</u></b>
2	7(7)(c) and(d)	Incorporation of Company	If it is found that the Company is incorporated by furnishing any false or incorrect information or by suppressing any material fact or information the Tribunal may <b><u>remove the name of the Company from Register of Company or may pass an order for winding up</u></b>



3	8 (9)	Formation Companies with Charitable Objects (Section 8 Company)	Tribunal may impose conditions for transfer of Assets remaining after the satisfaction of its debts and liabilities of Section 8 Company to another section 8 Company having similar objects in case of winding up or dissolution of a Company
4	48	Variation of Shareholders' Rights	Where a Company is having different class of shareholders and has passed special resolution for variation of shareholders' rights of any particular class. <b><u>Tribunal may pass order for confirmation/cancellation of variation of rights in case application is made by not less than 10% of issued shares of that class</u></b>
5	66	Reduction of Share Capital	<b><u>Application can be made to the Tribunal for Reduction of share capital</u></b> which was earlier to be made to the High Court under section 100 of Companies Act 1956.
6	224 (2)	Actions to be taken in pursuance of Inspector's report	On the basis of the inspector's report, the Central Government may if required cause any person, to file a petition for winding up of the Company or Body Corporate to the Tribunal on just and equitable grounds or in case of oppression mismanagement.
7	226	Voluntary winding up of Company , etc not to stop investigation proceedings	<b><u>Investigation shall not be stopped or suspended where:-</u></b> a) an application has been made for oppression and mismanagement b) special resolution is passed for voluntary winding up c) any proceeding for winding up is pending before tribunal
8	230 (except subsection 11 and 12) and section 231 to 233 and 235 to 240	Compromise, Arrangement and Amalgamation	Tribunal may pass order with respect to Compromise, Arrangements, Merger and Amalgamation. However, section and provisions pertaining to Takeover and Mergers of foreign Companies are not yet enforced.
9	270 to 288, 290 to 303 and 326 to	Winding up	Winding up orders can be passed by Tribunal for Winding up by Tribunal. Provisions pertaining to voluntary winding up are not yet enforced. Also the

	365		Tribunal is not yet empowered to pass an order for staying the proceeding of winding up.
10	324	Debts of all descriptions to be admitted to proof	In mode every winding up all debts payable on contingency and all claim against the Company bearing certain value shall be admissible only after furnishing the proof
11	370	Continuation of pending legal proceedings	For the purpose of Companies Authorised to register under the Act, in case all suits and other legal proceedings, execution cannot be issued against the property or person of any individual member on any decree or order obtain in any suit or proceedings but if the Company property is insufficient to satisfy decree or order, order may be obtained for winding of Company
12	372 to 373	Power or court to stay or restrain proceedings	During the pendency of winding up petition the Court has power to stay or restrain suits and other legal proceeding against the Company registered in pursuance of Part XXI Company.  Also, no suits or legal proceedings may be initiated against the Company or any contributory of the Company for debt of the Company without leave of Tribunal.
13	375 to 378	Winding up of Unregistered Companies	Unregistered Company may be wound up by the Tribunal in case it ceases to carry business or unable to pay its debts or on just an equitable grounds including Body Corporate incorporated outside India.
14	391 (2)	Winding up of foreign Companies	In case of mis-statement in prospects by a foreign Company having place of business in India may be wound by Tribunal as if it were a Company incorporated in India.
15	434 (2) (c)	Transfer of certain proceedings	All proceedings under the Companies Act, 1956, including proceedings relating to arbitration, compromise, arrangements and reconstruction and winding up of Companies, pending before any District Court or High Court will be transferred to the Tribunal and the Tribunal may proceed to deal with such proceedings from the stage before their transfer



## 17. COMPANIES (TRANSFER OF PENDING PROCEEDINGS) RULES, 2016

MCA had issued notification dated December 7, 2016 introducing Companies (Transfer of Pending Proceedings) Rules, 2016. The said rules are enforced from December 15, 2016 except Rule 4 relating to pending proceedings of voluntary winding up.

➤ **Transfer of pending proceedings relating to cases other than Winding up:**

All proceedings under the Act, including proceedings relating to arbitration, compromise, arrangements and reconstruction, other than proceedings relating to winding up will be transferred to the Benches of the Tribunal exercising respective territorial jurisdiction except reserved for orders for allowing or otherwise of such proceedings which shall not be transferred.

➤ **Pending proceeding relating to Voluntary Winding up:**

All applications and petitions relating to voluntary winding up of Companies pending before a High Court shall continue with and dealt with by the High Court in accordance with provisions of the Act.

➤ **Transfer of pending proceedings of Winding up on the ground of inability to pay debts:**

All petitions relating to winding up under clause (e) of section 433 of the Companies Act, 1956 on the ground of inability to pay its debts pending before a High Court, and where the petition has not been served on the respondent as required under rule 26 of the Companies (Court) Rules, 1959 will be transferred to the Bench of the Tribunal exercising territorial jurisdiction.

All cases where opinion has been forwarded by Board for Industrial and Financial Reconstruction, for winding up of a Company to a High Court and where no appeal is pending, the proceedings for winding up initiated under the Act, pursuant to section 20 of the Sick Industrial Companies (Special Provisions) Act, 1985 shall continue to be dealt with by such High Court in accordance with the provisions of the Act.

➤ **Transfer of pending proceedings of Winding up matters on the grounds other than inability to pay debts.**

All petitions filed under clauses (a) and (f) of section 433 of the Companies Act, 1956 pending before a High Court and where the petition has not been served on the respondent as required under rule 26 of the Companies (Court) Rules, 1959 will be transferred to the Bench of the Tribunal exercising territorial jurisdiction and such petitions shall be treated as petitions under the provisions of the Act.

## **18. COMPANIES (TRANSFER OF PENDING PROCEEDINGS) RULES, 2016**

MCA vide its notification dated December 7, 2016 has introduced Companies (Removal of Difficulties) Fourth Order, 2016.

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:**

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

## **19. ENFORCEMENT OF SECTION 248 TO 252 OF COMPANIES ACT, 2013**

MCA vide its notification dated December 26, 2016 has notified section 248 to 252 of Companies Act, 2013 related to removal of Names of Company from the Register of Companies. The said sections are enforced from December 26, 2016.

Section 560 of Companies Act, 1956 related to Sticking off the Companies name is replace with enforcement of abovementioned section.

The procedure for removal of name of defunct Company under Fast Track Exit Scheme (FTE) will be replaced by new rules notified on the same day namely, Companies (Removal Of Names Of Companies From The Register Of Companies) Rules, 2016.

Below mentioned are the key provisions:

➤ **Removal of name of Company from Register on Suo-motu basis:**

The Registrar of Companies may remove the name of a Company from the register of Companies where Registrar has reasonable cause to believe that –

- (a) company has failed to commence its business within one year of its incorporation;
- (b) the subscribers to the memorandum have not paid the subscription which they had undertaken to pay within a period of one hundred and eighty days from the date of incorporation of a company and a declaration under sub-section (1) of section 11 to this effect has not been filed within one hundred and eighty days of its incorporation; or
- (c) a company is not carrying on any business or operation for a period of two immediately preceding financial years and has not made any application within such period for obtaining the status of a dormant company under section 455,

However, following categories of Companies cannot be removed from the register

- 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;
- V. Companies where notice under section 234 of Companies Act 1956 or section 207 of Companies Act, 2013 has been issued by Registrar;
- 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;
- VIII. Companies, which have accepted public deposit 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.

➤ **Application for removal of name**

An application can be made by Company for removing the name from Register under section 248 (2) of the Act by submitting **Form STK-2** along with prescribed **fees of ₹ 5000/-**. Every application shall be accompanied with the following attachments:

1. No Objection Certificate from appropriate Authority concerned
2. Indemnity Bond from Director in Form STK-3
3. Statement of Accounts certified by Chartered Accountant
4. An affidavit from Director in Form STK-4
5. Special Resolution duly signed by every Director
6. Statement regarding pending litigations, if any, involving Company

In case of Foreign National/ NRI, Indemnity Bond and declaration shall be notarized or apostilled or consularised.

- The notice to be published by MCA shall be in Form STK 5 or STK 6 respectively. Company shall also be required to place application on its website till its disposal.

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**Amita Desai & Co.  
Company Secretaries**

**Chief Editor: Mrs. Amita Desai  
Editor: Ms. Sonali Jain and Ms. Mahima Ved**