

MCA UPDATES FOR THE MONTH OF AUGUST, 2019

A. INVESTOR EDUCATION AND PROTECTION FUND AUTHORITY (ACCOUNTING, AUDIT, TRANSFER AND REFUND) SECOND AMENDMENT RULES, 2019.

The Central Government vide its Notification dated 14th August, 2019 had amended the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016 (“**Rules 2016**”), which is called as the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Second Amendment Rules, 2019 (“**Rules 2019**”), the same will be effective from **20th August, 2019.**

From 20th August 2019 all sub rules of Rule 2019 except Rule 6(i), 6(iv), 6 (v) , 6 (vi), 6 (vii) and 6 (viii) which are sub rules 7 (2), 7(3), 7(7), 7(8), 7(9) and 7(10) of Rule 2016 will be effective.

From 20th September 2019 sub rules 6(i), 6(iv), 6 (v), 6 (vi), 6 (vii) and 6 (viii) of Rule 2019 which are Rule 7 (2), 7(3), 7(7), 7(8), 7(9) and 7(10) of Rule 2016 will be effective.

Following are the amendments:

1. Rule 2 : Definition

1.1 The definition of the term “**Company**” has been widened to include any transferee company in respect of the assets and liabilities of Transferor Company.

1.2 The definition of the term “**Corporate action**” has been made to be an inclusive definition.

1.3 The definition of the term “**Investor**” has been omitted.

2. Rule 3: Fund

2.1 The amount received through **disgorgement or disposal of securities** where a person has been convicted, the court may also order disgorgement of gain, if any, made by, and seizure and disposal of securities in possession of such person to be **credited to the IEPF.**

{With Reference to section 125(2)(g) read with section 38(4) of the Companies Act, 2013.}

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2.2 For the grants and donations given to the Fund, Central Government is also included along with the State Government, Companies or any other institution.

3. Rule 5: Statement to be furnished to the Fund

3.1 Any amount required to be credited to the Fund as per section 125(2) of the Act, shall be remitted online along with a Statement in **Form No. IEPF-1** within 30 days of such amounts becoming due to be credited to the Fund.

3.2 The following clauses are omitted, since the amount to be credited to the fund has been made online as mentioned above:

- **Sub-rule (2)**-tendering of amount along with challan in triplicate by the companies to the authorised bank under MCA 21 system and return 2 copies duly stamped to the Company as acknowledgement for the payment.
- **Sub- rule (3)**- to file 1 copy of above mentioned challan with the concerned Authority by the Company indicating the deposit of the amount.
- **Sub-rule (4)**-to furnish a statement in **Form No. IEPF-1** alongwith the copy of challan containing details of such transfer to the Authority within 30 days of submission of challan.

3.3 The Companies which have transferred any amount to IEPF or Central Government under clauses (a) to (d) of section 205C(2) of the Companies Act, 1956, but have not filed the statement or have filed the statement in any format other than in excel template, shall submit details mentioned in Rule 5(1) in **Form No. IEPF-1A** along with excel template **within 60 days** of notification of these amended rule.

3.4 The Company shall maintain records along with all the supporting documents in the same format as filed under **Form No. IEPF-1**, and the Authority shall have the powers to inspect such records.

3.5 The Company shall **within 60 days** of the AGM or the date on which it should have been held, whichever is earlier and every year thereafter till completion of the 7(seven) years period, identify the unclaimed amounts, as on the date of closure of financial year the account of which are to be adopted in the AGM, shall separately furnish and upload on its own website and also on website of Authority or any other website as may be specified by the Government, a statement or information of unclaimed and unpaid amounts separately for each of the previous 7 (seven) financial years in **Form No. IEPF-2**, containing following information, namely:-

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- (a) the names and last known addresses of the persons entitled to receive the sum;
- (b) the nature of amount;
- (c) the amount to which each person is entitled;
- (d) the due date for transfer into the Investor Education and Protection Fund; and
- (e) such other information as may be considered necessary.

4. Rule 6: Manner of transfer of shares under sub-section (6) of section 124 to the Fund

- 4.1** In case the beneficial owner has encashed any dividend warrant or any dividend amount has been credited to bank account of the owner of such shares during the last 7 years, then such **shares shall not be required** to be transferred to the Fund even though some dividend warrants may not have been encashed.
- 4.2** All shares in respect of which dividend has been transferred to IEPF on or before the 7th September 2016 shall be transferred in the name of IEPF by the company.
- 4.3** The Company shall send a statement to the Authority details of the transfer in **Form No. IEPF-4** within 30 days of corporate action and also attach a copy of public notice in the said form.
- 4.4** The company shall maintain records along with all the supporting documents in the same format as filed under **Form No. IEPF-4** and the Authority shall have the powers to inspect such records.
- 4.5** All the benefits accruing on the shares like bonus shares, split, consolidation, fraction shares, etc. except rights issue shall be credited to the DEMAT account by the Company which shall send a statement to the Authority in Form No. IEPF-4 within 30 days of corporate action containing details of the transfer.

5. Rule 7: Refund to claimants from Fund

- 5.1** **Form No. IEPF-5** shall be transmitted online to the **Nodal Officer of the Company** for verification of claim. After making an application in Form No. IEPF-5, the claimant shall send to the Nodal Officer at its registered office, the original physical share certificate; original bond; deposit certificate and debenture certificate, along with

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Indemnity Bond; Advance Receipts and any other document duly signed as enumerated in Form No. IEPF-5, for verification of claims.

- 5.2** Every company required to credit amounts or shares to the fund or has deposited the amount or transferred the shares to the Fund, shall **nominate a Nodal Officer** for the purpose of verification of claims and coordination with IEPF Authority, who shall either be a Director or Chief financial Officer or Company Secretary of the company.

A Company may appoint one or more officers as Deputy Nodal Officer to assist the Nodal Officer. The Nodal Officer shall be solely **liable for all actions of any officer appointed as Deputy Nodal Officer**.

In case a Company fails to appoint a Nodal Officer then, every Director shall be deemed to be a Nodal Officer and be liable for any failure to comply with requirement of these rules.

- 5.3** The details of the Nodal Officer and Deputy Nodal Officer indicating his or her designation, postal address, telephone and mobile number and company authorized e-mail ID shall be communicated to IEPF Authority in Form No. IEPF-2 within 15 days from the date of publication of these rules.

The Company shall display on its website the name and email id of Nodal Officer. Also, any change in the Nodal Officer or his details shall be communicated to the Authority through Form No. IEPF-2 within **7 days** of such change along with board resolution thereof.

- 5.4** The Company shall send an online verification report to the Authority after verification of details in Form No. IEPF-5, in the format specified by the Authority along with all documents submitted by the claimant **within 30 days of receipt of claim** and also attach the scanned copy of all the original documents certified by its Nodal Officer along with the e-verification report and also attach a scanned copy of both sides of original physical share certificate or original bond or deposit or debenture certificate/s duly cancelled and certified.

- 5.5** If the online **verification report is not sent by the Company within 30 days of filing of the claim**, then the Company may do so by paying an additional fee of Rs. 50 per day subject to maximum of **Rs. 2000 and Rs.500**.

The Company shall maintain the original documents and produce such documents whenever required.

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In case if the Authority does not receive the verification report along with documents after the expiry of 60 days from the date of filing of **Form No. IEPF-5**, then the Authority may reject **Form No. IEPF-5** after sending a communication to the claimant and the concerned Company on the e-mail address to furnish a response within 15 days. In case the Company and its Nodal Officer fail to submit verification report of the claim in accordance with these rules, they shall be punishable as per the provisions of the Act.

- a. The Authority shall give intimation on the email address of the claimant and the Company for requirement of any further information or any defect found in the e-form or document or any incompleteness in the e-form or document, directing to furnish such information or to rectify such defects or incompleteness or to re-submit such application or e-Form or document **within 15 days** from the date of receipt of such communication, failing which the Authority may **reject the claim or Form No. IEPF-5**.

If the information or incompleteness is called from the claimant, he shall file the e-form and shall send such documents duly signed by him within 15 days to the Nodal Officer of the concerned Company at its registered office for verification of the claim and company shall send a revised verification report.

If any such information or incompleteness is called from the Company, then it shall file the revised verification report and shall send such documents within 30 days.

- b. In case claimant is a legal heir or successor or administrator or nominee of the registered share holder, then he shall ensure to submit self-attested scanned copy of all documents detailed in **Schedule II** of these rules online along with the **Form No. IEPF-5**

In case of loss of securities held in physical form, the claimant has to ensure to submit self-attested scanned copy of additional documents detailed in Schedule III of these rules online along with the **Form No. IEPF-5**. The claimant shall submit all the original documents duly signed by him to the Nodal Officer of the concerned company at its registered office for verification of the claim.

- c. The Company shall **verify all requisite documents** required for registering transfer or transmission and shall issue letter to the claimant indicating his entitlement to the said security and **furnish a copy of the same to the Authority** while verifying the claim of such claimant through its e-verification report. In case, claimant is a legal

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heir or successor or administrator or nominee of any other registered security or in cases where request of transfer or transmission of shares is received after the transfer of shares by company to the Authority.

Provided that the authority shall **reject or dispose** such request of transfer or transmission based on the e-verification report of the company subject to verification of such request.

- d. Now, with this amendment the claimant shall file only one consolidated claim in respect of a company in a financial year, **is omitted**.

5.10 Any fraudulent claim by the claimant shall be deemed to be fraud within the meaning of **section 447 of the Companies Act, 2013** and the claimant shall be liable accordingly.

If any person fraudulently pretends to be an owner of any security or of any share warrant or coupon and files any claim to obtain or attempts to obtain any such security or interest or any such warrant or coupon due to the lawful owner, he shall be punishable under **sections 57, 447 and 448 of the Companies Act, 2013**.

6. Rule 8: Power to direct payment of amount due to the Fund.

6.1 The followings sub-rules are omitted :

- Sub-rule (1): furnishing of the statement to the authority in **Form IEPF-6** within 30 days of end of financial year stating amount due for the transfer to the Fund in the next financial year, which is now no longer required.
- Sub-rule (2): furnishing statement to the authority within **30 days of the closure of its accounts** for the financial year stating the reasons of deviation of amounts and actual amounts transferred to the Fund.

7. The following Schedules are added after Schedule I:

- **Schedule II:** Documents to be submitted to the Authority to register transmission of securities.
 - A. Documentary requirement for securities held in physical mode.
 - B. Documentary requirement for securities held in DEMAT mode.
- **Schedule III:** Documents to be submitted to the Authority in case of loss of securities held in physical mode.

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- **Schedule IV**: Procedure to be followed while disposing the claims.

Form No. IEPF-1A is inserted and Form No. IEPF-1, Form No. IEPF-2, Form No. IEPF-4 has been revised and Form No. IEPF-6 has been removed.

IEPF Second Amendment Rules, 2019 have been notified and are available on www.iepf.gov.in.

- The link of the aforesaid Notification is as under:

<http://egazette.nic.in/WriteReadData/2019/210624.pdf>

B. THE COMPANIES (SHARE CAPITAL AND DEBENTURES) AMENDMENT RULES, 2019---- NOTIFIED ON AUGUST 16, 2019

On August 16, 2019, Ministry of Corporate Affairs(MCA)had issued a Notification amending the Companies (Share Capital and Debentures) Rules, 2014which will be effective from 16th August 2019 and is called as the Companies (Share Capital and Debentures) Amendment Rules, 2019 (RULES).

Following are the details of the amendments in the RULES:

1. Equity Shares with Differential Rights under Rule 4has been substituted as follow:

1.1 The Company can now issue shares with Differential Voting Rights (DVR) upto **74% of the total voting power** including the voting power in respect of equity shares with differential rights issued at any point of time. The same was limited earlier to 26% of total post-issue paid up equity capital of the Company. [Sub-Rule (c)]

1.2 The Company can issue shares with DVR even if it **does not have consistent track record** of distributable profits for the last 3 (three) years. [Sub-Rule (d)].

2. Certificate of shares under Rule 5 has been amended as follow:

2.1 The Share Certificate may be issued by printing of facsimile signature of **Director or Company Secretary** now and it shall be presumed that Director or Company Secretary has signed the same and shall also be personally responsible for permitting the affixation of his signature on such Share Certificate.

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3. Issue of Employee Stock Options under Rule 12 has been amended as follow :

3.1 Startup Company are free to issue Employee Stock Option for a period of **10 (ten) years** from the date of its incorporation or registration (earlier it was 5 years) to an employee who is **promoter or a person belonging to the promoter group** or a director who either himself or through his relatives or through any body corporate, directly or indirectly, **holds more than 10%** of the outstanding equity shares of the Company.

3.2 Startup Company is as defined in notification number **“GSR 127(E),dated 19th February, 2019** issued by the Department for Promotion of Industry and Internal Trade” (Earlier the notification number was “GSR 180 (E) dated 17th February 2016”)

4. Debentures under Rule 18(7) has been substituted as follow :

Every company issuing redeemable debentures is required to comply with Debenture Redemption Reserve (“DRR”) and investment or deposit of sum in respect of debentures maturing during the year ending on the 31st day of March of next year, in accordance with the conditions given below:

- (a) DRR shall be created out of profits of the company available for payment of dividend;
- (b) the limits with respect to adequacy of DRR and investment or deposits shall be as under:-
 - (i) **DRR is not required** for debentures issued by All India Financial Institutions (AIFI) regulated by Reserve Bank of India (RBI) and Banking Companies, both public and privately placed debenture.
 - (ii) For other Financial Institutions within the meaning of section 2 (72) of the Companies Act, 2013, **DRR shall be as applicable** to NBFC registered with RBI.
 - (iii) For listed companies (other than AIFI and Banking Companies, **DRR is not required** for following cases:
 - In case of public issue or privately placed issue of debenture:
 - (a) For NBFCs registered with RBI and for Housing Finance Companies (HFC) registered with National Housing Bank and
 - (b) for other listed companies
 - (iv) For unlisted companies (other than AIFI and Banking Companies)

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DRR is not required for NBFCs registered with RBI and Housing Finance Companies (HFC) registered with National Housing Bank, in case of privately placed debentures.

- (v) For **other unlisted companies**, the adequacy of DRR shall be 10% of the value of the outstanding debentures.
- (vi) The companies covered in Point (iii) and (v) above, are required to invest or deposit, **a sum of at least 15%** of the amount of its debentures maturing during the year ending on 31st March of next year in any one or more methods of investments or deposits as provided below. Further, the amount remaining invested or deposited, shall not at any time fall below 15% of the amount of the debentures maturing during the year ending on 31st day of March of that year.
- a. in deposits with any scheduled bank, free from any charge;
 - b. in unencumbered securities of the Central Government or any State Government;
 - c. in unencumbered securities / bonds mentioned in Indian Trusts Act, 1882;

Provided that the amount invested or deposited as above shall not be used for any purpose other than for redemption of debentures maturing during the year referred above.

- (c) in case of partly convertible debentures, DRR shall be created in respect of non-convertible portion of debenture issue in accordance with this sub-rule.
- (d) the amount credited to DRR shall not be utilized by the Company except for the purpose of redemption of debenture.

➤ The link of the aforesaid Notification is as under:

<http://egazette.nic.in/WriteReadData/2019/210631.pdf>

C. THE COMPANIES (INCORPORATION) 7TH AMENDMENT RULES, 2019

The MCA has notified the Companies (Incorporation) 7th Amendment Rules, 2019 vide Notification dated 28th August 2019 and Form RD -1 and RD-GNL-5 was substituted. **Form RD-1** is required to be filed by the Company for making Application to the Office of

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Regional Director for the following two purposes pursuant to Rule 40 and 41 of the Companies (Incorporation) Rules, 2014.

- (a) Application for following different financial year other than April to March for consolidation of its accounts outside India.
- (b) Application for Conversion of Public Company into Private Limited Company.

Form RD GNL- 5 is required to be filed by the Company to resubmit the application made under Form RD-1 by providing further information or rectifying the defects or incompleteness.

- The link of the aforesaid Notification is as under:

<http://egazette.nic.in/WriteReadData/2019/211871.pdf>

D. Appointment of Member of Competition Commission of India.

- With effect from the 17th July, 2019, appointment of Shri Bhagwant Singh Bishnoi (IFS:1983) as Member of the Competition Commission of India for a period of five years or till he attains the age of 65 years, or until further orders, whichever is earlier.
- The link of the aforesaid Notification is as under:

<http://egazette.nic.in/WriteReadData/2019/211804.pdf>

E. Company Secretaries (Amendment) Regulations, 2019

- Company Secretaries (Amendment) Regulations, 2019 draft rules were made to amend the Company Secretaries Regulations, 1982 which the Council of the Institute of Company Secretaries of India proposes to make, in exercise of the powers conferred by sub-section (1) of section 39 of the Company Secretaries Act, 1980 (56 of 1980), and with the prior approval of the Central Government.

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- Notice is hereby says that the draft will be taken into consideration after the expiry of the period of 45 days from the date on which copies of the Official Gazette containing this notification are made available to the public. If any person desiring to make any objection or suggestion in respect of the said draft regulations, may forward the same for consideration by the Council of the Institute within the period above to the Secretary, the Institute of Company Secretaries of India, ICSI House, 22, Institutional Area, Lodi Road, New Delhi 110 003.
- The link of the aforesaid Notification is as under:

<http://egazette.nic.in/WriteReadData/2019/210242.pdf>

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By Amita Desai

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