

NEWS ALERT ON NOTIFICATION DATED JULY 05, 2018 OF MCA



Ministry of Corporate Affairs (MCA) vide its notification dated July 05, 2018 has notified Section 15, 16, 75 and 76 of Companies (Amendment) Act, 2017 (“CAA 2017”) from August 15, 2018 and Section 20 of CAA 2017 from July 05, 2018.

MCA has also amended respective rules to align the rules with the sections as amended by CAA 2017.

Sections of CAA 2017 notified on July 05, 2018 vis-à-vis Companies Act 2013 (“CA 2013”) are detailed as under:

Sr. No.	Effective Date	Section of CAA 2017	Section of CA, 2013	Title of Section
1	July 05, 2018	20	82	Company to report satisfaction of charge
2	August 15, 2018	15	73	Prohibition on Acceptance of Deposits from Public
3	August 15, 2018	16	74	Repayment of Deposits, etc., Accepted Before Commencement of this Act
4	August 15, 2018	75	366	Companies Capable of Being Registered
5	August 15, 2018	76	374	Obligations of Companies Registering Under this part

Links of the above notifications are as under:

http://www.mca.gov.in/Ministry/pdf/CommencementNotification0507_06072018.pdf

http://www.mca.gov.in/Ministry/pdf/CommencementNotification05_06072018.pdf

SUMMARY OF NOTIFICATION PUBLISHED ON JULY 05, 2018 IS UNDER:

A. SATISFACTION OF CHARGE

MCA vide its notification dated July 05, 2018 has notified Section 20 of Companies (Amendment) Act, 2017 i.e Section 82 as per Companies Act, 2013 and accordingly the Companies (Registration of Charges) Rules, 2014 (“Principal Rules”) has also been notified as on that date.

Section 82 - Company to report satisfaction of charge:

In sub-section (1) of section 82, following amendments has been made:

- The words, brackets and figures "and the provisions of sub-section (1) of section 77 shall, as far as may be, apply to an intimation given under this section" shall be omitted and it reads as follows:

“A company shall give intimation to the Registrar in the prescribed form, of the payment or satisfaction in full of any charge registered under this Chapter within a period of thirty days from the date of such payment or satisfaction ~~and the provisions of sub-section (1) of section 77 shall, as far as may be, apply to an intimation given under this section.~~

- The following proviso has been inserted , namely

"**Provided** that the Registrar may, on an application by the company or the charge holder, allow such intimation of payment or satisfaction to be made within a period of three hundred days of such payment or satisfaction on payment of such additional fees as may be prescribed."

The Companies (Registration of Charges) Amendment Rules, 2018:

MCA vide its notification dated July 05, 2018 has notified the Companies (Registration of Charges) Rules, 2014 (“Principal Rules”). The amendments are as follows:

Rule 3 - Registration of creation or modification of charge:

- In sub-rule (1) of rule 3 the words “shall be filed” shall be substituted for the words “and filed”. Sub-rule (1) of Rule 3 of Principal Rules after amendment reads as follows:

“For registration of charge as provided in sub-section (1) of section 77, section 78 and section 79, the particulars of the charge together with a copy of the instrument, if any,

creating or modifying the charge in Form No.CHG-1 (for other than Debentures) or Form No.CHG-9 (for debentures), as the case may be, duly signed by the company and the charge holder **shall be filed** with the Registrar within a period of 30 days of the date of creation or modification of charge along with the fee.”

Rule 8 – Satisfaction of charge:

- In Sub-rule (1) the amendment includes the following:
 - after the words “A company”, the words “or charge holder” shall be inserted; and
 - for the words “thirty days”, the words “three hundred days” shall be substituted.

- Sub-rule (1) of Rule 8 of Principal Rules after amendment reads as follows:

“A company **or charge holder** shall within a period of **three hundred days** from the date of the payment or satisfaction in full of any charge registered under Chapter VI, give intimation of the same to the Registrar in Form No.CHG-4 along with the fee.”

Rule 12 – Condonation of delay and rectification of register of charges:

- In sub-rule (1), the words “within a period of three hundred days” shall be substituted for the words “within 30 days”. After amendment, it reads as under:

“Where the instrument creating or modifying a charge is not filed within a period of three hundred days from the date of its creation (including acquisition of a property subject to a charge) or modification and where the satisfaction of the charge is not filed **within a period of 300 days** from the date on which such payment of satisfaction, the Registrar shall not register the same unless the delay is condoned by the Central Government”.

The Link of above notification is as under:

http://www.mca.gov.in/Ministry/pdf/CompaniesRegistrationChargesRules_06072018.pdf

B. DEPOSITS

MCA vide notification dated 5th July, 2018 has notified amendment to Section 73 & Section 74 of Companies Act, 2013 along with the Companies (Acceptance of Deposit) Amendment Rules, 2018. These amendments shall come into force from 15th August, 2018.

Amendment in the Section 73 & Section 74 is as below:

- Clause (c) of Section 73 (2) is substituted stating that a company accepting deposit shall on or before 30th April of each year deposit a sum which shall not at any time fall below 20% of the amount of deposit maturing during the financial year in a Schedule Bank in a Separate Bank Account Called as “ **Deposit Repayment Reserve Account**”.
- Clause (b) of Section 74 (1) is substituted stating that repay within 3 years from commencement of the act or on or before expiry of the period for which the deposits were accepted, whichever is earlier.

Provided that renewal of any such deposits shall be done in accordance with the provisions of Chapter V and the rules made thereunder.

Amendment in Companies (Acceptance of Deposit) Amendment Rules, 2018 is as below:

- Every Company accepting Deposit from members shall attach in Form DPT-1 a certificate of Statutory Auditor confirming that the company has not defaulted in repayment of deposit or in payment of interest on such deposit accepted either before or after payment of interest on such deposit accepted either before or after commencement of the act. In case company has defaulted in repayment of deposit accepted either before or after commencement of the act or in payment of interest, than a certificate of Statutory Auditor shall be attached with Form DPT-1 confirming that the company has made good the default and a period of 5 years has been lapsed from making the default good.
- Rule 5 of the Companies (Acceptance of Deposit) rules 2014 has been omitted which specifically provides for Manner and Extent of Deposit Insurance.
- A company accepting deposit shall on or before 30th April of each year deposit a sum as specified in clause (c) of Section 73 (2) which shall not at any time fall below 20% of the amount of deposit maturing during the financial year.

- Rule 14 (1) (k) of Companies (Acceptance of Deposit) rules, 2014 has been omitted. Hence, details of deposit insurance including extent of deposit insurance is not required to be mentioned in register of deposit.
- Form DPT-1 and DPT-3 has been substituted.

Link of the notification is as below:

http://www.mca.gov.in/Ministry/pdf/CompaniesAcceptanceDepositsAmendmentRules_06072018.pdf

C. COMPANIES CAPABLE OF BEING REGISTERED AND ITS OBLIGATIONS

MCA vide its notification dated **July 05, 2018** has made Section 75 and 76 of the Companies (Amendment) Act, 2017 effective from 15th August, 2018

1. Section 75 of Companies (Amendment) Act, 2017 –

In Section 366 (2) of Companies Act, 2013 for the words “seven or more members”, the words “two or more members has been substituted”.

In the proviso after clause (vi), the following clause has been inserted -

(vii) a company with less than seven members shall register as a private company.

Hence, Partnership firms / LLP may be registered as Private Company under this Act with 2 or more members (Earlier atleast 7 members was required for registration)

2. Section 76 of Companies (Amendment) Act, 2017 –

In Section 374 of the Companies Act, 2013 following proviso have been added after clause (d)-The proviso have been added after clause (d) conveying that Limited Liability Partnership/ partnership firm registered under this act will be automatically dissolved under Limited Liability Partnership Act, 2008 without any further act or deed.

MCA vide its notification dated **05th July, 2018** has issued Companies (Authorised to Register) Second Amendment Rules, 2018. ***These Rules shall come into force with effect from 15th August, 2018.*** However, the Central Government have the powers to amend the Companies (Authorised to Register) Rules, 2014 as conferred by section 469(1) & (2) of the Companies Act, 2013 (“The Act”).

Companies (Authorised to Register) Rules, 2014

In the Companies (Authorised to Register) Rules, 2014 (hereinafter to as the said rules), in rule 2, in sub-rule (1), after clause (g), the following clause shall be inserted, namely:-

(h) **“society”** means a society registered under the Societies Registration Act, 1860 (21 of 1860) and includes a society registered under or deemed to be registered under any other law for the time being in force;

(i) **“trust”** means an irrevocable public charitable or religious trust registered under any law for the time being in force and represented by its trustees, in whom the trust property is vested, as members;

(j) **“Registrar of Firms”** means the Registrar appointed under section 57 of the Indian Partnership Act, 1932(9 of 1932);

(k) **“Registrar of Trusts”** includes a charity Commissioner, an Inspector- General of Registration or such other authority having the duty of registering trust in a State.’

In the said rules, for rule 3, the following rule shall be substituted, namely:-

“3(1) For the purpose of section 366 (2) of the Act, the provision of Chapter II of the Act relating to incorporation of company and matters incidental thereto shall be applicable mutatis mutandis for such registration:

Provided that there shall be two or more member for the purpose of registration of a company under this sub-rule:

Provided further that a company with less than seven members shall register a private company.

(i) A list showing names, addresses, occupation along with the details of shares held by the partners. Also showing separate shares allotted for consideration in cash and other than cash along with the source of consideration and in case where shares are numbered, each share by its number, who not more than 6 clear days before the day of seeking registration;

(ii) A list of persons proposed as the first directors of the company, along with consent to act as a director, DIN, passport number (if any), residential address and their interest in other firm or body corporate;

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(iii) Copies of principal and subsequent deed in case of a firm, deed of partnership (if revised any time in past), bye-laws or other instruments regulating the firm along with the certificate of registration issued by the Registrar in case of registered firms.

(iv) Written consent or No objection certificate from all the secured creditors of the applicant;

(v) Written consent from majority of members whether present or proxy at a general meeting agreeing for such registration;

(vi) An undertaking that the proposed director shall comply with the requirement of Indian Stamp Act, 1899 (2 of 1899) as applicable;

(vii) A copy of latest income tax return of LLP or firm;

(B) Application by a LLP or firm for registration as a company limited by guarantee or as an unlimited company-

i A list of showing the names, address and occupation of all persons who on day, not being more than 6 clear days before the day seeking registration, were partners of LLP or firm with proof of membership;

ii A list of persons proposed as the first directors of the company, along with consent to act as a director, DIN, passport number (if any), residential address and their interest in other firm or body corporate;

iii Copies of principal and subsequent deed in case of a firm, deed of partnership (if revised any time in past), bye-laws or other instruments regulating the firm along with the certificate of registration issued by the Registrar in case of registered firms.

iv A copy of the resolution declaring the amount of guarantee, where the company intended to be registered as limited by guarantee,

v Written consent or No objection certificate from all the secured creditors of the applicant;

vi Written consent from majority of members whether present or proxy at a general meeting agreeing for such registration;

vii An undertaking that the proposed director shall comply with the requirement of Indian Stamp Act, 1899 (2 of 1899) as applicable;

viii A copy of latest income tax return of LLP or firm;

(C) Application by a **society** for registration as a company limited by guarantee under **Section 8**

- i A list of showing the names, address and occupation of all person who on day, not being more than 6 clear days before the day seeking registration, were members of the society with proof of membership;
- ii A list of persons proposed as the first directors of the company, along with consent to act as a director, DIN, passport number (if any), residential address and their interest in other firm or body corporate;
- iii A list containing the names and addresses of members of the governing body of society;
- iv A certified copy of certificate of registration of the society;
- v Written consent or No objection certificate from all the secured creditors of the applicant;
- vi Written consent from majority of members whether present or proxy at a general meeting agreeing for such registration and the resolution shall also provide for declaration of the amount of guarantee;
- vii An undertaking that the proposed director shall comply with the requirement of Indian Stamp Act, 1899 (2 of 1899) as applicable;
- viii A copy of latest income tax return of society;
- ix Details of object of the company along with a declaration from all members that the restrictions and prohibitions as mentioned in section 8 (1) (b) & (c) of the Act shall be complied;

(D) Application by a **trust** for registration as a company limited by guarantee under **section 8**

- i A list of showing the names, address and occupation of all person who on day, not being more than 6 clear days before the day seeking registration, were trustees of the trust with proof thereof;
- ii A list of persons proposed as the first directors of the company, along with consent to act as a director, DIN, passport number (if any), residential address and their interest in other firm or body corporate;
- iii A certified copy of certificate of registration of trust and the trust deed;
- iv Written consent or No objection certificate from all the secured creditors of the applicant;

- v Written consent from majority of members whether present or proxy at a general meeting agreeing for such registration and the resolution shall also provide for declaration of the amount of guarantee;
- vi An undertaking that the proposed director shall comply with the requirement of Indian Stamp Act, 1899 (2 of 1899) as applicable;
- vii A copy of latest income tax return of trust;
- viii Details of object of the company along with a declaration from all members that the restrictions and prohibitions as mentioned in section 8 (1) (b) & (c) of the Act shall be complied;

(3) An Application made by a society or firm for registration as company limited by guarantee and it is proved to ROC that such proposed company has its object in accordance with Section 8 (1) (a) of the Act and comply with restrictions and prohibitions as, mentioned in clause (b) and (c) of the said sub-section, a license in Form INC-16 shall be issued by Registrar of Companies (“ROC”) to allow such society or trust to be registered as a limited company without addition to its name of the word “Limited” or as the case may be, the words “Private Limited”, a certificate of Incorporation shall be issued in terms of rule 4 (4) on an application submitted under Chapter II of the Act for incorporation of a company:

Provided further that no society shall be eligible to apply for registration under Section 366 of the Act which has not file the annual or other returns statutorily required to be filed with the Registrar of Societies.

(4) An undertaking shall be given by all members/partners/trustees stating that in the event of registration as company under Part I of Chapter XXI of the Act, necessary documents shall be submitted to the registering or other authority with which the company was earlier registered, for its dissolution.

Provided that no such undertaking shall be required to be submitted in case application has been made by LLP registered under LLP Act, 2008 for registration under Part I of Chapter XXI of the Companies Act, 2013.

(5) The list of members and directors and any other particulars relating to the company shall be duly verified by the declaration of any two or more proposed directors which are required to be delivered to the ROC.”

a) In sub-rule (1) of rule 4, for the words ‘Limited Liability Partnership or the firm as the case may be is situate’ the words ‘Limited Liability Partnership, firm, society or trust, as the case may be, is situated’ shall be substituted.

b) In sub-rule (2) of rule 4, after the words, brackets and letters “Registrar (LLP)”, the words “Registrar of Firms, Registrar of Societies or Registrar of Trust, as the case may be” shall be inserted.

c) In clause (i) of Rule 5, the clause has been substituted as –

A certificate of registration obtained under Section 367 of Companies Act, 2013 by a firm, society or trust, within fifteen days of such registration an intimation shall be given regarding such registration to the concerned Registrar of Firms, Registrar of Societies or Registrar of Trusts, as the case may be with documents for dissolution as a firm, society or trust as the case may be, under which it was originally registered.

d) In clause (iii) of Rule 5, after the words “Registrar of Firms”, at both the places, where they occur, the words, “Registrar of Societies or Registrar of Trusts, as the case may be” shall be inserted.

e) in clause (v) of Rule 5, for the words “Limited Liability Partnership or the firm”, the words “Limited Liability Partnership, firm, society or trust” shall be substituted.

f) After clause (v), three new clauses have been added namely:

(vi) A society or a trust registered under section 12A of Income Tax Act, 1961 which is claiming exemption on its income and where a society or a trust intends to register as a company under Section 366 of Companies Act, 2013, such society or trust shall intimate Income- tax authorities and proof of its service shall form an attached in Form No.URC 1.

(vii) Where a society or trust have been registered as company under Companies Act, 2013 then application shall not be made for conversion into any other kind of company except conversion of Private company into public company or vice versa. Application for conversion into any other kind of company can be made only after the expiry of ten years from the date of incorporation under the Act.

(viii) In case of trust where there is any proceeding pending against it under section 92 of the Code of Civil Procedure (5 of 1908), then application for registration of Company shall not be made under Companies Act, 2013.

With the said rules Form No. URC – 1 for application by company for registration under section 366 & URC – 2 advertisement giving notice about registration under part 1 of chapter XXI for are substituted.

The Link of the above Rule is as under:

http://www.mca.gov.in/Ministry/pdf/CompaniesAuthorisedRegister_06072018.pdf

D. E-FORM DIR-3-KYC

MCA vide notification dated July 05, 2018 has amended Companies (Appointment and Qualification of Directors) Rules, 2014 which shall be **effective from July 10, 2018**. As per the said notification, Rule 11 is renumbered as sub-rule (1) and after sub-rule (1), sub-rules (2) & (3) are inserted.

In order to update its registry, MCA had introduced e Form DIR-3 KYC which will be available soon on MCA website. **Every Director who has been allotted Director Identification Number (DIN) on or before March 31, 2018 and whose DIN is in 'Approved' status, to file e form DIR-3 KYC on or before August 31, 2018.**

Sub-rule (2): According to this rule, if any Director fails to intimate his particulars in e Form DIR-3-KYC within stipulate time in accordance with Rule 12A i.e 30 days from the end of financial year, the Central Government or Regional Director (Northern Region) or any officer authorised by the Central Government or Regional Director has the authority to deactivate DIN of such a Director

Sub-Rule(3): According to this rule, the de-activated DIN, shall be re-activated only when the e-form DIR-3-KYC is filed along with penal fees of **Rs. 5,000/-**

After Rule 12 of Companies (Appointment and Qualification of Directors) Rules, 2014, Rule 12A is inserted, according to which every Director who has been allotted DIN as on March 31 of a financial year, has to file e-Form DIR-3-KYC on or before April 30 of next financial year.

However, for the financial year ended March 31, 2018, Directors are given time limit till August 31, 2018 to submit e-Form DIR-3-KYC.

Format of Form DIR-3-KYC is also prescribed with the aforesaid notification.

The Link of the above Rule is as under:

http://www.mca.gov.in/Ministry/pdf/CompaniesAppointmentQualificationRules_06072018.pdf

E. FEES FOR DIR-3 KYC

- MCA vide notification dated 5th July, 2018 has made amendments to the Companies (Registration Offices and Fees) Rules, 2014 and has notified the Companies (Registration Offices and Fees) Third Amendment Rules, 2018, which shall **come into force from 10th July, 2018**.
- In the Companies (Registration Offices and Fees) Rules, 2014, in the Annexure after item VI, item **VII FEE FOR FILING** for e- Form DIR-3 KYC under rule 12A of the Companies (Appointment and Qualification of Directors) Rules, 2014 has been inserted.
- As the ministry has come up with the KYC of all Directors of all companies annually through a new e-form viz. DIR-3 KYC to be notified and deployed shortly. Any Director whose has been allotted DIN on or before 31st March, 2018 and whose DIN is in Approved Status is now required to mandatorily file e-form DIR-3 KYC by 31st August, 2018 (including Disqualified Director) which shall be verified by One Time password and certified by CA/CS/CMA failing to which can lead to **Deactivation of DIN by MCA** with reason as 'Non-filing of DIR-3 KYC'.
- After expiry of the due date by which the KYC form is to be filed, the MCA21 system will mark all approved DINs (allotted on or before 31st March 2018) against which DIR-3 KYC form has not been filed as '**Deactivated**' with reason as 'Non-filing of DIR-3 KYC'. After the due date filing of DIR-3 KYC in respect of such deactivated DINs shall be allowed upon payment of a specified fee only, without prejudice to any other action that may be taken.
- Therefore MCA has amended the Companies (Registration Offices and Fees) Rules, 2014 and notified that No fee shall be payable in case the e-form is submitted till 30th April of every FY as at 31st March of immediate previous year and in case of **delay Rs.5000 shall be payable**. In case of current FY 2018-19 the delayed fees shall be applied in case the form is submitted on or after 1st of September, 2018.
- The link of the above notification is as under:
http://www.mca.gov.in/Ministry/pdf/CompaniesRegistrationOfficesFeesRle_06072018.pdf

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