

MCA UPDATES

1. The Companies (Share Capital And Debentures) Amendment Rules, 2020:

On **June 05, 2020**, the Ministry of Corporate Affairs (MCA) notified *The Companies (Share Capital and Debentures) Amendment Rules, 2020* and amendment is as below which is for start-up company and listed companies, this is to conserve cash with the company.

(a) For Startup Company and Sweat Equity

- (i) Start-up Company **definition** to be as per notification dated February 19, 2019 bearing no. G.S.R. 127(E) issued by the Ministry of Commerce and Industry, Government of India the Department for Promotion of Industry and Internal Trade, and the earlier definition of Start-up Company as per notification dated February 17, 2016 bearing number GSR 180(E).
- (ii) Start-up Company can now issue **sweat equity shares not exceeding 50% of its paid up capital upto 10 years** from the date of its incorporation or registration (earlier it was 5 years).
- (b) **For Listed entities which has issued Debentures:** Listed Company which has issued Debentures on Private Placement basis, are now **not required to invest or deposit**, a sum which shall not be less than 15% of the amount of Debentures maturing during the year ending on the 31st day of March of the next year.

The Link for aforesaid notification is as mentioned below:

http://www.mca.gov.in/Ministry/pdf/Rule_08062020.pdf

2. Extension of time for convening EGM through VC/OAVM till 30th September 2020:

On **June 15, 2020** MCA vide **General Circular No. 22/2020** extended the relaxation which was given earlier till June 30, 2020 is now protracted upto September 30, 2020 for convening the Extra Ordinary General Meeting (EGM) of its members through VC/OAVM or transacting items through Postal Ballot, without being physical present, which was relaxed vide General Circular No. 14 and 17 dated April 08, 2020 and April 13, 2020.

The Link for aforesaid circular is as mentioned below:

http://www.mca.gov.in/Ministry/pdf/Circular22_15062020.pdf

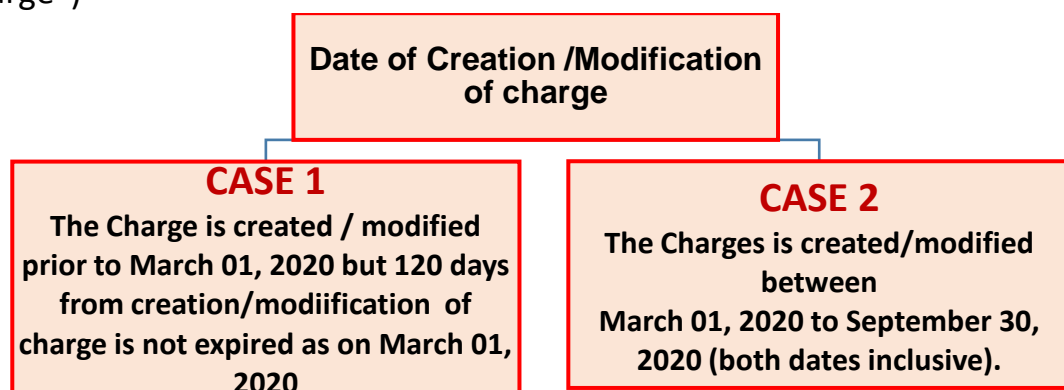
3. Scheme for relaxation of time for filing Charge related forms under the Companies Act, 2013:

On **June 17, 2020** MCA vide its **General Circular No. 23/2020** notified a Scheme relaxing delay in filing of Charge related documents with the Registrar of Companies (RoC). MCA has earlier on March 30, 2020 announced the Companies Fresh Start Scheme, 2020 (CFSS),

under which the benefit of waiver of additional fees was not granted to e- forms related to Charges. Hence under this Circular No. 23, MCA has now introduced a Scheme relaxing on additional fees for delay in filing documents for Charges "**Scheme for relaxation of time for filing forms related to creation or modification of charges under the Companies Act, 2013**"("The Scheme ") details of which are as under:

(i) **Effective date of the Scheme** is from June 17, 2020

(ii) **It is applicable for e-forms CHG-1 and CHG -9** to be filed either by the Company or the charge holder for creation / modification of Charge (for other than Debenture)(**under e-Form No. CHG-1**) and e-Form for creation / modification of Charge for Debenture (**under Form No. CHG-9**) by a company or a charge holder (" the Charge")



(iii) **Relaxation of time and fees in filing :**

Case 1 as mentioned above when the Charge is created / modified prior to March 01, 2020 but 120 days from the date of creation/ modification is not expired as on March 01, 2020:

1. The relaxation of six months that is from March 01, 2020 to September 30, 2020 shall not be counted for delay in filing.
2. If the same is filed **on or before September 30, 2020** then only **Normal fee** is payable.
3. If the same is filed **after September 30, 2020** then the **addition fees** shall be charged as per the Fees Rules for the number of days delayed after October 01, 2020 to the date of filing and added to it are number of days delayed from the date of the creation of the Charge till February 2020.

Case 2 as mentioned above when the Charge is created / modified between March 01, 2020 to September 30, 2020

1. The relaxation of period that is from the date of creation/ modification of Charge till September 30, 2020 shall not be counted for delay in filing.

2. If the same is filed **on or before September 30, 2020** then only **Normal fee** is payable
3. If the same is filed **after September 30, 2020** then the **addition fees** shall be charged as per the Fees Rules for the number of days delayed after October 01, 2020 to the date of filing.

(iv) Non-Applicability: The Scheme shall not apply in following cases:

1. The filing of e-Forms CHG-1 and/or CHG-9 is done **before June 17, 2020**.
2. The **timeline for filing** of e-Forms CHG-1 and/or CHG-9 has already **expired prior to March 01, 2020** (that is 120 days from the date of creation or modification of charge).
3. If filing of e-Forms CHG-1 and/or CHG-9 is delayed beyond 120 days from October 01, 2020, despite the relaxation given of time till **September 30, 2020**
4. Filing of **e-Form No. CHG -4**, for the Satisfaction of Charge.

The Link for aforesaid circular is as mentioned below:

http://www.mca.gov.in/Ministry/pdf/Circular23_17062020.pdf

4. Extension of time for creation of deposit repayment reserve and to invest or deposit amount of debentures:

On **June 19, 2020** MCA vide its **General Circular No. 24/2020** extended the time limit as follow, which MCA as per General Circular No. 11/2020 given it till June 30, 2020 and now it is extended till September 30, 2020.

- (i) Requirement to create the deposit repayment reserve of 20% of deposits maturing during the financial year 2020-21 before 30th April, 2020 shall be allowed to be complied with till 30th June, 2020.
- (ii) Requirement to invest or deposit at least 15% of amount of debentures maturing in specified methods of investments or deposits before 30th April, 2020, may be complied with till 30th June, 2020.

The Link for aforesaid circular is as mentioned below:

http://www.mca.gov.in/Ministry/pdf/Circular24_20062020.pdf

5. Board can have meeting through VC facility -----The Companies (Meetings of Board and its Powers) second amendment rules, 2020:

On **June 23, 2020** MCA had notified the amendment in The Companies (Meeting of Board and its Powers) Amendment Rules, 2020 and allowed the Companies to pass following matters which are generally not allowed to pass by way of Circular Resolution till September 30, 2020 (earlier it was allowed till June 30, 2020)

- a. the approval of the annual financial statements;
- b. the approval of the Board's report;
- c. the approval of the prospectus;
- d. the Audit Committee Meetings for consideration of financial statement including consolidated financial statement, if any, to be approved by the Board under sub-section (1) of section 134 of the Act ; and
- e. the approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover.

The Link for aforesaid notification is as mentioned below:

http://www.mca.gov.in/Ministry/pdf/Rule1_25062020.pdf

6. Independent Director ---The Companies (Appointment and Qualification of Directors) Third Amendment Rules, 2020:

On **June 23, 2020** MCA notified amendment in The Companies (Appointment and Qualification of Directors) Third Amendment Rules, 2020 ("**The 3rd Amendment Rules, 2020**") and extended the time limit for inclusion of name of Independent Director in data bank of Independent Director *from "seven months" to "ten months" that is till September 30, 2020*

Background of this amendment

- On June 23, 2020 vide 3rd Amendment Rules, 2020 MCA has brought amendment in **Rule 6** which deals with compliances required by any individual who is eligible and willing to be appointed as an Independent Director to apply online with the Indian Institute of Corporate Affairs at Manesar, for inclusion of his name in the data bank within 10 months (earlier it was 7 months). This Ten months is from December 1, 2019 when the 5th Amendment Rules 2019 was notified. Now the **extension of time** is given and the new date to apply online with institute for inclusion of name in the Data Bank of Independent Director is **September 30, 2020.**
- On April 29, 2020, MCA has notified extended the period of making such application with the Institute for a further period of 7 months (earlier it was 5 months). This seven months is from December 1st 2019 when the 5th amendment Rules 2019 was notified. **The extension of time was given till June 30, 2020.**
- On February 28, 2020, MCA has notified and extended the period of making such application with the Institute for a further period of 5 months (earlier it was 3 months). This five months is from December 1st 2019 when the 5th amendment Rules 2019 was notified. **The extension of time was given till April 30, 2020.**
- On October 22, 2019, Rule 6 was of the Rules was amended as the Companies (Appointment and Qualification of Directors) Fifth Amendment Rules, 2019 which was made effective from December 1, 2019, notifying a new requirement of **passing**

of proficiency test in one year from the date of application of inclusion of name online with the Indian Institute of Corporate Affairs at Manesar, an Institute, which will be creating and maintaining Data Base for Independent Director. He can include his name for a period of 1 year or 5 year or for his life-time and from time to time he shall take steps to renew it as long as he continues hold the office as an Independent Director in any company. Such application to the Institute to be made in *3 months from the date of notification that is **three months from December 01, 2019 so by February 28, 2020.***

The Link for aforesaid notification is as mentioned below:

http://www.mca.gov.in/Ministry/pdf/Rule2_25062020.pdf

7. CSR spends – Amendment in Schedule VII of Companies Act, 2013:

On **June 23, 2020** MCA notified that spending amount for *Central Armed Police Forces (CAPF) and Central Para Military Forces (CPMF) veterans, and their dependents including widows* is covered as CSR activities in Schedule VII of the Act.

The Link for aforesaid notification is as mentioned below:

<http://egazette.nic.in/WriteReadData/2020/220133.pdf>

8. The Companies (Removal of Names of Companies from the Register of Companies) Amendment Rules, 2020:

On **June 29, 2020** MCA notified *The Companies (Removal of Names of Companies from the Register of Companies) Amendment Rules, 2020* and amendment is as below which is for Government Company or Wholly Owned Subsidiary (WoS) of a Government Company:

(a) A Government Company or WoS of a Government Company in which the entire paid up share capital is held by the Central Government, or by any State Government or Governments or by the Central Government and one or more State Governments, at the time of filing of **form STK-2** (Application for Removing name of Company from Register of Companies) **submit a duly notarised Indemnity Bond in Form STK-3A (Format of Indemnity Bond)**, given by an authorised representative, not below the rank of Under Secretary or its equivalent, in the administrative Ministry or Department of the Government of India or the State Government, as the case may be, on behalf of the company, as an attachment of form STK-2.

The Link for aforesaid rule is as mentioned below:

http://www.mca.gov.in/Ministry/pdf/Rule3_30062020.pdf