

## MCA UPDATES

### **1. The Companies (Incorporation) Second Amendment Rules, 2021–dated February 01, 2021 with effect from April 01, 2021**

**MCA on February 01, 2021 issued Notification** amending Rule 3, 6 and 7 of the Companies (Incorporation) Rules, 2012 with respect to Incorporation of One Person Company (OPC).

The amendment states that the eligibility of a person incorporating One Person Company (OPC) is a natural person and Indian Citizen **whether resident in India or otherwise**. This means that now NRI can also incorporate OPC in India.

The definition of “**Resident in India**” has been changed to include a person who has stayed in India for a period of **not less than 120 days instead of 182 days**.

An OPC can now be voluntarily converted into any kind of Company without any threshold limit.

**Conversion of One Person Company into a Public Company or a Private Company** – Amendment is made vide this Notification regarding conversion of One Person Company into Public or Private Company other than a Section 8 Company (for the charitable purpose) .

OPC can file an Application in **E-Form No. INC-6** for its conversion into Private or Public Company, other than under Section 8 (for the charitable purpose), along with fees by attaching the following documents:-

- (a) Altered MOA and AOA;
- (b) Copy of OPC Resolution;
- (c) The list of Proposed Members and its Directors along with consent;
- (d) List of Creditors; and
- (e) The latest Audited Balance Sheet and Profit and Loss Account.

**Conversion of Private Company into One Person Company** – Now any Private Company irrespective of its “**Paid Up Share Capital of Rs. 50,00,000/- (Rupees fifty lakhs only) or less and Average Annual Turnover during the relevant period is Rs. 200,00,000/- (Rupees Two Crores only) or less**” other than a Section 8 Company (for the charitable purpose) can be converted into One Person Company. In other words, any Private Company without any threshold limit can now be converted into OPC.

As per the Notification, E- Form No. INC-5 filed for informing the Registrar regarding cessation of OPC is now omitted and E- Form No. INC-6 filed for conversion of One Person Company into a Public Company or a Private Company has been amended.

The link for the aforesaid notification is as mentioned below:

[http://www.mca.gov.in/Ministry/pdf/CompaniesSecondAmndtRules\\_16022021.pdf](http://www.mca.gov.in/Ministry/pdf/CompaniesSecondAmndtRules_16022021.pdf)

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## **Amita Desai & Co. Company Secretaries, Mumbai**

### **2. The Companies (Specification of Definitions Details) Amendment Rules, 2021-notified on February 01, 2021**

With the **Notification dated February 01, 2021**, the definition of Small Company has been widened wherein the Paid-up Share Capital of the Company shall not exceed Rs. 2 Crores instead of Rs. 50 lakhs and Turnover of the Company shall not exceed Rs. 20 Crores instead of Rs. 2 Crores. In other words, now a Small Company means a Company having Paid-up Share Capital upto Rs. 2 Crores and Turnover upto Rs. 20 Crores.

The link for the aforesaid notification is as mentioned below:

[http://www.mca.gov.in/Ministry/pdf/SpecificationAmndtRules\\_02022021.pdf](http://www.mca.gov.in/Ministry/pdf/SpecificationAmndtRules_02022021.pdf)

### **3. The Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2021-notified on February 01, 2021**

With the **Notification dated February 01, 2021** which shall come into effect from date of publication in Official Gazette, **Section 233** relating to Merger or Amalgamation of certain companies now states that a scheme of merger or amalgamation can now be entered into between any of the following class of companies, namely:-

- (i) two or more start-up companies; or
- (ii) one or more start-up company with one or more small company.

The link for the aforesaid notification is as mentioned below:

[http://www.mca.gov.in/Ministry/pdf/AmalgamationsAmndtRules\\_02022021.pdf](http://www.mca.gov.in/Ministry/pdf/AmalgamationsAmndtRules_02022021.pdf)

### **4. The Companies (Share Capital and Debentures) Amendment Rules, 2021-notified on February 11, 2021**

With the **Notification dated February 11, 2021**, **Rule 12A** has been inserted in **Companies (Share Capital and Debentures) Rules, 2014**. The Company can increase its Subscribed Capital by offering shares to its existing shareholders by restricting the time to accept such offer in **Seven (7)** days from Date of Offer (Right Issue). This will help the Company to raise money in a faster way.

The link for the aforesaid Notification is as below:

[http://www.mca.gov.in/Ministry/pdf/CompaniesShareCapitalDebenturesRules\\_16022021.pdf](http://www.mca.gov.in/Ministry/pdf/CompaniesShareCapitalDebenturesRules_16022021.pdf)

### **5. The Producer Companies Rules, 2021-notified on February 11, 2021**

With the **Notification dated February 11, 2021**, the **Producer Companies Rules, 2021** has been notified, which is applicable to Producer Companies as referred under Section 378A (I) and in supersession of Producer Companies (General Reserves) Rules, 2003. The Rule specifies **definition, change of place of Registered Office** from one place to another and **Investment of General Reserve** of Producer Companies.

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The link for the aforesaid Notification is as below:

[http://www.mca.gov.in/Ministry/pdf/ProducerCompaniesRules\\_16022021.pdf](http://www.mca.gov.in/Ministry/pdf/ProducerCompaniesRules_16022021.pdf)

### **6. The Companies (Amendment) Act, 2020 ( CAA, 2020)- with effect from February 11, 2021**

With the **Notification dated February 11, 2021**, provisions of **Section 52** (Section 378A to 378ZU for Producer Company as per CA, 2013) and **Section 66** (Section 465 on Repeal of certain enactments and savings as per CA, 2013) of CAA, 2020 shall be immediately effective.

The link for the aforesaid Notification is as below:

[http://www.mca.gov.in/Ministry/pdf/CommencementNotification\\_16022021.pdf](http://www.mca.gov.in/Ministry/pdf/CommencementNotification_16022021.pdf)

### **7. Benches of National Company Law Tribunal- notified on February 12, 2021**

With the **Notification dated February 12, 2021**, following amendments were made in the prior Notification dated June 01, 2016 regarding the benches of National Company Law Tribunal.

- a) The territorial jurisdiction of the Ahmedabad Bench now includes the Union Territory of Dadra and Nagar Haveli and Daman and Diu.”
- b) The territorial jurisdiction of the Chandigarh Bench now includes the Union Territory of Jammu and Kashmir and the Union territory of Ladakh.”

The link for the aforesaid Notification is as below:

<http://egazette.nic.in/WriteReadData/2021/225122.pdf>

### **8. Extension of Certain Sections of the Companies Act, 2013 to LLP Act, 2008**

As per the **Advisory dated February 18, 2021**, MCA has decided to extend certain sections of the Companies Act, 2013 to the LLP Act, 2008. Through this intimation, a total eight sections with respect to the Register of Significant Beneficial Owners, Disqualifications for Appointment of Directors, Number of Directorship, Vacation of Office of Directors, Power to Call for Information, Inspect Books and Conduct Inquiries, Conduct of Inquiries and Inspections, Appeal to Tribunal and Non-Cognizable Offences will soon be applicable to LLPs.

### **9. The Companies (Specification of Definitions Details) Amendment Rules, 2021- notified on February 19, 2021 with effect from April 1, 2021**

As per the **Notification dated February 19, 2021**, Rule 2A has been inserted in **The Companies (Specification of Definitions Details) Rules, 2014** stating the Companies which are not to be considered as Listed Companies.

As per Section 2(52) of the Act, following classes of the Companies shall **not be considered** as Listed Companies:

- a) Public Companies which have not listed their Equity Shares on recognized stock exchange but have listed their-

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- Non- convertible Debt Securities issued on Private Placement basis in terms of SEBI (Issue and Listing of Debt securities) Regulations, 2008; or
- Non- Convertible Redeemable Preference Shares issued on private placement basis in terms of SEBI (Issue and Listing of Non- convertible redeemable preference shares) Regulations, 2013; or
- Both categories above

b) Private Companies which have listed their Non- Convertible Debt Securities on Private Placement basis on a recognized stock exchange in terms of SEBI (Issue and Listing of Debt securities) Regulations, 2008; or

c) Public Companies which have not listed their equity shares on recognized stock exchange but whose equity shares are listed on a stock exchange in a jurisdiction as specified in sub- section (3) of Section 23 of the Act.

The link for the aforesaid Notification is as below:

[http://www.mca.gov.in/Ministry/pdf/CompaniesSpecification2ndAmndtRules\\_22022021.pdf](http://www.mca.gov.in/Ministry/pdf/CompaniesSpecification2ndAmndtRules_22022021.pdf)

### **10. Central Sector Scheme for Industrial Development of Union Territory of Jammu & Kashmir- effective from 01.04.2021 and will remain in force up to and inclusive of 31.03.2037**

As per the **Notification issued by Ministry Of Commerce And Industry (Department for Promotion of Industry and Internal Trade) dated February 19, 2021**, a new Central Sector Scheme has come into place for the Union Territory of Jammu and Kashmir. The scheme shall be known as **Central Sector Scheme for Industrial Development of Union Territory of Jammu & Kashmir** which shall be **effective from 01.04.2021 and will remain in force up to and inclusive of 31.03.2037**. The Scheme is a boost to the economy and the business sector of Union Territory of Jammu and Kashmir.

The link for the aforesaid Notification is as below:

<http://egazette.nic.in/WriteReadData/2021/225276.pdf>

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