

MCA UPDATES

1. New CSR-2 Form Introduce in the Provisions of sub-section (1) to section 135

On **February 11, 2022**, MCA has issued a Notification for New CSR-2 Form for the Financial year ended 2020-2021

Every Company covered under the provisions of sub-section (1) to section 135 shall furnish a Corporate Social Responsibility in Form CSR-2 to the registrar for the preceding FY (2020-2021) and onward as an addendum to form AOC-4 or AOC-4 XBRL, AOC-4 NBFC (IND AS), AOC-4 CFS. This form should be filed before the 31.03.2022

Link of the same is as follows:

<https://www.mca.gov.in/bin/dms/getdocument?mds=adQPpN3U8Y7LlcmY0C8FvA%253D%253D&type=open>

2. Limited Liability Partnership (Amendment) Rules, 2022:

On **February 11, 2022**, MCA vide Notification made following sections of Companies Act, 2013 applicable to Limited Liability Partnership (LLP):

1. Section 90: Register of significant beneficial owners in a company
2. Section 164: Disqualifications for Appointment of Director
3. Section 165: Number of Directorships
4. Section 167: Vacation of Office of Director
5. Section 206: Power to Call for Information, Inspect Books and Conduct Inquiries.
6. Section 252: Appeal to Tribunal
7. Section 439: Offences to be non-cognizable.

The word “Company” has been substituted as “Limited Liability Partnership” in sections 90, 164 (1), 167 (1), 207 (3) and 252.

The word “Member/ Director/ Officer” has been substituted as “Designated Partner” in sections 90, 164 (1), 165, 167 (1) and 252.

1. Section 90: Register of Significant Beneficial Owners in a Company:

Amendments are made in **Section 90** through LLP (Amendment) Rules, 2022 by substituting the word “Shares” as “Contribution” making the provisions of Register of Significant Beneficial Owners applicable to LLP also.

Off: 1005, Hubtown Solaris, Prof N. S. Phadke Marg, Andheri East, Mumbai – 400 069

Tel: 91 22 26845919/20/21 Cell: 09820177691

Website: www.amitadesai.com Email: info@amitadesai.com

Amita Desai & Co. Company Secretaries, Mumbai

2. Section 164: Disqualifications for Appointment of Directors:

Section 164 (1) of Companies Act, 2013 details the criteria for persons who will not be liable to be appointed as Director is made applicable to LLP through the LLP (Amendment) Rules, 2022. MCA vide this amendment specifies the criteria regarding the disqualifications which will be applicable to persons who want to become designated partners in LLP.

Section 164 (2) is substituted as follows through LLP (Amendment) Rules, 2022:

No person who is or has been a director of a company or designated partner of LLP, as the case may be, which:

- a) has not filed financial statements or the statement of account and solvency or annual returns, as the case may be, for any continuous period of three years financial years, or*
- b) has failed to repay the deposits accepted by it or pay interest thereon or to redeem any debentures on the due date or pay interest due thereon or pay any dividend declared and such failure to pay or redeem continues for one year or more, shall be eligible to become or continues as designated partner of that LLP for a period of five years from the date on which the said company or LLP fails to do so:*

Provided that where person becomes as a designated partner of LLP which is in a default of clause (b), he shall not incur disqualification for a period of six months from the date he become designated partner.

3. Section 165: Number of Directorship:

Following amendments are made through LLP (Amendment) Rules, 2022:

Section 165 (1) of Companies Act, 2013 is substituted as *“No person shall become designated partner in more than twenty LLPs “*

Section 165 (3) of Companies Act, 2013 is substituted as follows:

“Any person holding office as designated partner in LLPs more than the limits as specified in sub-Section (1), immediate before this notification shall within a period of one year from such notification:

- a) choose not more than specified limit of those LLPs, as LLPs in which he wishes to continue to hold office of designated partner;*
- b) resign his office as designated partner in the other remaining LLPs; and*
- c) intimate the choice made by him under clause (a), to each one of the LLPs in which he was holding the office of designated partner before such notification and Registrar having such jurisdiction in respect of each LLP.”*

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Section 165 (4) now reads as follows:

Any resignation made by a person as designated partner shall become effective immediately on the dispatch of such resignation to the LLP concerned.

Section 165 (5) is amended thereby specifying that any person cannot be a designated partner in more than 20 LLPs after dispatching resignation of his office as designated partner or after the expiry of one year from the date of this notification, whichever is earlier.

Section 165 (6) is amended stating that the penalty for contravention of the provisions of the Act will be applicable to any person who intends to become Designated Partner. Such person shall be punishable with a fine which shall not be less than Rs. 5,000/- but which may extend to Rs. 25,000/-.

4. Section 167: Vacation of Office of Director:

Following amendments are made through LLP (Amendment) Rules, 2022:

In **Section 167 (1)** which states the criteria about the vacation of office of Director, following amendments are made:

- the word “This Act” will be substituted as “Limited Liability Partnership Act, 2008”
- two clauses regarding the criteria for vacation of office of director which is applicable to Companies has been omitted for LLPs which states the following:
 - a. If a person absents himself from all the meetings of the Board of Directors held during a period of 12 months with or without seeking leave of absence of the Board or
 - b. if a person has been appointed as a director by virtue of his holding office or other employment in the holding, subsidiary or associate company, ceases to hold such office or other employment in that company.

Section 167 (3) is substituted as follows:

Where all the designated partners of LLP vacate their offices under any of the disqualifications specified in the sub-section (1), the partner or in their absence, the Central Government shall appoint the required number of designated partners, till the designated partners are appointed by the LLP.

5. Section 206: Power to Call for Information, Inspect Books and Conduct Inquiries:

Section 206 (5) of Companies Act 2013 is substituted by the new LLP (Amendment) Rules, 2022 as follows:

Central Government may, if it is satisfied that circumstances so warrant, direct inspection of books and papers of LLP by an inspector appointed by it for the purpose.

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6. Section 252: Appeal to Tribunal:

Amendments have been made to Section 252 of Companies Act, 2013 through the new LLP (Amendment) Rules, 2022.

Through this amendment now any person aggrieved by order of Registrar notifying strike off and dissolution of LLP under Section 75 (Power of Registrar to strike defunct LLP off register) of LLP Act, 2008 can appeal to Tribunal **within a period of 3 years** from the date of order of Registrar and if Tribunal is of the opinion that the removal of name is not justified, then it may order the restoration of name of LLP in the **Register of LLP**. If any designated partner, partner, creditor, workmen feel aggrieved by the name of LLP being struck, they can make appeal to the Tribunal within **five years (in Companies Act, 2013 it is twenty-five years)** from the publication of notice of strike off in the Official Gazette.

7. Section 439: Offences to be non-cognizable:

Section 439 (1) is substituted as follows:

Notwithstanding anything in the Code of Criminal Procedure 1973, (2 of 1974) every offence under this Act shall be deemed to be non-cognizable within the meaning of the said Code.

Section 439 (2) is substituted as follows:

No court shall take cognizance of any offence under this Act which is alleged to have been committed by any LLP or any designated partners or partners or employee thereof, except on the complaint in writing of the Registrar, or a partner of LLP, or of a person authorized by the Central Government in that behalf:

Provided that nothing in this sub-section shall apply to a prosecution by LLP of any of its officers.

Section 439 (4) is substituted as follows:

The provision of sub-section (2) shall not apply to any action taken by the liquidator of a LLP in respect of any offences alleged to have been committed in respect of any of the matters in Chapter XIII of this act or rules for winding up and dissolution of LLP.

Explanation: The liquidator of the LLP shall not be deemed to be an officer of the LLP within the meaning of sub-section (2).

Link of the aforesaid Notification is as follows:

<https://www.mca.gov.in/bin/dms/getdocument?mds=s3NAd1DMJP%252Bb4D3KxSkX1Q%253D%253D&type=open>

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3. Limited Liability Partnership (Amendment) Rules, 2022:

On **February 11, 2022**, MCA vide Notification introduced the Limited Liability Partnership (Amendment) Rules, 2022 to further amend the Limited Liability Partnership Rules, 2009 (said Rules) which shall be effective from April 01, 2022.

Following amendments are made in the said Rules through Limited Liability Partnership (Amendment) Rules, 2022

1. Rule 5: Fees:

- The First and second provisos to sub rule (2) is omitted and in the third proviso, the words “Provided also” is substituted as “Provided”.
- New sub- rule 3 is inserted: ***“The National Company Law Tribunal Appellate Tribunal Rules, 2016 mutatis mutandis shall be applicable for filing an appeal under sub-section (2) and (3) of Section 72.”***

2. Rule 18: Name of LLP:

In sub-rule (2) which states the criteria on basis of which name of LLP will not be reserved clause (xi) is substituted as follows: ***“the proposed name is identical with or too nearly resembles the name of the any other LLP or a Company.”***

3. Rule 19 (1) is substituted as follows:

“A LLP or company or a proprietor of a registered trade mark under the Trade Marks Act, 1999 which already has a name or trademarks which is similar to or which too nearly resembles the name or new name of a LLP incorporated subsequently, may apply to the Regional Director in Form 23 to give a direction to that LLP incorporated subsequently to change its name or new name, as the case may be

Provided that an application of the proprietor of the registered trade mark shall be maintainable within a period of three years from the date of incorporation or registration or change of name of LLP under the Act.”

4. A new Rule 19A: Allotment of new name to existing LLP under Section 17 (3) is inserted as follows:

- (1) ***“In case LLP fails to change its name or new name, as the case may be, in accordance with the direction issued under section 17(1) within a period of three months from the date of issue of such direction the letters “ORDNC” (Order of Regional Director Not Complied), the year of passing of the direction, the serial number and existing LLPIN of the LLP shall become the new name of the LLP without any further act or deed by the LLP, and the Registrar shall accordingly make new name in the register of LLP and issue a fresh certificate of incorporation in Form No. 16A:***

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Provided that nothing contained in sub- rule (1) shall apply in case e-form LLP form No-5 filed by the LLP is pending for disposal at the expiry of three months from the date of issue of direction by Regional Director unless the said e-form is subsequently rejected

- (2) The LLP whose name has been changed under section 17(3) shall at once make necessary compliance with the provision of section 21 and statement "Order of Regional Director Not Complied" shall be mentioned in brackets below name of LLP on its invoices, official correspondence, and publication:***

Provided that no such statement shall be required to be mentioned in such case the LLP subsequently changes its name in accordance with section 19."

5. New rules after rule 37 have been inserted as mentioned below:

- **Rule 37A:** Adjudication of Penalties
- **Rule 37B:** Appeal against order of adjudication officer
- **Rule 37C:** Registration of appeal
- **Rule 37D:** Disposal of appeal by Regional Director

The Central Government can appoint any officer not below the rank of Registrar as Adjudicating Officers for adjudicating penalty under the LLP Act. The Adjudicating Officer can pass an order of penalty against an LLP after sending notice and hearing the concerned person of the LLP. The Adjudicating Officer will send the order copy to the partner/designated partner of the LLP and the regional director. The LLP must pay the penalty only through the MCA portal.

The LLP can file an appeal with the Regional Director having jurisdiction in the matter within sixty days of passing the order by the Adjudicating Officer in Form 33 – LLP ADJ setting forth the appeal grounds. The Regional Director's office will register the appeal and give a serial number when it is in order.

The Regional Director will hear the parties to the appeal and pass an order in writing. The order passed by the Regional Director will be communicated to the Adjudicating Officer, the Appellant (LLP that files the appeal) and the Central Government.

Link of the aforesaid Notification is as follows:

<https://www.mca.gov.in/bin/dms/getdocument?mds=WnSUTRIP8aoAr6RLk1JIPg%253D%253D&type=open>

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4. Power of Regional Director u/s 17 of LLP Act, 2008

On the **February 11, 2022** MCA issued notification stating that the Central Government delegates to the Regional Directors at Mumbai, Kolkata, Chennai, New Delhi, Ahmedabad, Hyderabad and Guwahati, the powers and functions vested under Section 17.i.e Change of name of LLP under the LLP Act, 2008.

Link of the aforesaid Notification is as follows:

<https://www.mca.gov.in/bin/dms/getdocument?mds=vkSqd8xttaHgc57aBt3FcQ%253D%253D&type=open>

5. New web- based Form CSR-2 is introduced:

On February 11, 2022, MCA vide Notification issued new rules known as Companies (Accounts) Amendment Rules, 2022 to further amend Companies (Accounts) Rules, 2014. The new rules shall come into force from its date in Official Gazette.

Rule 12: Filing of Financial Statements and Fees to be paid thereon:

A new sub rule (1B) is inserted after sub rule (1A) is inserted as follows:

“Every company covered under the provisions of sub-section (1) to section 135 shall furnish a report on Corporate Social Responsibility in Form CSR-2 to the Registrar for the preceding financial year (2020-2021) and onwards as an addendum to Form AOC-4 or AOC-4 XBRL or AOC-4 NBFC (Ind AS), as the case may be:

Provided that for the preceding financial year (2020-2021), Form CSR-2 shall be filed separately on or before 31st March 2022, after filing Form AOC-4 or AOC-4 XBRL or AOC-4 NBFC (Ind AS), as the case may be.”

Also format of Form CSR- is attached for reference in the said Circular.

Link of the same is as follows:

<https://www.mca.gov.in/bin/dms/getdocument?mds=adQPpN3U8Y7LlcmY0C8FvA%253D%253D&type=open>

6. Jurisdiction For LLP Act,2008:

On the **February 11, 2022** MCA issued notification stating that pursuant to Section 76A of LLP Act, 2008, Registrar of Companies are hereby appointed as Adjudicating Officer for the case of LLPs. The same will be effective from April 01, 2022.

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Link of the same is as follows:

<https://www.mca.gov.in/bin/dms/getdocument?mds=E5puw64Yawzui80af1%252FD%252Fg%253D%253D&type=open>

7. Applicability of LLP (Amendment) Act,2021:

On the **February 11, 2022** MCA issued notification stating that the provisions of sections 1 to 29 of LLP (Amendment) Act, 2021 shall come in to force from April 1, 2022.

Link of the same is as follows:

<https://www.mca.gov.in/bin/dms/getdocument?mds=vkSqd8xttaHgc57aBt3FcQ%253D%253D&type=open>

8. Relaxation in payment of additional fees for filing Balance Sheet and Annual Return for the year 2021

On **February 14, 2022**, MCA has issued a **Circular No.01/2022** relaxing the levy of additional fees for annual financial statement/ annual return which is required to be done for the FY ended March 2021.

MCA has decided that there shall be no additional fees levied:

- up to 15.03.2022 for the filing of annual audited financials in the prescribed e-forms AOC-4, AOC-4 (CFS), AOC-4 XBRL, AOC-4 non-XBRL in respect of the financial year ended on 31.03.2021; and
- up to 31.03.2022 for filing of Annual Return in the prescribed e-forms MGT-7 / MGT-7A in respect of the financial year ended on 31.03.2021.

Link of the same is as follows:

<https://www.mca.gov.in/bin/dms/getdocument?mds=dJwPZuhvXhaSatUCw9YnZA%253D%253D&type=open>
