

## MCA UPDATES

### **1. Extension for holding of AGM through VC or OAVM**

On **May 05, 2022**, MCA vide **Circular No. 2/2022** issued a clarification that companies are allowed to conduct their **Annual General Meetings (AGM)** which are due in the year 2022 through Video Conferencing ("VC") or Other Audio-Visual Means ("OAVM") facilities **till December 31, 2022** as per the requirements laid in Circular No. 20/2020 dated May 05, 2020.

MCA has also clarified that such extension is only in holding the AGM through VC/ OAVM facilities and not to be construed as conferring any extensions of time for holding the AGM

Link of the aforesaid mentioned circular is as follows:

<https://www.mca.gov.in/bin/dms/getdocument?mcs=ArgX2%252B%252BijiObjlpD2nMcUA%253D%253D&type=open>

### **2. Extension for holding EGM through VC or OAVM**

On **May 05, 2022**, MCA vide **Circular No. 3/2022** allowed companies to conduct their **Extra Ordinary General Meetings (EGM)** through Video Conferencing (VC) or Other Audio-Visual Means (OAVM) facilities or transact items through postal ballot **till December 31, 2022**, in accordance with the framework provided in various Circular relating to conducting EGM through VC/ OVAM issued in the year 2020 and 2021.

Link of the same is as follows:

<https://www.mca.gov.in/bin/dms/getdocument?mcs=JbDXGa0hUFPRoITMEqTz6g%253D%253D&type=open>

### **3. The Companies (Prospectus and Allotment of Securities) Amendment Rules, 2022**

On **May 05, 2022**, MCA issued a Notification and amended the Companies (Prospectus and Allotment of Securities) Rules, 2014 ("the Original Rules") with the Companies (Prospectus and Allotment of Securities) Amendment Rules, 2022 ("the Amended Rules"). The Amended Rules shall come in effect from May 04, 2022.

- i. In Rule 14 of the Original Rules about Private Placement, a new proviso has been added which reads as follows:

*"Provided also that no offer or invitation of any securities under this rule shall be made to a body corporate incorporated in, or a national of, **a country which shares a land border with India**, unless such body corporate or the national, as the case may be, have obtained Government approval under*

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](http://www.amitadesai.com) Email: [info@amitadesai.com](mailto:info@amitadesai.com)

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

*the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 and attached the same with the private placement offer cum application letter.”*

Thus, any offer or invitation of securities on private placement basis to a body corporate or a national of a country sharing land border with India can be made only after the said body corporate or national has obtained approval from the Government under Foreign Exchange Management (Non-debt Instrument) Rules, 2019 and the approval has been attached with the private placement offer cum application letter viz. Form PAS-4.

- ii. Consequent to the insertion of new proviso as mentioned above in the Original Rules, a new clause has been inserted in Form PAS-4 (Private Placement Offer cum Application Letter)
  - a. *“The applicant is not required to obtain Government approval under the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 prior to subscription of shares;*
  - b. *The applicant is required to obtain Government approval under the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 prior to subscription of shares and the same has been obtained, and is enclosed herewith.”*

Link of the aforesaid Notification is as follows:

<https://www.mca.gov.in/bin/dms/getdocument?mcs=B400yqqCuZOFozkykpo8KA%253D%253D&type=open>

#### **4. The Companies (Share Capital and Debentures) Amendment Rules, 2022**

On **May 04, 2022**, MCA has notified the Companies (Share Capital and Debentures) Amendment Rules, 2022 (“the Amended Rules”) which amends the existing Companies (Share Capital and Debentures) Rules, 2014 (“the Original Rules”). The Amended Rules shall come in effect from May 04, 2022.

In the Annexure to the Original Rules, in Form SH-4 (Securities Transfer Form), following declaration is inserted, which reads as follows:

*“Transferee is not required to obtain the Government approval under the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 prior to transfer of shares;*

*or*

*Transferee is required to obtain the Government approval under the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 prior to transfer of shares and the same has been obtained and is enclosed herewith.”*

This amendment pertains to insertion of a declaration in form SH-4 with regards to whether transferee is required to obtain Government approval under the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 prior to transfer of shares or not.

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

In case no such approval is required then the transfer will take place in the normal course whereas if such an approval is required, then the approval letter to be obtained and to be enclosed with form SH-4.

Link of the aforesaid Notification is as follows:

<https://egazette.nic.in/WriteReadData/2022/235529.pdf>

### **5. The Companies (Incorporation) Second Amendment Rules, 2022**

On **May 20, 2022**, MCA has notified the Companies (Incorporation) Second Amendment Rules, 2022 (“the Amended Rules”) which amends the Companies (Incorporation) Rules, 2014 (“the Original Rules”). The Amended Rules shall be effective from **June 01, 2022**.

- A. MCA has substituted e- Form INC-9, a declaration by Subscribers and Directors for formation of the Company. The new e-Form INC-9 has a declaration on compliance with Government approval requirement under FEMA:

Below new checkboxes are included in e-Form No. INC-9:

- i. *I am required to obtain the Government approval under the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 prior to subscription of shares and the same has been obtained, and is enclosed herewith. or*
- ii. *I am not required to obtain the Government approval under the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 prior to subscription of shares*

- B. MCA has also inserted a new declaration in e-Form INC-32 (SPICe+), in Part-B on compliance with Government approval requirement under FEMA. The following declaration is inserted at the end of e-Form INC-31

*“I, on behalf of the proposed directors, hereby declare that person seeking appointment is a national of a country which shares a land border with India, necessary security clearance from Ministry of Home Affairs, Government of India shall be attached with the consent:*

- Yes
- No

*(if yes is opted, a copy of the security clearance is to be attached)”.*

Link of the aforesaid Notification is as follows:

<https://www.mca.gov.in/bin/dms/getdocument?mds=QJAZ8U7iIBs%252FRWVx91HwmQ%253D%253D&type=open>

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### **6. Relaxation in paying additional fees in case of delay in filing of Form LLP 11 (Annual Return) by LLP up to June 30, 2022**

On **May 27, 2022** MCA vide **Circular No. 04/2022** extended the time of filing e-Form LLP 11 (Annual Return of Limited Liability Partnership) for FY 2021-22 by Limited Liability Partnership (LLPs) till June 30, 2022 without paying additional fees.

In view of transition from version-2 of MCA-21 to version-3 of MCA-21 there are certain technical glitches which are faced in filing of any Form by LLP and hence to promote compliance on part of LLPs, MCA has accepted request and representations made for extension of last date of filing of this e-Form LLP 11 from 30 May 2022 to 30 June 2022

Link of the aforesaid Circular is as follows:

<https://www.mca.gov.in/bin/dms/getdocument?mds=bPU6zFGIKpt0gBxXLV99nw%253D%253D&type=open>

### **7. The Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2022**

On **May 30, 2022**, MCA vide **Notification No. G.S.R. 401 (E)** MCA has issued the Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2022 (“the Amended Rules”) and amended the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (“the Original Rules”). The Amended Rules shall come into effect immediately from May 30, 2022.

- a. In Rule 25A of the Original Rules which deals with merger or amalgamation of a foreign company with a Company and vice versa, following sub-rule is inserted:

*“Notwithstanding anything contained in sub-rule (3), in case of a compromise or an arrangement or merger or demerger between an Indian company and a company or body **corporate which has been incorporated in a country which shares land border with India**, a declaration in Form No. CAA-16 shall be required at the stage of submission of application under section 230 of the Act.”*

- b. New Form CAA. 16 has been introduced which deals with Declaration in terms of Rule 25A.

Link of the aforesaid Notification is as follows:

<https://egazette.nic.in/WriteReadData/2022/236112.pdf>

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Website: [www.amitadesai.com](http://www.amitadesai.com) Email: [info@amitadesai.com](mailto:info@amitadesai.com)

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

### **8. Relaxation in paying additional fees in case of delay in filing all the event-based e- forms by LLP upto June 30, 2022 which are due on and after February 25, 2022 to May 31, 2022**

On **May 31, 2022** MCA vide **Circular No. 06/2022** extended the time for filing all the event-based e- forms by LLP without paying additional fees.

In view of transition from version-2 of MCA-21 to version-3 of MCA-21 there are certain technical glitches which are faced in filing of any Form by LLP and hence to promote compliance on part of LLPs, MCA has accepted request and representations made for extension of last date of filing of all the event-based e- forms which are due on and after February 25, 2022 to May 31, 2022 without paying additional fees up **to June 30, 2022.**

Link of the aforesaid Circular is as follows:

<https://www.mca.gov.in/bin/dms/getdocument?mds=xVZAKAA2Ap%252B7ha8Y%252FML4fw%253D%253D&type=open>

### **9. The Companies (Accounts) Third Amendment Rules, 2022**

On **May 31, 2022**, MCA vide **Notification No. G.S.R. 407 (E)** has issued the Companies (Accounts) Third Amendment Rules, 2022 (“the Amended Rules”) and amended the Companies (Accounts) Rules, 2014 (“the Original Rules”). The Amended Rules shall come into effect immediately from May 31, 2022.

As per Rule 12(1B) of the Original Rules, every Company which was required to spend is also required to file e-Form CSR-2 along with its Balance Sheet (as an addendum to Form AOC-4 /Form AOC-4 XBRL/Form AOC-4 NBFC (Ind AS), as the case may be).

- a. However, for the FY 2020-21 e-form CSR-2 was to be filed separately on or before March 31, 2022, which date was later extended to May 31, 2022 vide Companies (Accounts) Second Amendment Rules, 2022 and now the date has been further extended to June 30, 2022 vide these Amended Rules.
- b. There is further amendment by inserting 2<sup>nd</sup> proviso which states that for the financial year 2021-22, e-form CSR-2 need to be filed separately on or before March 31, 2023, after filing Form AOC-4 / AOC-4 XBRL/ AOC-4 NBFC (Ind AS), as the case may be for FY 2021-22.

Link of the aforesaid Notification is as follows

<https://egazette.nic.in/WriteReadData/2022/236165.pdf>

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Website: [www.amitadesai.com](http://www.amitadesai.com) Email: [info@amitadesai.com](mailto:info@amitadesai.com)