

MCA UPDATES

1. The Companies (Appointment and Qualification of Directors) Amendment Rules, 2022:

On **June 01, 2022**, MCA vide Notification No. **G.S.R. 410(E)** introduced the Companies (Appointment and Qualification of Directors) Amendment Rules, 2022 amending the current Companies (Appointment and Qualification of Directors) Rules, 2014. The amended rules are effective from June 01, 2022 which are elaborated hereinafter:

The new amendment states that if any person is to be appointed as a Director of the Company who is national of a country which shares land border with India, then such Company is required to **take security clearance** from **Ministry of Home Affairs**. Also, the proposed Director to give consent that he is not a national of a country which shares land border with India.

These countries include **Bangladesh, Pakistan, China, Sri Lanka, Afghanistan, Myanmar, Bhutan and Nepal**.

Amendments are made in following Rules:

- a. In Rule 8 regarding Consent to Act as Director a new proviso is added:
“Provided further that in case the person seeking appointment is a national of a country which shares land border with India, necessary security clearance from the Ministry of Home Affairs, Government of India shall also be attached along with the consent.”
- b. In Rule 10 (1) regarding Allotment of DIN a new proviso is added:
“Provided that no application number shall be generated in case of the person applying for Director Identification Number is a national of a country which shares land border with India, unless necessary security clearance from the Ministry of Home Affairs, Government of India has been attached along with application for Director Identification Number.”
- c. In form DIR-2 regarding Consent to Act as Director, under the heading Declaration, a new declaration is inserted:
***“(ii) I further declare that -
I am not required to obtain the security clearance from the Ministry of Home Affairs, Government of India before seeking appointment as director; ☐***
***or
I am required to obtain the security clearance from the Ministry of Home Affairs, Government of India before seeking appointment as director and the same has been obtained and is attached. ☐***
- d. In Form DIR 3 regarding allotment of DIN, serial no. 3A is inserted:
“3A.I am not required to obtain the security clearance from the Ministry of Home Affairs, Government of India under sub rule (1) of rule 10 before applying for director identification number; ☐

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

or

I am required to obtain the security clearance from the Ministry of Home Affairs, Government of India under sub rule (1) of rule 10 before applying for director identification number has been obtained and is attached. ☐

The link for above notification is mentioned below:

<https://www.mca.gov.in/bin/dms/getdocument?mds=1QPa%252Fckqk4ob6rHXFQrVew%253D%253D&type=open>

2. The Companies (Removal of Name of Companies from the Register of Companies) Amendment Rules, 2022:

On **June 09, 2022**, MCA vide Notification No. **G.S.R. 436(E)** amended the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016. The amended rules are effective from June 09, 2022 which are explained below:

In “**Rule 4 - Application for removal of name of company**” new sub-rule (4) is added.

New sub-rule provides an opportunity to the Company to make resubmission of **Form STK-2 twice** (earlier it was only once). The Registrar of Companies on examination of application for removal of name of company finds that the application or any document or filed information is defective or incomplete then Registrar may ask for further information to be furnished or may ask to rectify the defects in application.

The company to resubmit the form with additional information in 15 days from date of intimation by the Registrar. If the company fails to make resubmission in 15 days, then the application shall be considered as invalid.

Additionally, any resubmission made prior to this amendment shall not be counted.

The new proviso can be read as under:

“(a) Where the Registrar, on examining the application made in Form STK-2, finds that it is necessary to call for further information or finds such application or any document annexed therewith is defective or incomplete in any respect, he shall inform to the applicant to remove the defects and re-submit the complete Form within fifteen days from the date of such information, failing which the Registrar shall treat the Form as invalid in the electronic record, and shall inform the applicant, accordingly.

(b) After the re-submission of the Form or document, if the Registrar finds that the Form or document is defective or incomplete in any respect, he shall give further time of fifteen days to remove such defects or complete the Form, failing which the Registrar shall treat the Form as invalid in the electronic record and shall inform the applicant, accordingly.

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(c) Any re-submission of the application in Form STK-2 made prior to the commencement of the Companies (Removal of Names of Companies from the Register of Companies) Amendment Rules, 2022 shall not be counted for the purposes of reckoning the maximum number of re-submissions of such Form.”

MCA has also amended Forms STK-1, STK-5 and STK-5A with this amendment.

The link for above notification is mentioned below:

<https://www.mca.gov.in/bin/dms/getdocument?mds=TffuoSoybbV3DKUqzsmMaQ%253D%253D&type=open>

3. The Companies (Appointment and Qualification of Directors) Second Amendment, Rules, 2022:

On **June 10, 2022**, MCA vide Notification No. **G.S.R. 439(E)** amended the Companies (Appointment and Qualification of Directors) Rules, 2014. The amended rules are effective from June 10, 2022 which are elaborated hereinafter:

In “**Rule 6 - Compliances required by a person eligible and willing to be appointed as an independent director**” new sub-rule (5) is added which provides for restoration of name of individual whose name has been removed from the Independent Director’s Databank by making payment of Rs. 1000/-.

Such Individual is required to clear online proficiency self-assessment test within One year from the date of such restoration of name. However, if a person fails to clear such test, then his/her name shall be removed from the Independent Director’s Databank and are required to apply afresh for inclusion of name in Databank.

“(5) Any individual whose name has been removed from the databank under sub-rule (4), may apply for restoration of his name on payment of fees of Rs.1000/- and the institute shall allow such restoration subject to the following conditions, namely: -

(i) his name shall be shown in a separate restored category for a period of one year from the date of restoration within which, he/she shall be required to pass the online proficiency self-assessment test and thereafter his/her name shall be included in the databank, only, if he/she passes the said online proficiency self-assessment test and, in such case, the fees paid by him /her at the time of initial registration shall continue to be valid for the period for which the same was initially paid; and
(ii) in case he/she fails to pass the online proficiency self-assessment test within one year from the date of restoration, his/her name shall be removed from the data bank and he/she shall be required to apply afresh under sub-rule (1) for inclusion of his/her name in the databank.”

The link for above notification is mentioned below:

<https://www.mca.gov.in/bin/dms/getdocument?mds=5KQ67DN6uq55p6%252FVSLvwEg%253D%253D&type=open>

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4. National Financial Reporting Authority Amendment Rules, 2022:

On **June 17, 2022**, MCA vide Notification No. **G.S.R. (E)** amended National Financial Reporting Authority Rules, 2018. The amended rules are effective from June 17, 2022 which are elaborated hereinafter:

Rule 13 regarding Punishment in case of non- compliance is substituted as follows:

"Whoever contravenes any of the provisions of these rules, shall be punishable with fine not exceeding Rs.5000/- and where the contravention is a continuing one, with a further fine not exceeding Rs.500/- for every day after the first during which the contravention continues."

The link for above notification is mentioned below:

<https://www.mca.gov.in/bin/dms/getdocument?mds=ALYJ%252BRnuB%252BCYMY4Llv02JA%253D%253D&type=open>

5. Relaxation in paying additional fees in case of delay in filing of Form LLP 11 (Annual Return) by LLP up to July 15, 2022

On **June 29, 2022** MCA vide **Circular No. 07/2022** 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 July 15, 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 May 30, 2022 to July 30, 2022.

Link of the aforesaid Circular is as follows:

<https://www.mca.gov.in/bin/dms/getdocument?mds=jkZozIMem2jwa2SdhjEzzg%253D%253D&type=open>
