

Article



“Companies Amendment Act 2015-an analysis of the amendment rules”

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Introduction

In an attempt to do away with the loose drafting of Companies Act, 2013 (“the Act”) and allowing ease of doing business in India, the Government notified the Companies (Amendment) Act, 2015 (“Amending Act”) on May 25, 2015. With this Amendment Act, 23 sections of the Act are amended. Accordingly to give effect to the amending sections, the corresponding rules are also amended. However, the amended rules are not notified in the Official Gazette.

Applicability of the Amending Act

Continuing the legacy of the new *awtar* of Companies Act of leaving a long tail of guess work and several views on a single point of discussion, the Amending Act came with a confusion of its date of enforcement.

Section 1(2) of the Amending Act reads:

It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act and any reference in any provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

However, MCA came up with a notification dated May 29, 2015¹ saying the same date to the enforcement date of all the sections of Amendment Act except section 13 and 14 relating to fraud reporting and omnibus approval for related party transaction from the Audit Committee respectively. Again, this notification is yet not published in the Official Gazette.

Amending Rules

As mentioned above, to give effect to the amending sections, the corresponding rules are also amended. The gazette copy of the same is awaited.

The table below discusses at length the amendments brought in by the Amendment Rules.

¹ http://www.mca.gov.in/Ministry/pdf/Notification_31052015.pdf

COMPARATIVE ANALYSIS OF THE AMENDMENT RULES AND FORMS

| SL.No. | RULE No. | RULE NAME | PERTAINS TO | EXISTING PROVISION | AMENDMENT | COMMENTS |
|--------|----------|--|--|--|---|---|
| 1 | 12 | Companies(Incorporation)Second Amendment Rules, 2014 | Application for incorporation of companies | An application shall be filed, with the Registrar within whose jurisdiction the registered office of the company is proposed to be situated, in Form No.INC.2 (for One Person Company) and Form no. INC.7 (other than One Person Company) along with the fee as provided in the Companies (Registration offices and fees) Rules, 2014 for registration of a company: | In Rule 12 the following proviso shall be inserted, namely:- “Provided that in case pursuing of any objects of a company requires registration or approval from sectoral regulators such as Reserve Bank of India, Securities and Exchange Board, registration or approval ,as the case may be, from such regulator shall be obtained by the company before pursuing such objects and a declaration in this behalf shall be submitted at the stage of incorporation of the | This will make incorporation procedure lengthy and rigorous as obtaining registration/approval, as the case may be will involve lots of documentation on the part of the company. |

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| SL.No. | RULE No. | RULE NAME | PERTAINS TO | EXISTING PROVISION | AMENDMENT | COMMENTS |
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| | | | | | company. | |
| 2 | 24 | Companies(Incorporation)Rules, 2014 | Declaration at the time of commencement of business | The declaration filed by a director shall be in Form No.INC.21 along with the fee as and the contents of the form shall be verified by a Company Secretary in practice or a Chartered Accountant or a Cost Accountant in practice: Provided that in the case of a company requiring registration from sectoral regulators such as Reserve Bank of India, Securities and Exchange Board of India etc, the approval from such regulator shall be required. | Rule 24 shall be omitted. | <p>Since Section 11 of the Act, 2013 has been omitted vide Amendment Act, 2015, Rule 24 of Companies (Incorporation) Rules, 2014 being the corresponding rule is also omitted. Also Form-21, form for declaration prior to commencement of business or exercising borrowing powers, has also been omitted.</p> <p>However, the requirement of obtaining registration/ approval from sectoral regulators which is present in this Rule has been included in Rule 12 vide Companies (Incorporation) Second Amendment Rules, 2015.</p> |
| 3 | Form INC-13 and INC-16 | Companies(Incorporation)Rules, 2014 | Form INC-13 - Form for Memorandum of Association INC-16 - Form for License under section 8(1) of the Companies Act,2013 | | In INC-13 and INC-16, through notes it has been added that Section 8 company which is an Electoral Trust as per the Electoral Trusts Scheme, 2013 read with section 2(22AAA) | It has now been provided that a section 8 company which is an Electoral Trust as per the Electoral Trusts Scheme, 2013 read with section 2(22AAA) of the Income-tax Act,1961 may amalgamate with similar companies having same objects and may wind up or dissolve only after |

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| | | | | | of the Income-tax Act, 1961 may amalgamate with another section 8 company having the object of an Electoral Trust or may wind up or dissolve only after disbursing all its funds as per the scheme. | disbursing all its funds as per the scheme. It is pertinent to note here that Section 8(10) of the Act, 2013 also mentions that that a section 8 company can amalgamate only with another section 8 company having similar objects. |
| 4 | INC-21 | Companies(Incorporation)Rules, 2014 | Declaration prior to commencement of business or exercising borrowing powers | | INC-21 shall be omitted. | Refer comment in Sr.No-2 |
| 5 | 5 (3) | Companies(Share Capital and Debentures)Rules, 2014 | Certificate of shares (where shares are not in demat form) | (3) Every share certificate shall be issued under the seal of the company , which shall be affixed in the presence of, and signed by- (a) two directors duly authorized by the Board of Directors of the company for the purpose or the committee of the Board, if so authorized by the Board; and (b) the secretary or any | (i) for the words “issued under the seal of the company”, the words “issued under the seal, if any, of the company “ shall be substituted (ii) for clause (b), the following clause (b) shall be substituted, namely:- "(b) the secretary or | Since the mandatory requirement of having a common seal has been done away with, now the affixation of the same on the share certificate has also been optional . That is to say, the same is required only if the company has a common seal. |

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| | | | | <p>person authorised by the Board for the purpose:</p> <p>Provided that, if the composition of the Board permits of it, at least one of the aforesaid two directors shall be a person other than the managing or whole-time director:</p> <p>Provided also further that, in case of a One Person Company, every share certificate shall be issued under the seal of the company, which shall be affixed in the presence of and signed by one director or a person authorized by the Board of Directors of the company for the purpose and the Company Secretary, or any other person authorized by the Board for the purpose.</p> | <p>any person authorised by the Board for the purpose Provided that in case a company does not have a common seal, the share certificate shall be signed by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary: Provided further that, if the composition of the Board permits of it, at least one of the aforesaid two directors shall be a person other than a managan9 director or a whole-time director: Provided also that, in case of a One person Company, every share certificate shall be issued</p> | |

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| | | | | | <p>under the seal, if any, of the company, which shall be affixed in the presence of and signed by one director or a person authorized by the Board of Directors of the company for the purpose and the Company Secretary, or any other person authorized by the Board for the purpose, and in case the One person Company does not have a common seal, the share Certificate Shall be signed by the persons in the presence of whom the seal is required to be affixed in this proviso.”.</p> | |
| 6 | 3 (5) | Companies (Declaration And Payment Of Dividend)Rules,2014 | Declaration of dividend out of reserves | In the event of inadequacy or absence of profits in any year, a company may declare dividend out of free | Rule 3(5) shall be omitted. | The same has been made part of the Act, 2013 vide Amending Act. |

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| | | | | reserves subject to the fulfillment of the following conditions, namely:— XXX (5) No company shall declare dividend unless carried over previous losses and depreciation not provided in previous year are set off against profit of the company of the current year the loss or depreciation, whichever is less, in previous years is set off against the profit of the company for the year for which dividend is declared or paid. | | |
| 7 | 3(4)(a) | Companies (Registration of Charges) Amendment Rules,2015, | Registration of creation or modification of charge | (4) A copy of every instrument evidencing any creation or modification of charge and required to be filed with the Registrar in pursuance of Section 77, 78 or 79 shall be verified as follows- (a) where the instrument or deed relates solely to the property situated | for the words "under the seal of the company", the words "under the seal, if any, of the company" shall be substituted; | The same has been done in line with making the affixation of common seal of the company non-mandatory requirement. |

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| | | | | outside India, the copy shall be verified by a certificate issued either under the seal of the company, or under the hand of any director or company secretary of the company or an authorised officer of the charge holder or under the hand of some person other than the company who is interested in the mortgage or charge; | | |
| 8 | 15 | Companies (Registration Offices and Fees) Second Amendment Rules, 2015 | Inspection of documents | | In rule 15, the following proviso shall be inserted: Provided that no person shall be entitled under section 399 to inspect or obtain copies of resolutions referred to in clause (g) of sub-section (3) of section 117 of the Act | To give effect to the amendment made in section 117 of Act, 2013 whereby board resolutions passed u/s 179 of the Act, 2013 is made a non-public document. |

Persisting confusion

It is pertinent to note that, although these amendment rules are issued by the MCA to give effect to the Amendment Act, clarity on several provisions is still missing. One of such unclear provision is discussed below:

1. Although the mandatory minimum capital requirement for the private and public company has been done away with vide the Amendment Act, the words “as may be prescribed” has not been omitted. Consequently, it seems that the MCA can further anytime in future prescribe the minimum paid-up share capital by way of rules which is surely not the intent of law.

Needless to mention, MCA will continue the spree of clarification to give an insight on many such unclear provisions of the Act. Also, since many non-notified sections of the Act have been amended, it is expected that the Ministry will soon enforce such sections of the Act to give effect to the Amendment Act in entirety

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