



The Companies Act 2013

Enlightening Nation

E-newsletter

DECEMBER, 2018

About the E-newsletter

Dear Users,

To keep you updated about the latest notifications, circulars & orders issued during the month, thecompaniesact2013.com present herewith its monthly e-newsletter. This is the issue of the December month comprising contemporary articles & monthly amendments.

The notion is to render all the updates in a compiled format and serve a better pavement for easy accessibility.

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Companies (Incorporation) Fourth **Amendment Rules, 2018**

Introduction:

MCA vide Notification No. **G.S.R. 1219(E)** dated 18th December, 2018 has amended the provisions of the Companies (Incorporation) Rules, 2014 to provide new rules in connection with declaration of commencement of business, manner of obtaining approval in case of change in financial year and conversion of public company into private company. Key highlights of the amendments are:

❖ Declaration at the time of commencement of business:

Section 10A as inserted by the Companies (Amendment) Ordinance, 2018 states that a company having share capital required to file a declaration with Registrar within 180 days from the date of incorporation for commencement of business or exercising the borrowing powers. Further the declaration states that every subscriber to the MOA has paid the value of shares agreed to be taken by him on the date of making declaration. Such declaration shall be filed by a director in **Form INC-20A** and such form shall be filed as provided in the Companies (Registration Offices and Fees) Rules, 2014.

Further the contents of the said form shall be verified by a Company Secretary or a Chartered Accountant or a Cost Accountant, in practice. However, in case of a company pursuing objects requiring registration or approval from any sectoral regulators such as RBI, SEBI etc., the registration or approval, as the case may be, from such regulator shall also be obtained and attached with the declaration.

✚ List of attachment to Form INC-20A

- Subscribers Proof of payment for the value of shares
- Certificate of Registration issued by RBI (Only in case of Non Banking Financial Companies/ From other Regulators)
- Other Required Attachments

❖ **Application under section 2(41) for change in financial year:**

As per Section 2(41) of the Companies Act, 2013 every company is required to follow uniform financial year ending on 31st March. Further on an application made to the Central government (Regional Director on behalf of Central Government) an exemption to be allowed to follow different financial year where the company or body corporate which is a holding company or a subsidiary or an associate company of a company incorporated outside India.

✚ The application for approval of concerned Regional Director (RD) under section 2(41), shall be filed in **e-Form No.RD-1** along with the fee and shall be accompanied by the following documents:

- Grounds and reasons for the application;
- A copy of the minutes of the Board meeting at which the resolution authorizing such change was passed, giving details of the number of votes cast in favor and or against the resolution;
- Power of Attorney or Memorandum of Appearance, as the case may be;
- Details of any previous application made within last 5 years for change in financial year and outcome thereof along with copy of order.

✚ Where RD on examining the application, finds it necessary to call for further information or finds such application to be defective or incomplete in any respect, he shall give intimation of such information called for or defects or incompleteness, on the last intimated e-mail address of the person or the company, which has filed such application, directing the person or the company to furnish such information, or to rectify defects or incompleteness and to re-submit such application within a period of 15 days, in Form RD GNL-5.

✓ **Note:** Maximum of two re-submissions shall be allowed.

✚ In case where the application is found to be in order, RD shall allow and convey the order within 30 days from the date of application or within 30 days from the date of last re-submission, as the case may be.

✚ Where no order for approval or re-submission or rejection has been explicitly made by RD within the stipulated time of 30 days, it shall be deemed that the application stands approved and an approval order shall be automatically issued to the applicant.

✚ The order conveyed by RD shall be filed by the company with Registrar of Companies in Form No.INC-28 within 30 days from the date of receipt of the order along with fee.

❖ **Application under section 14 for conversion of public company into private company:**

Section 14 of the Companies Act, 2013 states that as per the applicable provision of the Act and the condition contained in Memorandum, if any, company may, by Special resolution, alter its articles having the effect of conversion of -

- a) a private company into a public company; or
- b) a public company into a private company:

✚ An application under the second proviso to section 14(1) for the conversion of a public company into a private company, shall, within 60 days from the date of passing of special resolution, be filed with RD in e-Form No. RD-1 along with the fee and shall be accompanied by the following documents, namely:

- Draft copy of MOA and AOA;
- Copy of the minutes of the general meeting at which the special resolution authorizing such alteration was passed together with details of votes cast in favor and or against with names of dissenters;
- Copy of Board resolution or power of Attorney dated not earlier than 30 days, as the case may be, authorizing to file application for such conversion;
- List of creditors, debenture holders, drawn up to the latest practicable date preceding the date of filing of application by not more than 30 days;
- Declaration by KMP that pursuant to the provisions of section 2(68), the company limits the number of its members to 200 and also stating that no deposit has been accepted by the company in violation of the Act and rules made thereunder;
- Declaration by KMP that there has been no non-compliance of section 73 to 76A, 177, 178, 185, 186 and 188 of the Act and rules made thereunder;
- Declaration by KMP that no resolution is pending to be filed in terms of section 179(3) and also stating that the company was never listed in any of the Regional Stock Exchanges and if was so listed, all necessary procedures were complied with in full for complete delisting of the shares in accordance with the applicable rules and regulations laid down by SEBI.

✚ The company shall, at least 21 days before the date of filing of the application advertise in Form INC 25A, in a vernacular newspaper in the principal vernacular language in the district and in English language in an English newspaper, widely circulated in the State in which the registered office of the company is situated.

✓ Note: in case of such companies where no KMP is required to be appointed, the aforesaid declarations shall be filed any of the director.

- ✚ Where no objection has been received from any person in response to the advertisement and the application is complete in all respects, the same may be put up for orders without hearing and the concerned RD shall pass an order approving the application within 30 days from the date of receipt of the application.

- ✚ Where RD on examining the application finds it necessary to call for further information or finds such application to be defective or incomplete in any respect, he shall within 30 days from the date of receipt of the application, give intimation of such information called for or defects or incompleteness, on the last intimated e-mail address of the person or the company, which has filed such application, directing the person or the company to furnish such information, to rectify defects or incompleteness and to re-submit such application within a period of 15 days in e-Form No. RD-GNL-5.

- ✓ **Note:** Maximum of two re-submissions shall be allowed.

- ✚ Where no order for approval or re-submission or rejection has been explicitly made by RD within the stipulated period of 30 days, it shall be deemed that the application stands approved and an approval order shall be automatically issued to the applicant.

- ✚ The order conveyed by RD shall be filed by the company with ROC in Form No. INC-28 within 15 days from the date of receipt of approval along with fee.

✚ **Required Attachment with the form RD-1**

- ***Statement of the ground on which the application is made to the Regional Director**
- **Copy of Board Resolution**
- **Copy of Special Resolution**
- ***Copy of Advertisement in Form INC 25A**
- **List of creditor and debenture holders**
- ***Declaration by KMP on compliance of section 2(68)**
- ***Any other declaration**

✓ *** Mandatory Attachments**

NOTIFICATIONS

A. G.S.R. (E) Companies (Cost Records and Audit) Amendment Rules, 2018

Dated 03.12.2018

In exercise of the powers conferred by sub-section (1) and (2) of section 469 and section 148 of the Companies Act, 2018 (18 of 2013) the Central Government hereby makes the following rules further to amend the Companies (Cost Records and Audit) Rules, 2014, namely:-

- (1) These rules may be called the Companies (cost records and audit) Amendment Rules, 2018.
- (2) They shall come into force on the date of their Publication in the Official Gazette.

[READ NOTIFICATION IN DETAIL](#)

B. G.S.R. (E): Companies (Incorporation) Fourth Amendment Rules, 2018.

Dated 18.12.2018

In exercise of the powers conferred by clause (41) of section 2, section 3, sub-section (1) of section 7, section 10A, section 14 and sub under sub-sections (1) and (2) of sections 469 of the Companies Act, 2013 (18 of 2013) the Central Government hereby makes the following rules further to amend the Companies (Incorporation) Rules, 2014, namely:-

1. Short title and Commencement: -

- (1) These rules may be called the Companies (Incorporation) Amendment Rules, 2018.
- (2) They shall come into force on the date of their Publication in the Official Gazette.

[READ NOTIFICATION IN DETAIL](#)

C. G.S.R. (E): Companies (Registration of Charges) Second Amendment Rules, 2018.

Dated 18.12.2018

In exercise of the powers conferred by sub-section (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013) the Central Government hereby makes the following rules further to amend the Companies (Registration of Charges) Rules, 2014, namely:-

1. (1).These rules may be called the Companies (Registration of Charges) Second Amendment Rules, 2018.
- (2) They Shall come into force from the date of their publication in the Official Gazette.

[READ NOTIFICATION IN DETAIL](#)

CIRCULARS

A. General Circular 11/2018 Relaxation of additional fees and extension of last date of in filing of CRA-4(Cost Audit Report in XBRL Format)

Dated 10.12.2018

(1) Keeping in view the requests received from various stakeholders seeking extension of time for filing Cost Audit Report **for the financial year ended 31.03.2018** on account of various factor, it has been decided to relax the additional fees payable by companies on **CRA-4(Cost Audit Report In XBRL Format)** upto **31.12.2018**, wherever additional fee is applicable.

(2) This issue with the approval of the competent authority.

[READ CIRCULAR IN DETAIL](#)

B. General Circular 12/2018 Extension of last date of in filing of Form NFRA-1

Dated 13.12.2018

(1) The Ministry of Corporate Affairs has received several representations regarding extension of the last date of filing of Form NFRA-1, which is required to be filed under sub-rule (2) and sub-rule (3) of rule 3 of the National Financial Reporting Authority Rules, 2018.

(2) The matter has examined and it is stated that the time limit for filing Form NFRA-1 will be 30 days from the date of deployment of this form on the website of Ministry/ National Financial Reporting Authority (NFRA) for all bodies corporate governed by the said rule (excluding companies as defined under sub-section (20) of section 2 of the Companies Act, 2013, which are not required to file this Form).

(3) This issues with the approval of Competent Authority.

[READ CIRCULAR IN DETAIL](#)

ORDERS

A. S.O. 6225 (E) Delegation of powers and functions to Regional Directors

Dated 10.12.2018

(1) In exercise of the powers conferred by section 458 of the Companies Act, 2013 (18 of 2013), the Central Government hereby delegates to the Regional Directors at Mumbai, Kolkata, Chennai, New Delhi, Ahmedabad, Hyderabad and Shillong, the powers and functions vested in it under the first proviso to clause (41) of section 2 and second proviso to sub-section (1) of section 14 of the said Act, subject to the

condition that the Central Government may revoke such delegation of powers or may itself exercise the powers under the said sub-section, if in its opinion such a course of action is necessary in the public interest.

(2). This notification shall come into force with effect from the date of its publication in the Official Gazette.

LATEST UPDATES ON thecompaneisact2013.com

- **Companies (Incorporation) Fourth Amendment Rules, 2018.**
- **Companies (Registration of charges) Second Amendment Rules, 2018 .**
- **Companies (Cost Records and Audit) Amendment Rules, 2018**
- **General Circular No. 11/2018 Relaxation of additional fees and extension of last date of in filing of CRA-4 (Cost Audit Report in XBRL Format)**
- **General Circular No. 12/2018 Extension of last date of filing of Form NFRA-1**

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