



The Companies Act 2013

Enlightening Nation

E-newsletter

JANUARY, 2017

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 January 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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ARTICLE

All About SPICe- forms

MCA has taken a great step in the direction of Government Process Re-engineering (GPR) by introducing Simplified structure of Incorporation of a company i.e. SPICe form 32.

Government has notified these forms and made the same lawful vide Companies (Incorporation) Fourth Amendment Rules, 2016 dated 1st October 2016 viz. "Simplified Proforma for Incorporating Companies Electronically (SPICe). This form now can be download from MCA Portal alongwith it's linked form which are electronic MoA (SPICe MoA) and electronic AoA (SPICe AoA). These three forms are substitution of INC-7/INC-29.

Provisions from where these forms get recognition : MCA has notified Companies (Incorporation) fourth Amendment Rules as on 01/10/2016 in order to introduce New E-Spice forms, following are the insertion of these amendment rules:

In the Companies (Incorporation) Rules, 2014 after rule 37, the following rule shall be inserted, with effect from 2nd October 2016, namely:-

“38. Simplified Proforma for incorporating Company Electronically (SPICE)

(1) The simplified integrated process for incorporation of a company in Form No. INC-32 alongwith e-Memorandum of Association in Form No. INC-33 and e-Articles of Association in Form No. INC-34.

(2) The provisions of sub-rule (2) to sub-rule (13) of rule 36 shall apply mutatis mutandis for incorporation under this rule.

Provided that for the purposes of references to form numbers INC-29, INC-30 and MC-31 in rule 36 with Form No. 1NC-32, Form no, INC-33 and Form No. INC-34 shall be substituted respectively.

The abovementioned rule is substituted by Companies (Incorporation) 5th Amendment Rules 2016 Dated 29th December 2016. (The Amendment shall come into force from 1st January, 2017)

The new rule and its effects are stated below:

Effect of “Companies (Incorporation) Fifth Amendment Rules, 2016” on Spice Forms : In order to introduce more provisions and amendments in direction of Company Incorporation process, MCA has notified “Companies (Incorporation) Fifth Amendment Rules, 2016” applicable from 1 Jan. 2017. Following are the Changes and effects made by these amendment rules:

S.No.	Companies (Incorporation) Rules, 2014	Modifications	Effect
1	Sub rule 2 of Rule 4	for the words and figures ‘such nomination in Form No. INC-2 along with consent of such nominee obtained in Form No-INC-3’ the words and figures ‘such nomination in Form No. INC-32 (SPICe) along with consent of such nominee obtained in Form No.INC-3’ shall be substituted	INC-2 is deprecated and INC -32 will solve the purpose of nomination
2	Rule 10	for the words and figures ‘Form No. INC-7’ the words and figures Form No.INC-7 or Form No INC-32 (SPICe)’ shall be substituted.	INC-32 will be use for the purpose of giving notice to ROC about entrenchment of articles of association where application for company incorporation is making via spice forms
3	Rule 12	for the words and figures ‘Form No.INC-2 (for One Person Company) and Form No-INC-7 (other than One Person Company)’ the words and figures ‘Form No.INC-7 (Part I company and company with more than seven subscribers) and Form No INC-32 (SPICe)’ shall be substituted,	Now onwards for incorporation of One Person Company, a company having more than 7 subscribers/promoters, or foreign national subscribers not having a valid DIN- Form INC-7 will be use and in all other cases -Form INC-32 shall be filed for incorporation of a company
4	Rule 36	Shall be omitted	Integrated Process for Incorporation i.e. concept of INC-29 has omitted and no company shall incorporate via this form.
5	Rule 38	<i>Following Rules shall be Substituted namely:</i> The application for incorporation of a company under this rule shall	It means in case of a section-8 Company, MOA and AOA will be

		<p>be in FORM No. INC-32 (SPICe) along with e-Memorandum of Association (e-MOA) in Form No. INC-33 and e-Articles of Association (e-AOA) in Form no. INC-34.</p> <p>Provided that in case of incorporation of a company falling under section 8 of the Act, FORM No. INC-32 (SPICe) shall be filed along with FORM No. INC-13 (Memorandum of Association) and FORM No. INC-31 (Articles of Association) as attachments,</p>	<p>attached in PDF format as same as the case of Form INC-7.</p> <p>Reason behind this is as Section-8 Company has to provide it's MOA and AOA at the time of application for license, so it is not possible to Re-prepare the same during Incorporation Process and to use E-formats of the same.</p>
		<p>For the purposes of sub-rule (1), the application for allotment of Director Identification Number up to three Directors, reservation of a name, incorporation of company and appointment of Directors of the proposed for One Person Company, private company, public company and a company falling under section 8 of the Act. Shall be filed in FORM No. INC-32 (SPICe), . with the Registrar, within whose jurisdiction the registered office of the company is proposed to be situated along with the fee of rupees five hundred in addition to the registration fee as specified in the Companies (Registration of Offices and Fees) Rules. 2014</p> <p>Provided that where an applicant has applied for reservation of a name under Rule 9 and which has been approved therein, he may fill the reserved name as proposed name of the company.</p> <p>For the purposes of filing SPICe Form, the particulars of maximum of three directors shall be allowed to be filled in FORM No. INC-32 (SPICe), and allotment of Director</p>	<p>User can apply for DIN of upto three Directors via form INC-32 (SPICe), which was not possible in case of INC-7, although fee of Rs. 500/- per DIN application will be charge by ministry in addition to Fee of Company Incorporation</p> <p>If user has already applied for name of Proposed Company in Form INC-1 and has a valid name Approval letter , then SRN of INC-1 need to provide while preparation of Form INC-32 (SPICe)</p> <p>Directors not having DIN cannot be more than 3 in number.</p>

		<p>Identification Number of maximum of three proposed directors shall be permitted in FORM NO. INC-32 (SPICe) in case of proposed directors not having approved Director Identification Number.</p>	
		<p>The promoter or applicant of the proposed company shall prepare Memorandum of Association (e-MoA) in FORM No. INC-33 and Articles of Association (e-AoA) in FORM No. INC-34, in accordance with rule 13.</p> <p>Provided that the subscribers and witness or witnesses shall affix their digital signatures to the e-MoA and e-AoA</p>	<p>In case of form INC-7, user was used to attach MOA and AOA of the proposed company in PDF Format. Now in the scenario of Form INC-32 (SPICe), user need to fill Form INC-33 (E-MOA) and INC-34 (E-AOA) and to affix DSC of all subscribers and witness in the same. As these forms are e-form itself then these shall be file on MCA portal as linked form of Form INC-32 (SPICe) at the time of company incorporation.</p>
		<p>For incorporation using application as provided in this rule, provisions of the sub-clause (i) of sub-section (5) of section 4 of the Act. rule 9, and clause (a) of sub-rule (1) of rule 16 to the extent of affixing recent photograph shall not apply.</p>	<p>As concept of E-MOA has arrived so there is no more need to affix photographs on Subscriber sheets</p>
		<p>A company using the provisions of this rule may furnish verification of its registered office under sub-section (2) of section 12 of the Act by filing Form No. INC-32 (SPICe) in which case the company shall attach along with such Form No. .INC-32 (SPICe), any of the documents referred to in sub-rule (2) of rule 25.</p>	<p>If registered office address of proposed company is same as correspondence address mentioned in Form No. INC-32 (SPICe), then user need not to file separate Form No. INC-22, instead this he/she will attach the required documents such as lease agreement (if owned by company), Rent agreement (if taken on lease), as the case may be.</p>
		<p>Form No. INC-22 shall not be required to be filed in case the proposed company maintains its registered office at the given correspondence address.</p>	

		<p>(a) Where the Registrar on examining Form No. INC-32 (SPICe), finds that it is necessary to call for further information or finds such application or document to be defective or incomplete in any respect, he shall give intimation to the applicant to remove the defects and re-submit the e-form within fifteen days from the date of such intimation given by the Registrar.</p> <p>(b) After the resubmission of the document, if the registrar still finds that the document is defective or incomplete in any respect, he shall give one more opportunity of fifteen days to remove such defects or deficiencies.</p>	<p>Two Chances of Re-submission will be given to user under process of Form No. INC-32 (SPICe)</p>
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Key Features of Spice E-form:

1. It is an Integrated Process of Company Incorporation
2. It provides Standardised format of Memorandum of Association as per Companies Act, 2013 in electronic form
3. It Provides Standardised format of Articles of Association as per Companies Act, 2013 in electronic form
4. These E-MOA and E-AOA shall be linked forms for the purpose of Company Incorporation*.
5. Mandatory DSCs of Subscribers and Witnesses (max 7+1) in SPICe MOA and SPICe AOA
6. Subscriber's photo is not required on Subscriber sheet of MOA and AOA

* In case of incorporation of section-8 Company via Spice form, User has to provide SRN of Form INC-1. After this, form will show the license number which would be same as mentioned in license issued by Central Government, authority delegated to ROC to user. It is to be noted that in this case user need not to prepare Form No. INC-33 (E-MOA) and Form No. INC-34 (E-AOA). Instead these, Spice E-form will provide the option to attach MOA and AOA of the proposed company under the attachment head and one has to attach PDF file of the same over there.

Advantages of Form INC-32 (SPICe)

1. Name can apply through this form
2. DIN of upto 3 Directors can apply via this form, subject to the fee of Rs. 500/- Per application.
3. No need to submit separate form DIR-12 at the time of incorporation.

4. No need to submit form INC-22 (for giving intimation regarding registered office address) if it is same as correspondence address given in form INC-32 (SPICe)
5. Now adhar card can be attached as residential address proof of director's and subscriber's.
6. Less chances of clerical error while preparation of MOA and AOA of the proposed company as both are available in Electronic format.
7. Two resubmissions are permitted for SPICe forms
8. Faster Process of form approval at the end of ministry due to Simplified and standard formats of MOA and AOA
9. *Now, if form is rejected due to any reason then, user can apply for refund.*

Drawbacks of Form INC-32 (SPICe)

1. Only one name can be filed under INC 32 form. So, if user wants to propose more than one name, then he/she have to file form No. INC 1 before form INC-32 (SPICe). Maximum 6 Names can be filed under INC- 1 form.
2. Only maximum 7 DSC can be attached in E-MOA. of Subscribers. It means if user wants to incorporate a company with more than seven subscribers he has to file the form INC-7 instead this SPICe form.
3. This form cannot be used for incorporation of unregistered companies, a company having a foreign individual subscribers without a valid DIN, and companies being formed with more than 7 subscriber
4. DSC of all subscribers are mandatory.
5. It is now mandatory to apply PAN and TAN along with form INC-32 (SPICe)*.
6. Limits define for main object is 20,000 characters and for matters which are necessary for furtherance of the objects specified in clause 3(a) are 1,00,000 characters

* The user is required to click on mca.gov.in and access the service 'Submit application for PAN and TAN' under the head of "MCA services". Then user need to download 49A(PAN) and 49B(TAN) and upload them on the same screen after attaching his/her DSC. After this user has to upload these forms(PAN&TAN) within 2 days of filing the form INC-32 (SPICe). If user will not do so then the entire SPICe form would be marked as Invalid and ministry will not be take the same on record.

Article by ACS Kavita Sharma

NOTIFICATIONS



A. G.S.R.08 (E) Notification –Exemption to Specified IFSC Public company –under section 462 of the Companies Act, 2016

Dated 04.01.2017

In exercise of the powers conferred by clauses (a) and (b) of sub-section (1) of Section 462 and in pursuance of sub-section (2) of the said section of the Companies Act, 2013 (18 of 2013), the Central Government, in the interest of public, hereby directs that certain provisions of the Companies Act, 2013 (18 of 2013), as specified in column (2) of the Table, shall not apply or shall apply with such exceptions, modifications and adaptations as specified in column (3) of the said Table, to an unlisted public company which is licensed to operate by the Reserve Bank of India or the Securities and Exchange Board of India or the Insurance Regulatory and Development Authority of India from the International Financial Services Centre located in an approved multi services Special Economic Zone set-up under the Special Economic Zones Act, 2005 (28 of 2005) read with the Special Economic Zones Rules, 2006 (herein after referred to as “Specified IFSC public company”), namely:—

Serial Number	Provisions of the Companies Act, 2013 (18 of 2013)	Exceptions/Modifications/Adaptations
(1)	(2)	(3)
1.	Clause (41) of section 2	In Clause (41), after the second proviso, the following proviso shall be inserted, namely :- “Provided also that in case of a Specified IFSC public company, which is a subsidiary of a foreign company, the financial year of the subsidiary may be same as the financial year of its holding company and approval of the Tribunal shall not be required.”.
2.	Sub-clause (viii) of clause (76) of section 2	Shall not apply with respect to section 188.
3.	Sub-section (2) of section 3	In sub-section (2), the following proviso shall be inserted, namely:- “Provided that a Specified IFSC public company shall be formed only as a

		company limited by shares.”.
4.	Clause (a) of subsection (1) of section 4	In clause (a) of sub-section (1), after the proviso, the following proviso shall be inserted, namely:- “Provided further that a Specified IFSC public company shall have the suffix “International Financial Service Company” or “IFSC” as part of its name.”.
5.	Clause (c) of subsection (1) of section 4	In clause (c) of sub-section (1) of section 4, the following proviso shall be inserted, namely:- “Provided that a Specified IFSC public company shall state its objects to do financial services activities, as permitted under the Special Economic Zones Act, 2005 (28 of 2005) read with the Special Economic Zones Rules, 2006 and any matter considered necessary in furtherance thereof, in accordance with license to operate, from International Financial Services Centre located in an approved multi services Special Economic Zone, granted by the Reserve Bank of India or the Securities and Exchange Board of India or the Insurance Regulatory and Development Authority of India.”.
6.	Sub-section (1) of section 12	In sub-section (1), the following proviso shall be inserted, namely:- “Provided that a Specified IFSC public company shall have its registered office at the International Financial Services Centre located in the approved multi services Special Economic Zone set-up under the Special Economic Zones Act, 2005 read with the Special Economic Zones Rules, 2006, where it is licensed to operate, at all times.”.
7.	Sub-section (2) of section 12	For the words “thirty days” read as “sixty days”.
8.	Sub-section (4) of section 12	For the words “fifteen days” read as “sixty days”.
9.	Sub-section (5) of section 12	For sub-section (5), the following sub-

		<p>section shall be substituted, namely:-</p> <p>“(5) Except on the authority of a resolution passed by the Board of Directors, the registered office of the Specified IFSC public company shall not be changed from one place to another within the International Financial Services Centre:</p> <p>Provided that the Specified IFSC public company shall not change the place of its registered office to any other place outside the said International Financial Services Centre.”.</p>
10.	Section 21	For the words “an officer” read as “an officer or any other person”.
11.	Sub-sections (3) and (7) of section 42	Shall not apply.
12.	Sub-section (6) of section 42	For the words “sixty days” read as “ninety days”.
13.	Section 43	Shall not apply to a Specified IFSC public company, where memorandum of association or articles of association of such company provides for it.
14.	Section 47	Shall not apply to a Specified IFSC public company, where memorandum of association or articles of association of such company provides for it.
15.	Clause (c) of subsection (1) of section 54	Shall not apply.
16.	Sub-section (4) of section 56	<p>In sub-section (4), after the proviso, the following proviso shall be inserted, namely:-</p> <p>“Provided further that a Specified IFSC public company shall deliver the certificates of all securities to subscribers after incorporation, allotment, transfer or transmission within a period of sixty days.”</p>
17.	Clause (a) of subsection (1) of section 62	<p>In clause (a) of sub-section (1), the following proviso shall be inserted, namely:-</p> <p>“Provided that notwithstanding anything contained in sub-clause (i), in case of a</p>

		Specified IFSC public company, the periods lesser than those specified in the said sub-clause shall apply if ninety per cent. Of the members have given their consent in writing or in electronic mode.”
18.	Clause (b) of subsection (1) of section 62	For the words “special resolution” read as “ordinary resolution”.
19.	Section 67	Shall not apply to a Specified IFSC public company- (a) in whose share capital no other body corporate has invested any money; (b) if the borrowings of such company from banks or financial institutions or any body corporate is less than twice of its paid up share capital or fifty crore rupees, whichever is lower; and (c) Such a company is not in default in repayment of such borrowings subsisting at the time of making transactions under this section.
20.	Clauses (a) to (e) of subsection (2) of section 73	Shall not apply to a Specified IFSC public company which accepts from its members, monies not exceeding one hundred per cent. Of aggregate of the paid up share capital and free reserves, and such company shall file the details of monies so accepted to the Registrar in such manner as may be specified.
21.	Sub-section (1) of section 82	In sub-section (1), the following proviso shall be inserted, namely:- “Provided that in case of a Specified IFSC public company, the Registrar may, on an application by the company, allow such registration to be made within a period of three hundred days of such Creation on payment of such additional fees as may be prescribed.”
22.	Sub-section (6) of section 89	For the words “thirty days” read as “sixty days”.
23.	Sub-section (3) of section 92	Shall not apply.
24.	Sub-section (1) of section 100	In sub-section (1), the following proviso shall be inserted, namely:- “Provided that in case of a Specified IFSC public company, the Board may subject to the consent of all the shareholders, convene its extraordinary general meeting at any

		place within or outside India.”.
25.	Sections 101 to 107 and section 109	Shall apply in case of a Specified IFSC public company, unless otherwise specified in the articles of the company.
26.	Sub-section (1) of section 117	For the words “thirty days” read as “sixty days”.
27.	Clause (g) of sub-section (3) of section 117	Shall not apply.
28.	Sub-section (1) of section 118	In sub-section (1), the following proviso shall be inserted, namely:- “Provided that in case of a Specified IFSC public company, the minutes of every meeting of its Board of Directors or of every committee of the Board, to be prepared and signed in the manner as may be prescribed under sub-section (1) at or before the next Board meeting or committee meeting, as the case may be and kept in the books kept for that purpose.”.
29.	Sub-section (10) of section 118	Shall not apply.
30.	Sub-section (3) of section 134	In sub-section (3), following proviso shall be inserted, namely:- “Provided that in case of a Specified IFSC public company, if any information listed in this sub-section is provided in the financial statement, the company may not include such information in the report of the Board of Directors.”
31.	Section 135	Shall not apply for a period of five years from the commencement of business of a Specified IFSC public company.
32.	Section 138	Shall apply if the articles of the company provides for the same.
33.	Fourth proviso to sub section (1) of section 139	For the words “fifteen days” read as “thirty days”.
34.	All provisos to subsection (2) of section 139	Shall not apply.
35.	Sub-section (1) of section 140	In sub-section (1) after the proviso, the following proviso shall be inserted, namely:- “Provided further that in case of a Specified IFSC public company, where,

		within a period of sixty days from the date of submission of the application to the Central Government under this sub-section, no decision is communicated by the Central Government to the company, it would be deemed that the Central Government has approved the application and the company shall appoint new auditor at a general meeting convened within three months from the date of expiry of sixty days period.”
36.	Second proviso to subsection (1) of section 149	Shall not apply.
37.	Sub- section (3) of section 149	In sub-section (3), the following proviso shall be inserted, namely:- “Provided that this sub-section shall apply to a Specified IFSC public company in respect of financial years other than the first financial year from the date of its incorporation.”
38.	Sub- sections (4) to (11), clause (i) of subsection (12) and sub-section (13) of section 149	Shall not apply.
39.	Sub-section (5) of section 152	For the words “thirty days” read as “sixty days”.
40.	Sub-sections (6) and (7) of section 152	Shall not apply.
41.	Section 160	Shall apply as per the articles framed by the company.
42.	Sub-section (3) of section 161	In sub-section (3), the following proviso shall be inserted, namely:- “Provided that in case of a Specified IFSC public company, the Board may appoint, any person nominated by any institution or company or body corporate as a director in pursuance of the provisions of any law for the time being in force or of any agreement or by the Central Government or the State Government by virtue of its shareholding in a Government company.”
43.	Section 162	Shall not apply.
44.	Proviso to sub-section (1) of section 168	For the word “shall” read as “may”.

45.	Sub-section (2) of section 170	For the words “thirty days” at both places read as “sixty days”.
46.	Sub-section (1) of section 173	In sub-section (1), after the proviso, the following proviso shall be inserted, namely:- “Provided further that a Specified IFSC public company shall hold the first meeting of the Board of Directors within sixty days of its incorporation and thereafter hold at least one meeting of the Board of Directors in each half of a calendar year.”
47.	Sub-section (3) of section 174	Shall apply with the exception that interested director may participate in such meeting provided the disclosure of his interest is made by the concerned director either prior or at the meeting.
48.	Section 177	Shall not apply.
49.	Section 178	Shall not apply.
50.	Sub-section (3) of section 179	In sub-section (3), after the second proviso, the following proviso shall be inserted, namely:- “Provided also that in case of a Specified IFSC public company, the Board can exercise powers by means of resolutions passed at the meetings of the Board or through resolutions passed by circulation.”
51.	Section 180	Shall apply in case of a Specified IFSC public company, unless the articles of the company provides otherwise.
52.	Sub-section (2) of section 184	Shall apply with the exception that interested director may participate in such meeting provided the disclosure of his interest is made by the concerned director either prior or at the meeting.
53.	Sub-section (1) of section 185	In the Explanation, for clause (c), the following clause shall be substituted, namely:- “(c) any private company of which any such director is a director or member in which director of the lending company do not have direct or indirect shareholding through themselves or through their relatives and a special resolution is passed to this effect;”

54.	Sub-section (1) of section 186	Shall not apply.
55.	Sub-sections (2) and (3) of section 186	Shall not apply if a company passes a resolution either at meeting of the Board of Directors or by circulation.
56.	Sub-section (5) of section 186	In sub-section (5), after the proviso, the following proviso shall be inserted, namely:- “Provided further that in case of a Specified IFSC public company, the Board can exercise powers under this sub-section by means of resolutions passed at meetings of the Board of Directors or through resolutions passed by circulation.”
57.	Second proviso to subsection (1) of section 188	Shall not apply.
58.	Sub-section (4) of section 196	Shall not apply.
59.	Section 197	Shall not apply.

B. G.S.R. 09 (E): Notification –Exemption to Specified IFSC Private company – under section 462 of the Companies Act,2016

Dated 04.01.2017

In exercise of the powers conferred by clauses (a) and (b) of sub-section (1) of section 462 and in pursuance of sub-section (2) of the said section of the Companies Act, 2013 (18 of 2013), the Central Government, in the interest of public, hereby directs that certain provisions of the Companies Act, 2013 (18 of 2013), as specified in column (2) of the Table, shall not apply or shall apply with such exceptions, modifications and adaptations as specified in column (3) of the said Table, to a private company which is licensed to operate by the Reserve Bank of India or the Securities and Exchange Board of India or the Insurance Regulatory and Development Authority of India from the International Financial Services Centre located in an approved multi services Special Economic Zone set-up under the Special Economic Zones Act, 2005 (28 of 2005) read with the Special Economic Zones Rules, 2006 (hereinafter referred to as “Specified IFSC private company”), namely:—

Serial Number	Provisions of the Companies Act, 2013 (18 of 2013)	Exceptions/Modifications/Adaptations
(1)	(2)	(3)

1.	Clause (41) of section 2	In clause (41), after the second proviso, the following proviso shall be inserted, namely:- “Provided also that in case of a Specified IFSC private company, which is a subsidiary of a foreign company, the financial year of the subsidiary may be same as the financial year of its holding company and approval of the Tribunal shall not be required.”.
2.	Sub-section (2) of section 3	In sub-section (2), the following proviso shall be inserted, namely:- “Provided that a Specified IFSC private company shall be formed only as a company limited by shares.”.
3.	Clause (a) of subsection (1) of section 4	In clause (a) of sub-section (1), after the proviso, the following proviso shall be inserted, namely:- “Provided further that a Specified IFSC private company shall have the suffix “International Financial Service Company” or “IFSC” as part of its name.”.
4.	Clause (c) of subsection (1) of section 4	In clause (c) of sub-section (1) of section 4, the following proviso shall be inserted, namely:- “Provided that a Specified IFSC private company shall state its objects to do financial services activities, as permitted under the Special Economic Zones Act, 2005 read with the Special Economic Zones Rules, 2006 and any matter considered necessary in furtherance thereof, in accordance with license to operate, from International Financial Services Centre located in an approved multi services Special Economic Zone, granted by the Reserve Bank of India or the Securities and Exchange Board of India or the Insurance Regulatory and Development Authority of India.”.
5.	Sub-section (1) of section 12	In sub-section (1), the following proviso shall be inserted, namely:- “Provided that a Specified IFSC private company shall have its registered office at the International Financial Services Centre located in the approved multi services Special Economic Zone set-up under the Special Economic Zones Act, 2005 read with the Special Economic Zones Rules, 2006, where it is licensed to operate, at all times.”.
6.	Sub-section (2) of section 12	For the words “thirty days” read as “sixty days”.
7.	Sub-section (4) of section 12	For the words “fifteen days” read as “sixty days”.

8.	Sub-section (5) of section 12	For sub-section (5), the following sub-section shall be substituted, namely:- “(5) Except on the authority of a resolution passed by the Board of Directors, the registered office of the Specified IFSC private company shall not be changed from one place to another within the International Financial Services Centre: Provided that a Specified IFSC private company shall not change the place of its registered office to any other place outside the International Financial Services Centre.”.
9.	Section 21	For the words “an officer” read as “an officer or any other person”.
10.	Sub-sections (3) and (7) of section 42	Shall not apply.
11.	Sub-section (6) of section 42	For the words “sixty days” read as “ninety days”.
12.	Clause (c) of subsection (1) of section 54	Shall not apply.
13.	Sub-section (4) of section 56	In sub-section (4), after the proviso, the following proviso shall be inserted, namely:- “Provided further that a Specified IFSC private company shall deliver the certificates of all securities to subscribers after incorporation, allotment, transfer or transmission within a period of sixty days.”.
14.	Sub-section (1) of section 82	In sub-section (1), the following proviso shall be inserted, namely:- “Provided that in case of a Specified IFSC private company, the Registrar may, on an application by the company, allow such registration to be made within a period of three hundred days of such creation on payment of such additional fees as may be prescribed.”.
15.	Sub-section (6) of section 89	For the words “thirty days” read as “sixty days”.
16.	Sub-section (3) of section 92	Shall not apply.
17.	Sub-section (1) of section 100	In sub-section (1), the following proviso shall be inserted, namely:- “Provided that in case of a Specified IFSC private company, the Board may subject to the consent of all the shareholders, convene its extraordinary general meeting at any place within or outside India.”.

18.	Sub-section (1) of section 117	For the words “thirty days” read as “sixty days”.
19.	Sub-section (1) of section 118	In sub-section (1), the following proviso shall be inserted, namely:- “Provided that in case of a Specified IFSC private company, the minutes of every meeting of its Board of Directors or of every committee of the Board, to be prepared and signed in the manner as may be prescribed under sub section (1) at or before the next Board or committee meeting, as the case may be and kept in books kept for that purpose.”.
20.	Sub-section (10) of section 118	Shall not apply.
21.	Sub-section (3) of section 134	In sub-section (3), the following proviso shall be inserted, namely:- “Provided that in case of a Specified IFSC private company, if any information listed in this sub-section is provided in the financial statement, the company may not include such information in the report of the Board of Directors.”.
22.	Section 135	Shall not apply for a period of five years from the commencement of business of a Specified IFSC private company.
23.	Section 138	Shall apply if the articles of the company provides for the same.
24.	Fourth proviso to subsection (1) of section 139	For the words “fifteen days” read as “thirty days”.
25.	All provisos to subsection (2) of section 139	Shall not apply.
26.	Sub-section (1) of section 140	In sub-section (1), after the proviso, the following proviso shall be inserted, namely:- “Provided further that in case of a Specified IFSC private company, where, within a period of sixty days from the date of submission of the application to the Central Government under this sub-section, no decision is communicated by the Central Government to the company, it would be deemed that the Central Government has approved the application and the company shall appoint new auditor at a general meeting convened within three months from the date of expiry of sixty days period.”.

27.	Sub-section (3) of section 149	In sub-section (3), the following proviso shall be inserted, namely:- “Provided that this sub-section shall apply to the Specified IFSC private company in respect of financial years other than the first financial year from the date of its incorporation.”.
28.	Sub-section (3) of section 161	In sub-section (3), the following proviso shall be inserted, namely:- “Provided that in case of a Specified IFSC private company, the Board may appoint, any person nominated by any institution or company or body corporate as a director in pursuance of the provisions of any law for the time being in force or of any agreement or by the Central Government or the State Government by virtue of its shareholding in a Government company.”.
29.	Proviso to sub-section (1) of section 168	For the word “shall” read as “may”.
30.	Sub-section (2) of section 170	For the words “thirty days” at both places read as “sixty days”.
31.	Sub-section (1) of section 173	In sub-section (1), after the proviso, the following proviso shall be inserted, namely:- “Provided further that a Specified IFSC private company shall hold the first meeting of the Board of Directors within sixty days of its incorporation and thereafter hold at least one meeting of the Board of Directors in each half of a calendar year.”.
32.	Sub-section (3) of section 174	Shall apply with the exception that interested director may participate in such meeting provided the disclosure of his interest is made by the concerned director either prior or at the meeting.
33.	Sub-section (3) of section 179	In sub-section (3), after the second proviso, the following proviso shall be inserted, namely:- “Provided also that in case of a Specified IFSC private company, the Board can exercise the powers by means of resolutions passed at the meetings of the Board or through resolutions passed by circulation.”
34.	Sub-section (1) of section 185	In the Explanation, for clause (c), the following clause shall be substituted, namely:- “(c) any private company of which any such director is a director or member in which director of the lending company do not have direct or indirect shareholding through themselves or through their relatives and a special resolution is passed to this effect.”
35.	Sub-section (1) of section 186	Shall not apply.

36.	Sub-sections (2) and (3) of section 186	Shall not apply, if a company passes a resolution either at meeting of the Board of Directors or by circulation.
37.	Sub-section (5) of section 186	In sub-section (5), after the proviso, the following proviso shall be inserted, namely:- “Provided further that in case of a Specified IFSC private company, the Board can exercise powers under this sub-section by means of resolutions passed at meetings of the Board of Directors or through resolutions passed by circulation.”
38.	Sub-section (2) of section 384	In sub-section (2), the following proviso shall be inserted, namely:- “Provided that notwithstanding anything contained in this Act, the exemptions provided under section 92 to companies incorporated under this Act for the purpose of operating from the International Financial Services Centre located in an approved multi services Special Economic Zone set-up under the Special Economic Zones Act, 2005 (28 of 2005) and the Special Economic Zones Rules, 2006, shall apply mutatis mutandis to a foreign company registered under Chapter XXII of this Act, which has a place of business or which conducts business activity from the International Financial Services Centre located in an approved multi services Special Economic Zone set-up under the Special Economic Zones Act, 2005 and the Special Economic Zones Rules, 2006.” .
39.	Sub-section (4) of section 384	In sub-section (4), the following proviso shall be inserted, namely:- “Provided that notwithstanding anything contained in this Act, the exemptions provided under Chapter VI to companies incorporated under this Act for the purpose of operating from the International Financial Services Centre located in an approved multi services Special Economic Zone set-up under the Special Economic Zones Act, 2005 (28 of 2005) and the Special Economic Zones Rules, 2006, shall apply mutatis mutandis to a foreign company registered under Chapter XXII of this Act, which has a place of business or which conducts business activity from the International Financial Services Centre located in an approved multi services Special Economic Zone set-up under the Special Economic Zones Act, 2005 and the Special Economic Zones Rules, 2006.” .

C. G.S.R. (E) Companies (Incorporation) Amendment Rules, 2017

Dated 25.01.2017

In exercise of the powers conferred by sub-sections (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 (Incorporation) Rules, 2014, namely: -

1. (1) These rules may be called the Companies (Incorporation) Amendment Rules, 2017.

(2) They shall come into force on the 30th day of January, 2017.

2. In the Companies (Incorporation) Rules, 2014 (hereinafter referred to as the principal rules) for rule 18, the following rule shall be substituted, namely:-

“18. The Certificate of Incorporation shall be issued by the Registrar in Form No.INC-11 and the Certificate of Incorporation shall mention permanent account number of the company where if it is issued by the Income-tax Department”.

Revised version of Form No. INC-11 and Form No. INC-32 have been introduced through notification.

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In Association with:

Arms & Associates LLP

Practicing Company Secretaries

24 ka 1 Jyoti Nagar, Jaipur

Ph.No. 0141-3263017, 3111777

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