



news flash

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Amendment to Companies Incorporation Rules

The Ministry of Corporate Affairs (“MCA”) has recently introduced certain changes to the Companies (Incorporation) Rules, 2014 (“Rules”).

The additions and substitutions to the Rules have been stated there under:

A. One Person Company (“OPC”)

The Rules provided that no person shall be the member of more than one OPC or a nominee of more than one OPC. The Rules have now been revised to clarify that no *natural* person shall be a member or a nominee of more than one OPC at any point of time.

B. Undesirable names

The Rules provided that the name of a company shall be considered undesirable if the same consists of a registered trademark or a trademark proposed to be registered and consent of the owner or applicant of such mark is not obtained. This provision is now amended to insert the phrase *‘under the Trade Marks Act, 1999 and rules framed there under’* to provide clarity that the mark proposed or registered should be under the Trade Marks Act and the rules framed thereunder.

The Rules further restricted the use of certain words in the name of the company unless prior permission of the Central Government (“Government”) was obtained. One of provisions prohibited use of the words *‘financial, corporation and the like’*. The Rules are now amended to remove the comma between the words *‘financial’* and *‘corporation’*. Hence use of the words *‘financial corporation’* in the name of a company would require consent of the Government.

C. Signing of memorandum and articles

The Rules required that the subscribers to the memorandum and articles and the witnesses thereof sign and state their respective particulars, such as, name, address, description and occupation. The above details were to be mandatorily hand written by the respective persons. The Rules are now amended and an explanation has been inserted stating that type-written or printed particulars of the subscribers and witnesses shall be allowed provided the same has their signature or thumb impression, as the case may be.

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D. Particulars of every subscriber to be filed with the Registrar

- (1) The Rules set out the necessary particulars and identity proof of subscribers to the memorandum required to be filed with the Registrar, at the time of incorporation. The Rules are now amended to state that in case the subscriber is already holding a valid Director Identification Number and the particulars provided therein have been updated as on the date of application and a declaration to this effect is given in the application, then the proof of identity and residence need not be attached.
- (2) The Rules stated that, the promoter or first director shall self-attest his signature and latest photograph will have to be affixed in Form No. INC-10. The amendment to the Rules entails that the said Form need not be attached and therefore, this Form has been omitted from these rules.
- (3) The Rules provided that if the subscriber to the memorandum of association is a limited liability partnership or partnership firm, certified true copy of the resolution agreed to by all the partners specifying inter alia the authorization to subscribe to the memorandum of association of the proposed company and to make investment in the proposed company, the number of shares proposed to be subscribed in the body corporate, and the name of the partner authorized to subscribe to the memorandum, is to be filed with the Registrar. The Rules are now amended and the words '*partnership firm*' have been deleted. Hence, only a limited liability partnership firm shall be required to file a certified true copy of the resolution, as stated above.

E. Publication of name by company

The Rules have been amended to lay down that a company having a website for conducting online business or otherwise must publish the following details of the website:

- (1) Name;
- (2) Address of its registered office;
- (3) Corporate identity number;
- (4) Telephone number;
- (5) Fax, if any;
- (6) E-mail ID; and
- (7) Name of person to be contacted for any queries or grievances.

F. Shifting of registered office within the same State

The Rules set out the conditions applicable for shifting the registered office of the company within the same State. The second proviso to this rule states that such shifting shall not be allowed if any inquiry, inspection or investigation has been initiated against the company or any prosecution is pending against the company under the Companies Act, 2013. A new proviso has now been added stating that, shifting of the registered office shall be allowed on completion of such inquiry, inspection or investigation as a consequence of which no prosecution is envisaged or no prosecution is pending.

G. Shifting of registered office from one State or Union Territory to another State

- (1) The Rules set out the documents needed to be filed with the Government to obtain approval for alteration of memorandum in case of change of registered office from one State or Union Territory to another State. A new provision has been inserted stating that in case the applicant is a registered non-banking financial company, a copy of the no objection certificate from the Reserve Bank of India would be necessary for obtaining the approval of the Government.
- (2) The Rules provided that a company shifting its registered office from one State or Union Territory to another State shall be required to serve a notice of the hearing and application copy to the Registrar, to Securities and Exchange Board of India (“SEBI”) (in the case of listed companies), and to the regulatory body, if the company is regulated under any special law. However, these provisions have been modified to remove the requirement of serving the aforementioned notice to SEBI. Therefore, a company proposing a change in its registered office from one State or Union Territory to another State, shall be required to serve the notice of hearing only upon the Registrar and/ or the regulatory body, as the case may be.
- (3) Akin to the proviso has been inserted in case of shifting of registered office within the State, in case of shifting of the registered office to another State, such shifting will be allowed on completion of such inquiry, inspection or investigation as a consequence of which no prosecution is envisaged or no prosecution is pending.

H. Alteration of memorandum owing to change of name

The Rules provided that alteration of memorandum of association owing to change of name was restricted if the company had not filed its annual returns or financial statements or any other document due for filing, or had defaulted in repayment of matured deposits or debentures or interest on deposits or debentures. This provision is amended by adding a proviso which states that upon rectification of the above-mentioned defaults, the company shall be permitted to effectuate the change of name.

I. Conversion of unlimited liability company into a limited liability company

In addition to the abovementioned alterations, a new provision has been inserted for conversion of unlimited liability company into a limited liability company by shares or guarantee. This provision inter alia provides that, the company shall:

- (1) pass a special resolution in a general meeting,
- (2) publish a notice in two newspapers, one being in English and one in the vernacular language where the registered office of the company is situated and on the website of the company, for the purpose of informing about such conversion and inviting objections from any interested persons within twenty-one days from publication of the notice. The company shall also be required to dispatch such notice to its creditors and debenture holders,

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(3) within forty-five days of passing special resolution, the company shall file an application with the Registrar of its conversion along with certain documents.

Further, a declaration is required to be signed by not less than two directors (including the Managing Director, in case there is one present), that no complaints, inquiry or investigation is pending against the company, its directors or its officers.

On considering the application and objections, and ensuring that the company has successfully addressed the objections, the Registrar shall determine whether approval for conversion should be granted or not. On approval of the same, a new certificate of incorporation will be issued to the company. Registrar shall be required to take a decision with respect to application filed under these rules within thirty days from its receipt

After the conversion, the company shall not be allowed to change its name for a period of one year from such conversion and it shall not declare or distribute any dividend without meeting past debts, liabilities, obligations or contracts incurred or entered into prior to such conversion.

Further, a company shall not be eligible to undertake such a conversion in certain cases such as if the net worth of such company is negative.

J. Amendments in forms

In view of the insertion of the provision of conversion of a company from unlimited company into a limited liability company, certain forms have been amended and certain new forms have been issued.

CONCLUSION

The MCA has made progressive changes to the Rules and has issued certain clarifications as regards the process of incorporation. These steps show the constant effort of the MCA and the Government of India to ensure ease of doing business in India.

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For further clarification and details on the above, you may write to the Corporate team comprising of (among others) Mr. Vaishakh Kapadia (Partner) at vkapadia@almtlegal.com and Ms. Namita Vaidya (Senior Associate) at nvaidya@almtlegal.com and Ms. Nikunj Rana (Associate) at nrana@almtlegal.com.