Issue Number -9

Updates on the Corporate Laws
1-05-2019 to 31-05-2019

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### The Companies Act, 2013 / LLP ACT 2008

#### Due Date Compliance for the Month of June, 2019

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<td>Particulars of the Company and its registered office in e-form ACTIVE (Active Company Tagging Identities and Verification)</td>
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<td>1. Companies National Financial Reporting Authority (Meeting for Transaction of Business) Rules, 2019</td>
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<tr>
<td>10. Clarification for form ADT-1 filed through GNL-2 under the Companies Act, 2013-reg</td>
<td></td>
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</tbody>
</table>
Companies National Financial Reporting Authority (Meeting for Transaction of Business) Rules, 2019

The Ministry of Corporate Affairs has issued Companies National Financial Reporting Authority (Meeting for Transaction of Business) Rules, 2019 wherein the powers conferred by sub-section (10) of section 132 read with section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes National Financial Reporting Authority (Meeting for Transaction of Business) Rules, 2019

In these rules, definitions were introduced -

(3). Meetings for transaction of business and procedure thereof. –

1) The meetings of the Authority shall ordinarily be held at its head office situated in New Delhi for the purpose of discharging its functions:

Provided that the Authority may also hold meetings at its other offices or at any other place in India, whenever, in the opinion of the Authority, it is expedient to do so.

2) The chairperson shall decide in advance, the date, time, place and the agenda for each meeting of the Authority.

3) The Secretary, and such other officers and persons as permitted by the chairperson, shall attend a meeting of the Authority.

4) If the chairperson, for any reason, is unable to attend a meeting of the Authority, the senior-most full-time member present at the meeting, shall preside at the meeting.

5) The Authority may grant leave of absence to a member not present in the meeting and such leave of absence shall be recorded in the minutes of the meeting.

6) Any member unable to be present in a meeting for any reason, may choose to participate in the said meeting through video conferencing.

7) Wherever considered necessary, a business may be transacted by a resolution passed by circulation of an agenda to the members:

Provided that a resolution passed through circulation of the agenda to the members shall be placed before the next meeting of the Authority for ratification.

8) Matters placed for consideration of the Authority shall be decided by a majority of the members present and voting, and in the event of an equality of votes, the chairperson or in his absence, the member presiding, shall have a second or casting vote.
9) The quorum for a meeting of the Authority shall be four Members, of which at least one member shall be a full-time member.

10) The Authority shall cause the minutes of all the proceedings to be maintained in the books kept for the purpose which may be in the form of binders containing loose reaves, duly numbered.

11) A copy of draft minutes of the proceedings of each meeting of the Authority shall be circulated as soon as possible for confirmation by the members.

12) The confirmed minutes shall be signed by the chairperson or the member presiding at the succeeding meeting, and taken on record thereafter.

13) A member, who has any pecuniary interest, direct or indirect in any matter that is brought up for consideration at a meeting of the Authority, shall, as soon as possible after relevant circumstances have come to his knowledge, disclose the nature of his interest at such meeting and such disclosure shall be recorded in the proceedings of the Authority, and such member shall not take any part in any deliberation or decision of the Authority with respect to that matter.

14) If any doubt arises in the procedure to be adopted in a meeting, the same shall be placed before the chairperson or in his absence, the member presiding, whose decision in this regard shall be final.

4. Power to regulate procedure in certain circumstances. - In a situation not provided for in these rules, the chairperson may, for reasons to be recorded in writing, determine the procedure in a particular case.

5. Effect of any irregularities of procedure- No act or proceeding of the Authority shall be invalid merely by reason of any irregularities in the procedure of the Authority not affecting the merits of the case.

Details are available at:

Companies (Prospectus and Allotment of Securities) Rules, 2014

The Ministry of Corporate Affairs has issued Companies (Prospectus and Allotment of Securities) Rules, 2014 wherein In the Companies (Prospectus and Allotment of securities) Rules, 2014 (hereinafter referred to as the principal rules), in rule 9A,(i) in sub-rule (7), for the word and figures "Regulations, 1996, the word and figures "Regulations, 2018" shall be substituted;

(ii) For sub-rule (8), the following sub-rules shall be substituted, namely:-
"(8) Every unlisted public company governed by this rule shall submit Form PAS-6 to the Registrar with such fee as provided in Companies (Registration Offices and Fees) Rules, 2014 within sixty days from the conclusion of each half year duly certified by a Company secretary in practice or chartered accountant in practice.

(8A) The Company shall immediately bring to the notice of the depositories any difference observed in its issued capital and the capital held in dematerialised form."

Details are available at:

Companies (Appointment and Qualification of Director) 2nd Amendment Rules, 2019

The Ministry of Corporate Affairs has issued Companies (Appointment and Qualification of Directors) Second Amendment Rules, 2019 wherein in the Companies (Appointment and Qualification of Directors) Rules, 2014, after rule 12A, the following rule shall be inserted,

‘12B. Directors of company required to file e-form ACTIVE-

(1) Where a company governed by Rule 25A of the Companies (Incorporation) Rules, 2014, fails to file the e-form ACTIVE within the period specified therein, the Director Identification Number (DIN) allotted to its existing directors, shall be marked as "Director of ACTIVE non-compliant company".

(2) Where the DIN of a director has been marked as “Director of ACTIVE non-compliant company”, such director shall take all necessary steps to ensure that all companies governed by rule 25A of the Companies (Incorporation) Rules, 2014, where such director has been so appointed, file e-form ACTIVE.

(3) After all the companies referred to in sub-rule (2) file the e-form ACTIVE, the DIN of such director shall be marked as "Director of ACTIVE compliant company"

Details are available at:

Companies (Incorporation fifth Amendment Rules, 2019)

The Ministry of Corporate Affairs has issued Companies (Incorporation) Fifth Amendment Rules, 2019 which shall come into force 10.05.2019 wherein rule 8, the following rules shall be substituted, namely:

Rule 8 Names which resemble too nearly with name of existing company
(1) A name applied for shall be deemed to resemble too nearly with the name of an existing company, if, and only if, after comparing the name applied for with the name of an existing company by disregarding the matters set out in sub-rule (2), the names are same.

(2) The following matters are to be disregarded while comparing the names under sub-rule (1)

Illustration

(b) The plural or singular form of words in one or both names;

Illustration
Green Technology Ltd. is same as Greens Technology Ltd. and Greens Technologies Ltd

(c) Type and case of letters, spacing between letters, punctuation marks and special characters used in one or both names;

Illustration
ABC Ltd. is same as A.B.C. Ltd. and A B C Ltd

(d) Use of different tenses in one or both names;

Illustration
Ascend Solutions Ltd. is same as Ascended Solutions Ltd. and Ascending Solutions Ltd.

(e) Use of different phonetic spellings including use of misspelled words of an expression;

Illustration
Chemtech Ltd. is same as Chemtec Ltd., Chemtek Ltd., Cemtech Ltd., Cemtek Ltd., Kemtech Ltd. and Kemtek Ltd

(f) Use of host name such as ‘www” or a domain extension such as ‘net’, ‘org’, ‘dot’ or ‘com’ in one or both names;

Illustration
Ultra Solutions Ltd. is same as Ultrasolutions.com Ltd.
(g) the order of words in the names;

Illustration

Ravi Builders and Contractors Ltd. is same as Ravi Contractors and Builders Ltd.

(h) Use of the definite or indefinite article in one or both names;

Illustration

Congenial tours Ltd. is same as A Congenial Tours Ltd. and The Congenial Tours Ltd.

(i) A slight variation in the spelling of the two names including grammatical variation thereof

Illustration

Color technologies Ltd. is same as Colour Technologies Ltd.

(j) Complete translation or transliteration, and not part thereof, of an existing name, in Hindi or in English

Illustration

National Electricity Corporation Ltd. is same as Rashtriya Vidyut Nigam Ltd.

(k) Addition of the name of a place to an existing name, which does not contain the name of any place;

Illustration

If Salvage technologies ltd. is an existing name, it is same as Salvage technologies Delhi Ltd and Salvage Delhi Technologies Ltd.

(l) Addition, deletion, or modification of numerals or expressions denoting numerals in an existing name, unless the numeral represents any brand;

Illustration

Thunder Services Ltd is same as Thunder 11 Services Ltd and One Thunder Services Ltd.

Provided that clauses (f) to (h) and clauses (K) and (l) shall not be disregarded while comparing the names, if a no objection by way of a Board Resolution has been provided by an existing company.

8A. Undesirable names- (1) the name shall be considered undesirable, if

(a) it is prohibited under the provisions of section 3 of the Emblems and Names (Prevention and Improper Use) Act, 1950 (12 of 1950), unless a previous permission has been obtained under that Act;
(b) if the name includes a trademark registered under the Trade Marks Act, 1999 and the rules framed thereunder in the same class of goods or services in which the activity of the Company is being carried out or is proposed to be carried out, unless the consent of the owner or applicant for registration, of the trademark, has been obtained and produced by the promoters;

(c) It includes any word or words which are offensive to any section of the people;

(d) the proposed name is identical with or too nearly resembles the name of a Limited liability partnership

Provided that the provisions of rule 8 shall apply mutatis-mutandis while determining whether a proposed name is too nearly resembling the name of a limited liability partnership.

(e) the proposed name is identical with or too nearly resembles with a name which is for the time being reserved in accordance with rule 9:

Provided that the provisions of rule B shall apply mutatis mutandis while determining whether a proposed name is too nearly resembling with a reserved name;

(f) the company's main business is financing, leasing, chit fund, investments, securities or combination thereof, but the proposed name is not indicative of such related financial activities. viz. Chit Fund or Investment or Loan, etc.;

(g) the company's name is indicative of activities financing, leasing, chit fund, investments, securities or combination thereof, but the company's main business is not related to such activities;

(h) it resembles closely the popular or abbreviated description of an existing company or limited liability partnership

(i) the proposed name is identical with or too nearly resembles the name of a company or limited liability partnership incorporated outside India and reserved by such company or limited liability partnership with the Registrar:

Provided that if a foreign company is incorporating its subsidiary company in India, then the original name of the holding company as it is may be allowed with the addition of word India or name of any Indian State or city, if otherwise available:

Provided further that provisions of rule B shall apply mutatis mutandis while determining whether a proposed name is too nearly resembling the name of a company or limited liability partnership incorporated outside India;

(j) any part of the proposed name includes the words indicative of a separate type of business constitution or legal person or any connotation thereof e.g. co-
operative, sehkari, trust, LLP, partnership, society, proprietor, HUF, firm, Inc., PLC, GmbH, SA, PTE, SdN, AG, etc

(k) the proposed name contains the words 'British India,

(l) the proposed name implies association or connection with an embassy or consulate of a foreign government

(m) the proposed name includes or implies association or connection with or patronage of a national hero or any person held in high esteem or important personages who occupied or are occupying important positions in the Government:

(n) the proposed name is identical to the name of a company dissolved as a result of liquidation proceeding and a period of two years has not elapsed from the date of such dissolution:

Provided that if the proposed name is identical with the name of a company which is struck off in pursuance of action under section 248 of the Act or under section 560 of the Companies Act, 1956 (1 of 1956) the same shall not be allowed before the expiry of twenty years from the date of publication in the Official Gazette being so struck off;

(o) it is identical with the name of a limited liability partnership in liquidation or the name of a limited liability partnership which is struck off up to a period of five years

(p) the proposed name include words such as 'Insurance', 'Bank', 'Stock Exchange', 'Venture Capital', 'Asset Management'. 'Nidhi', 'Mutual Fund', etc., unless a declaration is submitted by the applicant that the requirements mandated by the respective regulator, such as IRDA, RBI, SEBI, MCA, etc. have been complied with by the applicant;

(q) the proposed name includes the word "State", in case the company is not a Government company;

(r) the proposed name is containing only the name of a continent, country, State, city such as Asia limited, Germany Limited, Haryana Limited or Mysore Limited

(s) Use of descriptive names, where the name merely consists of commonly used words to describe an activity

Illustrations

The names Silk Manufacturers private Limited and Manufacturers Silk Ltd. are descriptive names as they merely describe an activity which may also be carried out by any other company and the order of the words is not relevant while determining a descriptive name.
The names Computer World Ltd., Food Star Ltd., Tour Hub Ltd or House of Chocolate Ltd are not descriptive as the names do not merely consist of commonly used words.

(t) the proposed name includes name of any foreign country or any city in a foreign country, the same shall be allowed if the applicant produces any proof of significance of business relations with such foreign country like memorandum of understanding with a company of such country:

Provided that the name combining the name of a foreign country with the use of India like India Japan or Japan India shall be allowed if, there is a government to government participation or patronage and no company shall be incorporated using the name of an enemy country.

(u) the proposed name of a section 8 company under the Act does not include the words Foundation, Forum, Association, Federation, Chambers, Confederation, Council, Electoral Trust and the like; etc.

(v) the proposed name of a Nidhi company under the Act does not have the last words "Nidhi Limited" as a part of its name.

(w) the proposed name has been released from the register of companies upon change of name of a company and three years have not elapsed since the date of change unless a specific direction has been received from the competent authority in the course of compromise, arrangement or amalgamation.

1. The applicant shall declare in affirmative or negative (to affirm or deny) whether he is using or has been using in the last five years, the name applied or incorporation of company or LLP in any other business constitution like Sole proprietor or Partnership or any other incorporated or unincorporated entity and if, yes details thereof and No Objection Certificate from other partners and associates for use of such name by the proposed Company or LLP, as the case may be, and also a declaration as to whether such other business shall be taken over by the proposed company or LLP or not.

8B. Word or expression which can be used only after obtaining previous approval of Central Government

In terms clause (b) of sub-section (3) of section 4, the following words and combinations thereof shall not be used in the 'name of a company in English or any of the languages depicting the same meaning unless the previous approval of the Central Government has been obtained for the use of any such word or expression:-

(a) Board;
(b) Commission;
(c) Authority;
(d) Undertaking;
(e) National;
(h) Federal;
(i) Republic;
(j) President;
(k) Rashtrapati;
(l) Small Scale Industries;
(m) Khadi and Village Industries Corporation;
(n) Financial Corporation and the like;
(o) Municipal;
(p) Panchayat;
(q) Development Authority;
(r) Prime Minister or Chief Minister;
(s) Minister;
(t) Nation;
(u) Forest corporation;
(v) Development Scheme;
(w) Statute or Statutory;
(x) Court or Judiciary
(y) Governor;
(z) the use of word Scheme with the name of Government (s), State, India, Bharat or any Government authority or in any manner resembling with the schemes launched by Central, State or local Governments and authorities; and
(za) Bureau."

Detailed Notification is available at:
http://www.mca.gov.in/Ministry/pdf/CompaniesIncorporationFifthAmendmentRules_12052019.pdf

Companies (Removal of Names of Companies from the Registrar of Companies) Amendment Rules, 2019

The Ministry of Corporate Affairs has issued Companies (Removal of Names of Companies from the Register of Companies) Amendment Rules, 2019 which shall come into force from 08.05.19 wherein in Rule 4 Companies (Incorporation) Fourth Amendment Rules, 2019
<table>
<thead>
<tr>
<th><strong>PRE- AMENDMENT</strong></th>
<th><strong>POST AMENDMENT</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>An application for removal of name of the Company under sub-section (2) of section 248 shall be made in Form 248 shall be made in Form STK-2 along with the fee of five thousand rupees.</td>
<td>An application for removal of name of the Company under sub-section (2) of section 248 shall be made in Form 248 shall be made in Form STK-2 along with the fee of ten thousand rupees.</td>
</tr>
<tr>
<td>Provided that no application in Form No's STK-2 shall be filed by a company unless it has filed overdue returns in Form No. AOC4 (Financial statement) and Form No. MGT-7 (Annual Return), up to the end of the financial year in which the company ceased to carry its business operations.</td>
<td>Provided further that in case a company intends to file Form No. STK-2 after the action under sub-section (1) of section 248 has been initiated by the Registrar, it shall file all pending overdue returns in Form No. AOC-4 (Financial statement) or AOC4 XBRL and Form No. MGT-7 (Annual Return) before filing Form No. STK-2.</td>
</tr>
<tr>
<td>Provided also that once notice in Form No. STK-7 has been issued by the Registrar Pursuant to the action initiated under sub-section (1) of company shall not be allowed to file an application in Form No' STK-2</td>
<td>Provided also that once notice in Form No. STK-7 has been issued by the Registrar Pursuant to the action initiated under sub-section (1) of company shall not be allowed to file an application in Form No' STK-2.</td>
</tr>
</tbody>
</table>

in sub-rule (3), in clause (ii), after the words, "statement of words, letters and figures "in Form No. STK-8" shall be inserted"
National Capital Law Tribunal (Second Amendment) Rules, 2019

The Ministry of Corporate Affairs has issued National Company Law Tribunal (Second Amendment) Rules, 2019 which shall come into force 08.05.2019 wherein in rule 84, after sub-rule (2), the following sub-rules shall be inserted, namely:

<table>
<thead>
<tr>
<th>PRE- AMENDMENT</th>
<th>POST -AMENDMENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>An application under sub- section (1) of section 245, read with sub-section (3) of section 245 of the Act, shall be filed in Form NCLT-9.</td>
<td>1) An application under sub- section (1) of section 245, read with sub-section (3) of section 245 of the Act, shall be filed in Form NCLT-9.</td>
</tr>
<tr>
<td>A copy of every application under sub-rule (1) shall be served on the Company, other respondents and all such persons as the Tribunal may direct.</td>
<td>2) A copy of every application under sub-rule (1) shall be served on the Company, other respondents and all such persons as the Tribunal may direct.</td>
</tr>
<tr>
<td>3) In case of a company having a share capital, the requisite number of member or members to file an application under sub-section (1) of section 245 shall be – (i) (a) at least five per cent. of the total number of members of the company; or (b) one hundred members of the company, whichever is less; or (ii) (a) member or members holding not less than five per cent. of the issued share capital of the company, in case of an unlisted company; b) member or members holding not less than two per cent. of the issued share capital of the company, in case of a listed company.</td>
<td>4) The requisite number of depositor or depositors to file an application under sub-section (1) of section 245 shall be - (i) (a) at least five per cent. of the total number of depositors of the company; or (b) one hundred depositors of the company, whichever is less; or; (ii) depositor or depositors to whom the company owes five per cent. of total</td>
</tr>
</tbody>
</table>
Companies (Appointment and Qualification of Directors) Amendment Rules, 2019

The Ministry of Corporate Affairs has issued Companies (Appointment and Qualification of Directors) Amendment Rules, 2019 which shall come into force from 30.04.19 wherein Rule 12A related to Directors KYC has been amended as under:

<table>
<thead>
<tr>
<th>BEFORE AMENDMENT</th>
<th>AFTER AMENDMENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Every individual who has been allotted a Director Identification Number (DIN) as on 31st March of a financial year as per these rules shall submit e-form DIR-3 KYC to the Central Government on or before 30th April of immediate next financial year.</td>
<td>Every individual who has been allotted a Director Identification Number (DIN) as on 31st March of a financial year as per these rules shall submit e-form DIR-3 KYC to the Central Government on or before 30th June of immediate next financial year.</td>
</tr>
</tbody>
</table>

Details are available at:
http://www.mca.gov.in/Ministry/pdf/CosAppointmentQualificationDirAmend_01052019.pdf
Companies (Acceptance of Deposits) Second Amendment Rules, 2019

The Ministry of Corporate Affairs (MCA) has notified Companies (Acceptance of Deposits) Second Amendment Rules, 2019 on April 30, 2019.

As per the notification in rule 16A, in sub-rule (3),

(a) for the words “the date of publication of this notification in the Official Gazette”, the figures, letters and word “31st March, 2019” shall be substituted

(b) for the words “ninety days from the date of said publication of this notification”, the words, figures and letters “ninety days from 31st March, 2019” shall be substituted

Details are available at:


Companies (Registration of Charges) Amendment Rules, 2019

The Ministry of Corporate Affairs (MCA) has notified Companies (Registration of Charges) Amendment Rules, 2019 which shall come into force from 30.04.19 wherein the following amendments have been made:

1. In rule 3, for sub-rules (2) and (3), the following sub-rules shall be substituted:

   2. In which If the particulars of a charge are not filed, such creation or modification shall be filed in Form No. CHG1 or Form No. CHG9 within the period as specified in section 77 on payment of additional fee or advalorem fee.

   (3) Where the company fails to register the charge and the registration is effected on the application of the charge-holder, such charge-holder shall be entitled to recover from the company the amount of any fees or additional fees or advalorem fees paid by him to the Registrar.

2. In the said rules, for rule 4 (Condonation of delay), the following rules shall be substituted, namely (Application to Registrar).

<table>
<thead>
<tr>
<th>BEFORE AMENDMENT</th>
<th>AFTER AMENDMENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. The Registrar may, on being satisfied that the company had sufficient cause for not filing the particulars and instrument of charge, if any, within a period of thirty days of the creation of the charge, allow the registration of the same after thirty</td>
<td>1. For the purposes of the first proviso and clause (b) of the second proviso to sub-section (1) of section 77, the Registrar may, on being satisfied that the company had sufficient cause for not filing the particulars and instrument of charge, if any, within a period of thirty days of the</td>
</tr>
</tbody>
</table>
1. If the application for delay is made within a period of three hundred days of the date of creation of charge or modification of charge on payment of Additional fees.

2. The application for delay shall be made in a form no. CHG-1 and supported by a declaration from the Company signed by its Secretary or Director that such belated filing shall not adversely affect rights of any other intervening creditors of the Company.

3. Rule 12 (Condonation of Delay and Rectification of Register of Charges) substituted with Rule 12 (Rectification in register of charges on account of omission or misstatement of particulars in charge previously recorded and extension of time in filing of satisfaction of charge)

4. Form Nos. CHG-I, CHG-8 and CHG-9, the following forms shall be substituted, with effect from 1st August, 2019.

Details are available at:
http://www.mca.gov.in/Ministry/pdf/CompaniesRegistrationChargesAmendRule_01052019.pdf

**Clarification for form ADT-1 filed through GNL-2 under the Companies Act, 2013-reg**

The Ministry of Corporate Affairs has issued a clarification wherein it has been mentioned that the companies which had filed Form no. ADT-I through GNL-2 as an attachment (by selecting 'others) during the period from 01.04.2014 to 20.10.2014 may file e-form no. ADT-1 for appointment of Auditor for the period upto 31.03.2019 without fee, till 15.06.2019 (since fee had been paid for filing GNL-2 for the same purpose) and thereafter fee and additional fee shall be applicable as per Companies (Registration of Office and fees) Rules, 2014.

Details are available at:
http://www.mca.gov.in/Ministry/pdf/GeneralCircular13052019.pdf