

Analysis of the MCA's recent amendment notifications revamping forms in-tune with V3 portal

I. Background:

The MCA is in the process of upgrading the present version of the portal from Version 2 to Version 3. This is an enhanced version of the V2 portal.

In this process of transmission, various forms have been modified. Earlier, the MCA has notified a list of 56 Company forms which would be rolled out in different tranches. 10 Company forms that have been rolled out on 09 Jan 2023 in the first tranche are SPICE + Part A, RUN, SPICE+ Part B, AGILE Pro S, e-AOAs, e-MOAs, INC-9, and URC-1. Further, the rest 46 Company forms have been rolled out on 23rd Jan 2023. These forms include DIR-12, DIR-11, DIR-3, DIR-3C, INC-12, INC-18, INC-20A, etc.

Various changes have been carried out in the modified forms seeking additional disclosures to make the reporting process at MCA portal more transparent. The MCA has issued nine (9) amendment notifications on 20th January 2023 and 21st January 2023. This article discusses in detail about all the amendment notifications issued by the MCA and their impact analysis thereof.

II. Rule wise analysis of the Amendment Notifications

1. Amendment to the Companies (Appointment and Remuneration of Managerial Remuneration) Rules, 2014.

1.1 MCA tweaks MR-1 and MR-2 forms; seeks detailed info w.r.t to NR managerial persons and pleas pending before Tribunals

The MCA has amended the Companies (Appointment and Remuneration of Managerial Remuneration) Rules, 2014. Forms MR-1 & MR-2 have been modified.

Now, in form MR-1, additional disclosure relating to whether the appointee is a Non-Resident and SRN of MR-2 for obtaining Central Government's approval (as applicable) is to be mentioned.

Further, in form MR-2, additional disclosure relating to details of application pending before NCLT/NCLAT has to be given. The changes will be effective from 23/01/2023.

Comments: The main objective of the amendment to the Companies (Appointment and Remuneration of Managerial Remuneration) Rules, 2014 is to enhance the various disclosures in the form MR-1 and MR-2 for better transparency regarding the appointment

of Non-resident key managerial personnel. Further, it will also help the Govt. to track the pending proceedings before NCLT/NCLAT.

2. Amendment to the Companies (Share Capital and Debentures) Rules, 2014

2.1 Companies that are buying-back secs need to file a declaration with RoC certifying that buy-back is compliant with Cos. Act

The MCA has amended the Companies (Share Capital and Debentures) Rules, 2014. Now, a declaration must be filed along with the Form No. SH.11, signed by two directors of the company including the managing director, if any, certifying that the buy-back of securities has been made in compliance with the provisions of the Act.

Earlier, a certificate in **Form No. SH.15** certifying that the buy-back of securities has been made in compliance with the provisions of the Act and the rules made thereunder was required to be annexed now MCA has removed the requirement to annex Form SH-15 along with SH-11.e

2.2 Forms No. SH-7SH-8(and SH-9(have been substituted with the new web-based forms

The MCA has substituted the following forms with the web based forms:

- (a) SH-7 (Notice to Registrar of any Alteration of share capital)
- (b) SH-8 (Letter of Offer)
- (c) SH-9 (Declaration of Solvency)

Now, the MCA seeks more disclosures relating to proceedings of the meetings of the members in which alteration of share capital has been authorized, SRN of the form INC-28 in which the order of the Central Government/Tribunal is filed.

Further in case of consolidation/sub-division of share, capital structure before consolidation/sub-division and after consolidation/sub-division, in case of conversion of share, capital structure before conversion and after conversion, in case of re-conversion of share, capital structure before re-conversion and after re-conversion are to be disclosed .

Further, also in case of cancellation of share, details of class of shares cancelled are to be disclosed.

In Form SH-8, enhanced disclosure is to be given related to the following

- (a) Details of any subsisting default, or

- (b) If the default is remedied and a period of three years has not lapsed after such default ceased to subsist or
- (c) Any default in complying with the provisions of section 92(annual return), section 123(declaration of dividend), section 127(punishment for failure to distribute dividends and section 129(financial statement).

Comments: The main objective of the amendment to the Companies (Share Capital and Debentures) Rules, 2014 is to make the buyback process more transparent and more compliant by seeking the additional disclosures/ Further, the various disclosures in the form SH-7 and SH-8 will lead to better transparency regarding the share capital structure and alteration of share capital.

3. Amendment to Companies (Appointment and Qualifications of Directors) Rules, 2014

3.1 Now Directors disqualified u/s 164 (1) of Companies Act, 2013 are also required to file form DIR 8

The MCA has amended the Companies (Appointment and Qualifications of Directors) Rules, 2014. The amendment requires that directors disqualified under section 164(1) of the Companies Act must also file Form DIR-8 with the company.

As per section 164(1) of the Companies Act, 2013, a person is disqualified to be appointed as a director of the company in the following cases–

- (a) Person is of unsound mind and stands declared so by a competent court;
- (b) Un-discharged insolvent;
- (c) Person who has applied to be adjudicated as insolvent and his application is pending;
- (d) Person convicted by a Court of any offence, whether involving moral turpitude *or otherwise*, and sentenced to imprisonment for not less than 6 months.
- (e) Person who has not paid calls in respect of shares in the company whether alone or jointly with others and six months have elapsed from the last date fixed for payment of call;
- (f) He has been convicted of an offence dealing with related party transactions at any time during the preceding five years.
- (g) If he has not obtained DIN.
- (h) He has not complied with the provisions of section 165(1) (regarding restriction on the number of directorships).
- (i) If Court or NCLT has passed the order disqualifying a person as a director and the order is in force.

Earlier, the DIR-8 was required to file in case of disqualification under section 164(2). Further, the company is required to file Form DIR-9 with RoC within 30 days of receipt of DIR-8. Various changes in forms are also notified.

Now, in V3 portal, User can authorize MCA to fetch data from Digi locker. Further, MCA notified the newer version of forms such as Form DIR-3, DIR-3C, DIR-5, DIR-6, DIR-8, DIR-9, DIR-10, DIR-11 & DIR-12 pursuant to amendment. Accordingly, MCA has also prescribed new format of Form DIR-8.

Comments: Form DIR 8 is a mandatory form that needs to be submitted before the appointment or re-appointment of a director. Previously, it only required a declaration regarding disqualification under Section 164 (2) of the Companies Act. However, the directors who were disqualified under Section 164 (1) was not required to file form DIR-8 which led to a lack of transparency for stakeholders. This amendment aims to seek more disclosures and to provide more transparency for stakeholders by including all disqualifications under Section 164.

4. Amendment to Companies (Miscellaneous) Rules, 2014

4.1 MCA substitutes form MSC-1, MSC-3, & MSC-4 with the new version of forms

The MCA has amended the Companies (Miscellaneous) Rules, 2014. The Ministry has substituted form MSC-1, MSC-3 & MSC-4 with the new forms.

- (a) MSC-1: Application to the Registrar for obtaining the status of dormant Company
- (b) MSC-3: Return of dormant Companies
- (c) Msc-4: Application for seeking status of active company

Now, in form MSC-1, details relating to filing of last financial statement and annual returns is to be provided.

In form MSC-3, break up of existing share capital of the company is to be provided. Further, in form MSC-4, Compliance related details such as intention to obtain Active status, description of non-compliance condition shall also be provided.

Comments: The main objective of the amendment to the Dormant Companies forms (V3 forms) is to increase the level of transparency and disclosure required from companies. Prior to the amendment, certain information was not mandatory to be provided in these forms.

5. Amendment to Companies (Incorporation) Rules, 2014

5.1 Now OPCs to declare nominee details in MoA and shall file such nomination in SPICe+ form

The MCA has amended the Companies (Incorporation) Rules, 2014. Now, the name of person nominated shall be mentioned in MoA & such nomination shall be filed in form INC 32 (SPICe+) along with the consent.

Further, it has been directed for substitution of words 'Form INC 3' & 'Form INC 4' from the above-mentioned rules. Amendments relating to conversion of OPC into private or public company or vice versa has been notified. MCA has notified the new version of various forms pursuant to amendment.

Now, Registrar shall approve conversion of One Person Company into a Public company or a Private company after examining the latest audited financial statements of the company. Further, altered e-MoA & e-AoA is to be attached with INC 6 for conversion into OPC.

Further, Registrar will now grant the license u/s 8 of Companies Act, 2013 after considering two years financial statements, board report, and audit reports preceding the date of application. Also, company shall file an application in Form INC 18 with the RD through the new MCA System.

MCA has now notified RUN form, INC-4, INC-6, INC-9, INC-12, INC-13, INC-18, INC-20, INC-20A, INC-22, INC-23, INC-24, INC-27, etc. in new V3 portal.

Comments: The MCA (Ministry of Corporate Affairs) has simplified the process for filing forms for One Person Companies (OPCs) by including the nominee's consent in the SPICe+ form. Previously, a separate signed and scanned INC 3 form was required to be attached. Additionally, MCA has increased the disclosure requirements in certain cases.

6. Amendment to Nidhi Rules, 2014

6.1 *Now forms NDH-1 to NDH 4 relating to Nidhi Cos have been transformed into web-based forms*

The MCA has amended the Nidhi Rules, 2014. The Ministry has substituted form NDH 1, NDH 2, NDH 3 & NDH 4 with the new web-based forms. Form NDH-2 includes a dedicated dialog box for the 'purpose of the application'. This box provides options such as requesting an extension of time, seeking permission to open a branch, etc. In form NDH-3 & NDH-4, enhanced disclosure is to be given for deposits, profit & bank details. Also, in form NDH-4, SRN of NDH-2/RD-1 for application to RD to be mentioned now.

Comment: The new e-form for Nidhi Company selection simplifies the process for users by providing a clear and concise form with all the essential information needed to confirm the Nidhi company's legitimate business operations. It provides larger information which needed to ensure proper business is taking place.

7. Amendment to Companies (Prospectus and Allotment of Securities) Rules, 2014

7.1 MCA entails detailed disclosures relating to charges/valuations in the revised forms PAS-2, PAS-3, & PAS-6

The MCA has amended the Companies (Prospectus and Allotment of Securities) Rules, 2014. The Ministry has substituted form PAS-2, PAS-3 & PAS-6 with the new forms. Now, in form PAS-2, formats of disclosure relating to charges has been amended. In form PAS-3, greater disclosures regarding valuation undertaken is to be given. Further, in form PAS-6, greater disclosure of details of shares as per class is to be given.

Comments: The updated V3 E-forms now require more specific information about valuations. Instead of only indicating if a valuation has been done, users must now provide additional details about the valuation process and the valuer.

8. Amendment to Companies (Registration of Foreign Companies) Rules, 2014

8.1 MCA substitutes form FC-1, FC-2, FC-3 & FC-4 with the new version of forms

The MCA has amended the Companies (Registration of Foreign Companies) Rules, 2014. The Ministry has substituted form FC-1, FC-2, FC-3 & FC-4 with the new forms. Now, in form FC-1, FC-2, FC-3 & FC-4, MCA has enhanced and modified formats of present forms.

III. Bird eye view of the 'Amendment Notifications'

Relevant Notification	Effective Date	Rule	Sections	Forms	Key Amendments	Comments
Notification No. G.S.R.....(E), Dated 20.01.2023	23.01.2023	Companies (Appointment and Qualifications of Directors) Rules, 2014	164	DIR -8 & DIR-9	Directors disqualified under section 164(1) of the Companies Act must also file Form DIR-8 with the company	This amendment aims to improve disclosures and provide more transparency for stakeholders by including all disqualifications under Section 164.
Notification No. G.S.R.....(E), Dated 20.01.2023	23.01.2023	Companies (Miscellaneous) Rules, 2014	455	MSC-1, MSC-3 & MSC-4	In form MSC-4, Compliance related details such as intention to obtain Active status, description of non-compliance	The main objective of the amendment to the Dormant Companies forms (V3 forms) is to increase the level of

					condition shall also be provided.	transparency and disclosure required from companies.
Notification No. G.S.R.....(E).. Dated 19.01.2023	23.01.2023	Companies (Incorporation) Rules, 2014	3	INC 32 (SPICe+)	The name of person nominated shall be mentioned in MoA & such nomination shall be filed in form INC 32 (SPICe+) along with the consent.	The MCA has simplified the process for filing forms for One Person Companies (OPCs) by including the nominee's consent in the SPICe+ form.
Notification No. G.S.R.. Dated 21.01.2023	23.01.2023	Nidhi Rules, 2014	-	NDH 1, NDH 2, NDH 3 & NDH 4	. In form NDH 3 & NDH 4, enhanced disclosure is to be given for deposits, profit & bank details. Also, in form NDH 4, SRN of NDH-2/RD-1 for application to RD to be mentioned now.	The new e-form provides a clear and concise form with all the essential information needed to confirm the Nidhi company's legitimate business operations.
Notification No. G.S.R.....(E).. Dated 20.01.2023	23.01.2023	Companies (Prospectus and Allotment of Securities) Rules, 2014	42	PAS-2, PAS-3, & PAS-6	In form PAS-3, greater disclosures regarding valuation undertaken is to be given.	The updated V3 E-forms now require more specific information about valuations.
Notification No. G.S.R.....(E).. Dated 20.01.2023	23.01.2023	Companies (Registration of Foreign Companies) Rules, 2014	380	FC-1, FC-2, FC-3 & FC-4	In form FC-1, FC-2, FC-3 & FC-4, MCA has enhanced and modified formats of present forms.	
Notification No.	23.01.2023	Companies (Appointment	196	MR-1 and MR-	In form MR-1, additional	The main objective of the

G.S.R.....(E)., Dated 19.01.2023		and Remuneration of Managerial Remuneration) Rules, 2014		2	disclosure relating to whether the appointee is a Non-Resident and SRN of MR-2 for obtaining Central Government's approval (as applicable) is to be mentioned.	amendment is to enhance the various disclosures in the form MR-1 and MR-2 for better transparency regarding appointment of Non-resident key managerial personnel and pending proceedings before NCLT/NCLAT.
Notification No. G.S.R..... (E). Dated 21.01.2023	23.01.2023	Companies (Share Capital and Debentures) Rules, 2014	68	SH-11	Now, a declaration must be filed along with the return to ROC in Form No. SH.11. Further, the MCA has removed the requirement to annex Form SH-15 along with SH-11. Also, MCA has substituted forms SH-7, SH-8 and SH-9.	The main objective of the amendment is to give better safeguard to Act and rules and also enhance the various disclosures in the form SH-7 and SH-8 for better transparency regarding the share capital structure and alteration of share capital.
Notification No. G.S.R.....(E)., Dated 21.01.2023	23.01.2023	Companies (Management and Administration) Rules, 2023	88	MGT-3	MCA has enhanced the disclosures to be made in Form MGT-3.	Greater disclosures relating to Notice of situation of office/Change of situation /discontinuation of office where a

						foreign register is kept is to be given. It will lead to proper tracking of records of foreign register.
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