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MCA UPDATES FOR THE MONTH OF DECEMBER 2020

CIRCULARS

GENERAL CIRCULAR NO.38/2020

01st December, 2020

Relaxation of additional fees and extension of last date of filing of CRA-4 for FY 2019-20

MCA, vide notification dated 01/12/2020, has further extended last date for filing of **CRA-4** (form for filing of cost audit report) for Financial Year 2019-20 up to 31st December,2020 (earlier it was 30th November,2020).

No additional fees is required to be paid.

Consequently, the cost audit report for the financial year ended 31st March, 2020 shall be filed in e-form CRA-4 within 30 days from the receipt of copy of cost audit report by the company.

Provided that the Companies which have got extension of time of holding Annual General Meeting under section 96 (1) of the Companies Act, 2013, may file form CRA-4 within resultant extended period of filing financial statements under section 137 of the Companies Act, 2013.

For more information: [GeneralCircularNo.38_01122020.pdf \(mca.gov.in\)](#)

GENERAL CIRCULAR NO.39/2020

31st December, 2020

Clarification

MCA has clarified that conduct of Extra-ordinary General Meeting for approving financial statements through Video Conferencing (VC) or Other Audio-Visual Means (OAVM) or transact items through postal ballot shall be allowed till 30th June, 2021 (earlier 31st December, 2020)

For more information: [GeneralCircularNo.39_31122020.pdf \(mca.gov.in\)](#)

RULES

**1. COMPANIES (APPOINTMENT AND QUALIFICATION OF DIRECTORS) FIFTH AMENDMENT
RULES, 2020**

(18th December, 2020)

MCA has amended sub-rule (4) of rule 6 of Companies (Appointment and Qualification of Directors) Rules, 2014 vide Companies (Appointment and Qualification of Directors) Fifth Amendment Rules,

2020 dated 18th December, 2020 and first & second proviso shall be substituted with the new proviso. Also in the explanation, item (b) has been amended. The said amendment is illustrated as under:

- Rule 6 (4)

Every individual whose name is so included in the data-bank under sub-rule (1) shall pass an online proficiency self-assessment test conducted by the institute within a period of **2 years (earlier 1 year)** from the date of inclusion of his name in the data bank, failing which, his name shall stand removed from the data bank of the institute:

Provided that an individual shall not be required to pass the online proficiency self-assessment test when he has served for a total period of not less than three years as on the date of inclusion of his name in the data bank,-

- (A) As a director or key managerial personnel, as on the date of inclusion of his name in the data bank, in one or more of the following, namely:-
 - (a) Listed public company; or
 - (b) Unlisted public company having a paid-up share capital of rupees ten crore or more; or
 - (c) Body corporate listed on any recognised stock exchange or in a country which is a member State of Financial Action Task Force on Money Laundering and the regulator of the securities market in such member State is a member of the International Organisation of Securities Commissions; or
 - (d) Bodies corporate incorporated outside India having a paid-up share capital of US\$ 2 million or more; or
 - (e) Statutory corporations set up under an act of Parliament or any State Legislature carrying on commercial activities; or
- (B) In the pay scale of director or above in the Ministry of Corporate Affairs or the Ministry of Finance or Ministry of Commerce and Industry or the Ministry of Heavy Industries and Public Enterprises and having experience in handling the matters related to corporate laws or securities laws or economic laws; or
- (C) In the pay scale of Chief General Manager or above in the Securities and Exchange Board or the Reserve Bank of India or the Insurance Regulatory and Development Authority of India or the Provident Fund Regulatory and Development Authority and having experience in handling the matters related to corporate laws or securities laws or economic laws :

Provided further that for the purpose of calculation of three years referred to in the first proviso, any period during which an individual was acting as a director of key managerial personnel in two or more companies or bodies corporate or statutory corporations at the same time shall be counted only once. ;

- Explanation :

- (b) an individual who has obtained a score of not less than fifty percent (**earlier sixty percent**) in aggregate in the online proficiency self-assessment test shall be deemed to have passed such test.

For more information: [FifthAmdtRules_18122020.pdf \(mca.gov.in\)](#)

2. COMPANIES (COMPROMISES, ARRANGEMENTS AND AMALGAMATIONS) SECOND AMENDMENT RULES, 2020

(18th December, 2020)

MCA has amended Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 vide Companies (Compromises, Arrangements and Amalgamations) Second Amendment Rules, 2020 dated 18th December, 2020.

As per the said amendment, new clause (e) in sub rule (1) of rule 2 and new rule 26A after rule 26 have been inserted respectively. The said amendment is illustrated as under:

1. The term 'Corporate Action' has been defined in clause (e) of Sub rule (1) of rule 2
"Corporate action" means any action taken by the company relating to transfer of shares and all the benefits accruing on such shares namely, bonus shares, split, consolidation, fraction shares and right issue to the acquirer.
2. Rule 26A
Purchase of minority shareholding held in demat form-
 - (1) The company shall within two weeks from the date of receipt of the amount equal to the price of shares to be acquired by the acquirer, under section 236 of the Act, verify the details of minority shareholders holding shares in dematerialised form.
 - (2) After verification under sub rule (1), the company shall send notice to such minority shareholders by registered post or by speed post or by courier or by email about a cut-off date, which shall not be earlier than one month after the date of sending of the notice, on which shares of minority shareholders shall be debited from their account and credited to the designated DEMAT account of the company, unless the shares are credited in the account of the acquirer, as specified in such notice, before the cut-off date.
 - (3) A copy of the notice served to the minority shareholders under sub rule (2), shall also be published simultaneously in two widely circulated newspapers (one in English and one vernacular language) in the district in which registered office of the company is situated and also be uploaded on the website of the company, if any.
 - (4) The company shall inform the depository immediately after publication of the notice under sub rule (3) regarding the cut-off date and submit the following declarations stating that:-
 - (a) The corporate action is being effected in pursuance of the provisions of section 236 of the Act;
 - (b) The minority shareholders whose shares are held in dematerialised form have been inform about the corporate action [a copy of the notice served to such shareholders and published in the newspapers to be attached];
 - (c) The minority shareholders shall be paid by the company immediately after completion of the corporate action;
 - (d) Any dispute or complaints arising out of such corporate action shall be the sole responsibility of the company.
 - (5) For the purpose of effecting transfer of shares through corporate action, the Board shall authorise the Company Secretary, or in his absence any other person, to inform the depository under sub rule (4), and to submit the documents as may be required under the said sub rule.
 - (6) Upon receipt of the information under said sub rule (4), the depository shall make the transfer of shares of the minority shareholders, who have not, on their own, transferred their shares in favour of the acquirer, into the designated DEMAT account of the company on the cut-off date and intimated the company.
 - (7) After receiving the information of successful transfer of shares from the depository under sub rule (6), the company shall immediately disburse the price of the shares so

transferred, to each of the minority shareholders after deducting the applicable stamp duty, which shall be paid by the company, on behalf of the minority shareholders, in accordance with the provisions of the Indian Stamp Act, 1899.

- (8) Upon successful payment to the minority shareholders under sub rule (7), the company shall inform the depository to transfer the shares of such shareholders, kept in the designated DEMAT account of the company, to the DEMAT account of the acquirer.

Explanation- the company shall continue to disburse such payment to the entitled shareholders, where disbursement could not be made within the specified time, and transfer the shares to the DEMAT account of the acquirer after such disbursement.

- (9) In case, where there is a specific order of Court or Tribunal or statutory authority restraining any transfer of such shares and payment of dividend, or where such shares are pledged or hypothecated under the provisions of the Depositories Act, 1996, the depository shall not transfer the shares of the minority shareholders to the designated DEMAT account of the company under sub rule (6).

Explanation- For the purpose of this rule, if “cut-off date” falls on a holiday, the next working day shall be deemed to be the “cut-off date”.

For more information: [SecondAmdtRules_18122020.pdf \(mca.gov.in\)](#)

3. COMPANIES (SHARE CAPITAL AND DEBENTURES) SECOND AMENDMENT RULES, 2020

24th December, 2020

MCA has issued new form SH-7 in annexure to the Companies (Share Capital and Debentures) Rules, 2014.

Click [SecondAmdtRules_24122020.pdf \(mca.gov.in\)](#) for viewing the said form and for further information.

4. COMPANIES (INCORPORATION) THIRD AMENDMENT RULES, 2020

24th December, 2020

MCA has issued new rule 9A to be inserted with effect from 26th January, 2021 in the Companies (Incorporation) Rules, 2014.

The said new rule is illustrated as under:

- Rule 9A-Extension of reservation of name in certain cases
Upon payment of fees provided below through the web service available at www.mca.gov.in, the registrar shall extend the period of a name reserved under rule 9 by using web service SPICe+ (Simplified Proforma for Incorporating Company Electronically Plus: INC-32), up to :
 - (a) Forty days from the date of approval under rule 9, on payment of fees of **rupees One thousand** made before the expiry of twenty days from the date of approval under rule 9;
 - (b) Sixty days from the date of approval under rule 9, on payment of fees of **rupees two thousand** made before the expiry of forty days referred to in clause (a) above;
 - (c) Sixty days from the date of approval under rule 9, on payment of fees of **rupees three thousand** made before the expiry of twenty days from the date of approval under rule 9:Provided that the registrar shall have the power to cancel the reserved name in accordance with sub section (5) of Section 4 of the Companies Act, 2013.
- In the annexure in SPICe+, Part A has been substituted with **new Part A** with some changes.

Click [ThirdAmdtRules_24122020.pdf \(mca.gov.in\)](#) for viewing the said Part A and for more information.

5. COMPANIES (MEETINGS OF BOARD AND ITS POWERS) FOURTH AMENDMENT RULES, 2020

30th December, 2020

MCA has amended sub-rule (2) of rule 4 of Companies (Meeting of Board and its Powers) Rules, 2014 vide Companies (Meeting of Board and its Powers) Fourth Amendment Rules, 2020 dated 30th December, 2020.

As per the said amendment, **matters*** referred to in **sub-rule 1** of **rule 4** of Companies (Meeting of Board and its Powers) Rules, 2014 may be held through video conferencing or other audio-visual means for the period beginning from commencement of Companies (Meeting of Board and its Powers) Amendment Rules, 2020 ending on 30th June, 2021 (earlier 31st December, 2020)

*matters referred to in rule 4(1) are:

- (i) the approval of annual financial statements
- (ii) the approval of Board's report
- (iii) the approval of prospectus
- (iv) the Audit Committee Meetings for consideration of financial statements including consolidated financial statements if any, to be approved by the Board under section 134(1).

For more information: [FourthAmdtRules_30122020.pdf \(mca.gov.in\)](#)

Hope the information will assist you in your Professional endeavours. In case of any query / information, please do not hesitate to write back to us at E: pcschinki@gmail.com and M: +91 9050320565.

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Best Regards '



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