



Inside this edition

- Amendment to the National Company Law Tribunal Rules, 2016.
- Amendment to the Nidhi Rules, 2014.
- Amendment to the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
- Amendment to the Companies (Issue of Global Depository Receipts) Rules, 2014.
- Filing of form by Insolvency Professionals with ROC.
- Amendment to the Companies (Registration Offices and Fees) Rules, 2014.
- Spice+ and AGILE Pro notified for company incorporation.
- MCA Notifies Companies (Auditor's Report) Order, 2020
- Amendment to the Companies (Appointment and Qualification of Directors) Rules 2014.

Amendments in the National Company Law Tribunal Rules, 2016



The Ministry of Corporate Affairs(MCA) on 3rd February 2020 has published the National Company Law Tribunal (Amendment) Rules, 2020 to insert new Rule to deal with grievances with respect to the takeover offer of Unlisted Companies. Section 230(11) of the Companies Act, 2013 provides that takeover offer in case of unlisted companies can be made through Scheme of compromise or arrangement, while in case of listed companies, takeover offers must be made as per regulation prescribed by Securities and Exchange Board of India.

The keyhighlights of this notifiacion are summatized below:

- An aggrieved party shall make an application under Section 230(12) to Tribunal in Form NCLT -1 and shall be accompanied with such documents as are mentioned in Annexure B to the said rules.
- The entry, stating the Payment of a filing fee of INR 5,000/- for making an any such application, has been inserted in **SCHEDULE OF FEES** of the Principal rules i.e. National Company Law Tribunal Rules, 2016.
- The enclosure with the petition to be filed with the Application in cases of takeover offer of which are not listed **are as follows:**
 1. Affidavit verifying the petition
 2. Memorandum of appearance with copy of the Board's Resolution or the executed vakalatnama, as the case may be.
 3. Documents in support of the grievance against the takeover.

4. Any other relevant document.

Amendment to the Nidhi Rules, 2014



MCA has notified and substituted Form NDH-1, NDH-2 & NDH-3 and issued revised FORM NO. NDH-1- Return of Statutory Compliances, FORM NO. NDH-2 – Application for extension of time and FORM NO. NDH-3 – Return of Nidhi Company for the half year.The detailed link of the amendment can be found below:

http://mca.gov.in/Ministry/pdf/Rules2_04022020.pdf

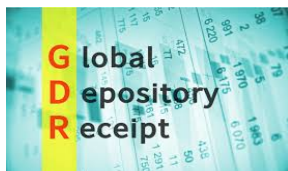
Amendment to the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016



The Ministry of Corporate Affairs (MCA) issued a notification on February 3, 2020, introduced the Companies (Compromises, Arrangements, and Amalgamation) Amendment Rule, 2020 wherein the norms for filing the arrangement application is specified which will come into force when it will be published into the Official Gazette of India. As per the amendmended rule, a member of a company may make an application for the arrangement pertaining to the takeover offer must fulfil following conditions namely:

- A member of the company shall make an application for arrangement when such member along with any other member holds not less than three-fourths of the shares in the company, and such application has been filed for acquiring any part of the remaining shares of the company.
- An application of arrangement for takeover offer shall contain a report of a registered valuer which must disclose all the details of the valuation of the shares which the member strives to acquire.
- The application filed by a member must contain the details of the bank account which is to be opened separately by the members wherein the sum of the amount must not be less than half of the total consideration of the takeover offer of the deposit.

Amendment to the Companies (Issue of Global Depository Receipts) Rules, 2014



The Ministry of Corporate Affairs (MCA) on February 13, 2020, issues the Companies (Issue of Global Depository Receipts) Amendment Rules, 2020 to further amend the Companies (Issue of Global Depository Receipts) Rules, 2014. The followings amendments were made:

A company may issue depository receipts provided it is eligible to do so in terms of the Depository Receipts Scheme, 2014 and relevant provisions of the Foreign Exchange Management Rules and Regulations.

Rule 5(1) relates to Manner and form of depository receipts stands substituted stating that the depository receipts can be issued by way

of public offering or private placement or in any other manner prevalent in the concerned jurisdiction and may be listed or traded on the listing or trading platform in the concerned jurisdiction.

Rule 7 The proceeds of issues of depository receipts shall either be remitted to a bank account in India or deposited in an Indian bank operating abroad or any foreign bank (which is a Scheduled Bank under the Reserve Bank of India Act, 1934) having operations in India with an agreement that the foreign bank having operations in India shall take responsibility for furnishing all the information which may be required and in the event of a sponsored issue of Depository Receipts, the proceeds of the sale shall be credited to the respective bank account of the shareholders. **Provided that proceeds of issue of depository receipts may be remitted in an International Financial Services Centre Banking Unit (IBU) and utilised in accordance with the instructions issued by the Reserve Bank of India from time to time.**

Rule 9(1) related to Non Applicability of Certain Provisions of the Act. The provisions of the Act and any rules issued thereunder insofar as they relate to public issue of shares or debentures shall not apply to issue of depository receipts.

MCA further amends the Nidhi Rules, 2014



MCA has notified (Second Amendment) Rules, 2020. As per the amendment Nidhi companies need to file **declaration within 9 months** which was earlier **6 months** from

commencement of Nidhi (Amendment) Rules, 2019 notified on 15th August, 2019. The amended Rule stands as follows:

Rule 23A : Every company referred to in clause (b) of rule 2 and every Nidhi incorporated under the Act, before the commencement of Nidhi (Amendment) Rules, 2019, shall also get itself declared as such in accordance with rule 3A within a period of one year from the date of its incorporation or within a period of nine months (*which was six months earlier*) from the date of commencement of Nidhi (Amendment) Rules, 2019, whichever is later.

Provided that in case a company does not comply with the requirements of this rule, it shall not be allowed to file Form No. SH-7 (Notice to Registrar of any alteration of share capital) and Form PAS-3 (Return of Allotment).

Filing of form by Insolvency Professionals with ROC appointed under Insolvency Bankruptcy Code, 2016 (IBC, 2016)



Upon receiving several requests have been received in the Ministry with respect to filing of documents in the MCA-2 1 registry where an Insolvency Professional (Interim Resolution Professional (IRP) or Resolution Professional (RP) or Liquidator) has been appointed under IBC, 2016 in respect of a company. Keeping in view the requirements for statutory compliances by such companies under the Companies Act, 2013 and to enable compliance of such requirements by such Resolution Professionals, it is hereby clarified that the procedure mentioned in the notification shall be followed in respect of all such cases. Below is the link of the notification:

http://mca.gov.in/Ministry/pdf/Circular_17022020.pdf

MCA further amend the Companies (Registration Offices and Fees) Rules, 2014



MCA vide this notification has revised the Form GNL-2, a generic form, required to be filed for many items by removing the tabs for items like Circular for inviting Deposits, Return of Deposits and Declaration of Solvency for which specific forms have been notified for the purpose and hence the form now stands aligned with the current Statutory requirement. The detailed Notification can be found in the link below:

http://mca.gov.in/Ministry/pdf/rule_19022020.pdf

Spice+ and AGILE Pro notified for company incorporation



MCA notifies the Companies (Incorporation) Amendment Rules, 2020, whereby e-Forms SPICe (INC 32) and INC 35 (AGILE) have been substituted with SPICe+ (INC 32) and INC 35 (AGILE PRO), w.e.f. 23rd February, 2020. This is a step towards 'Ease of doing business'. The **key features** are as follows:

- 1. SPICe+** would have two parts viz.: **Part A**-for Name reservation for new companies and **Part B** offering a bouquet of services viz.
 - (i) Incorporation
 - (ii) DIN allotment
 - (iii) Mandatory issue of PAN

- (iv) Mandatory issue of TAN
 - (v) Mandatory issue of EPFO registration
 - (vi) Mandatory issue of ESIC registration
 - (vii) Mandatory issue of Profession Tax registration(Maharashtra)
 - (viii) Mandatory Opening of Bank Account for the Company and
 - (ix) Allotment of GSTIN (if so applied for)
2. Users may either choose to submit Part-A for reserving a name first and thereafter submits Part B for incorporation & other services or,
 3. File Part A and B together at one go for incorporating a new company and availing the bouquet of services as above.
 4. Stakeholders will not be required to even enter the SRN of the approved name as the approved Name will be prominently displayed on the Dashboard and a click on the same will take the user for continuation of the application through a hyperlink that will be available on the SRN/application number in the new dashboard.
 5. From 15th February 2020 onwards, **RUN** service would be applicable only for 'change of name' of an existing company.
 6. The approved name and related incorporation details as submitted in Part A, would be automatically Pre-filled in all linked forms also viz., AGILE-PRO, eMoA, eAoA, URC-1, INC-9
 7. Registration for EPFO and ESIC shall be mandatory for all new companies incorporated w.e.f 15 February 2020 and no EPFO & ESIC registration nos. shall be separately issued by the respective agencies.
 8. Registration for Profession Tax shall also be mandatory for all new companies incorporated in the State of Maharashtra w.e.f 15th February 2020

9. All new companies incorporated through SPICe+ (w.e.f 15th February 2020) would also be mandatorily required to apply for opening the company's Bank account through the AGILE-PRO linked web form.
10. Declaration by all Subscribers and first Directors in INC-9 shall be autogenerated in pdf format and would have to be submitted only in Electronic form in all cases, except where:
 - (i) Total number of subscribers and/or directors is greater than 20 and/or
 - (ii) Any such subscribers and/or directors has neither DIN nor PAN.

The detailed Notification can be found in the link below:

http://mca.gov.in/Ministry/pdf/rule_22022020.pdf

MCA Notifies Companies (Auditor's Report) Order, 2020



Ministry of Corporate Affairs has notified the Companies (Auditor's Report) Order, 2020 ("2020 Order") which is superseding the Companies (Auditor's Report) Order, 2016 ("2016 Order"). The CARO, 2020 is applicable for an audit of financial statements of eligible companies for the financial years commencing on or after the 1st April 2019. The criteria of eligibility of companies on which the CARO, 2020 shall be applicable has not been changed and hence it shall be applicable to all those companies on which CARO, 2016 was applicable. CARO 2020 would necessitate enhanced due diligence and disclosures on the part of auditors of eligible companies and has

been designed to bring in greater transparency in the financial state of affairs of such companies.

There are in total **21 clauses as compared to 16 clauses in CARO 2016, 7 clauses inserted, 1 clause merged with other and 1 clause deleted**. The detailed Notification can be found in the link below:

http://mca.gov.in/Ministry/pdf/Orders_25022020.pdf

MCA amends the Companies (Appointment and Qualification of Directors) Rules 2014.



Ministry of Corporate Affairs on 28.02.2020 amends the said rules namely the Companies (Appointment and Qualification of Directors) Amendment Rules, 2020. The amended sub rules to Rule 6 stands as follows:

Rule 6 (1)a: Every individual –

- (a) who has been appointed as an independent director in a company, on the date of commencement of the Companies (Appointment and Qualification of Directors) Fifth Amendment Rules, 2019, shall within a period of five months (**which was earlier three months**) from such commencement shall apply online to the institute for inclusion of his name in the data bank for a period of one year or five years or for his life-time, and from time to time take steps as specified in sub-rule (2), till he continues to hold the office of an independent director in any company:

Provided that any individual, including an individual not having DIN, may voluntarily apply to the institute for inclusion of his name in the data bank.

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 one year from the date of inclusion of his name in the data bank, failing which, his name shall stand removed from the databank of the institute:

Provided that an individual shall not be required to pass the online proficiency self-assessment test, when he has served as a director or key managerial personnel, for a total period of not less than ten years, as on the date of inclusion of his name in the databank, 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 a recognized stock exchange.

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

VERENDRA KALRA & CO

CHARTERED ACCOUNTANTS

CONTACT DETAILS:

Head Office

75/7 Rajpur Road, Dehradun

T +91.135.2743283, 2747084, 2742026

F +91.135.2740186

E info@vkalra.com

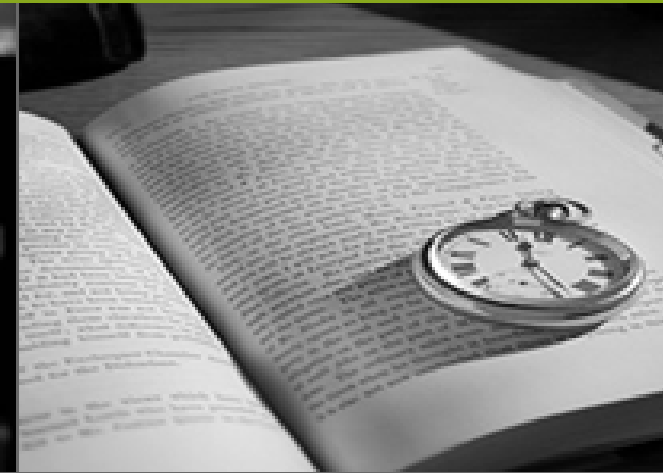
W www.vkalra.com

Branch Office

80/28 Malviya Nagar, New Delhi

E info@vkalra.com

W www.vkalra.com



© 2020 Verendra Kalra & Co. All rights reserved.

This publication contains information in summary form and is therefore intended for general guidance only. It is not a substitute for detailed research or the exercise of professional judgment. Neither VKC nor any member can accept any responsibility for loss occasioned to any person acting or refraining from actions as a result of any material in this publication. On any specific matter, reference should be made to the appropriate advisor.