[To be published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-Section (i)]

Government of India
Ministry of Corporate Affairs

Notification

New Delhi, 27th July, 2016

G.S.R. .—In exercise of the powers conferred by sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Incorporation) Rules, 2014, namely:—

1. (1) These rules may be called the Companies (Incorporation) Third Amendment Rules, 2016.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Companies (Incorporation) Rules, 2014 (hereinafter referred to as the principal rules), in rule 3, for sub-rule (2), the following shall be substituted, namely:-

" (2) A natural person shall not be member of more than a One Person Company at any point of time and the said person shall not be a nominee of more than a One Person Company".

3. In the principal rules, in rule 8,-

(a) in sub-rule (2) for clause (ii), the following shall be substituted namely:-

"(ii) it includes the name of a trade mark registered or a trade mark which is subject of an application for registration under the Trade Marks Act, 1999 and the rules framed thereunder unless the consent of the owner or applicant for registration, of the trade mark, as the case may be, has been obtained and produced by the promoters;"

(b) in sub-rule (6), in clause(n), the comma between the words 'financial' and 'corporation' shall be omitted.

4. In the principal rules, in rule 13, after sub-rule (2), the following Explanation shall be inserted, namely:-

"Explanation.- For the purposes of sub-rule (1) and sub-rule (2), the type written or printed particulars of the subscribers and witnesses shall be allowed as if it is written by the subscriber and witness respectively so long as the subscriber and the witness as the case may be appends his or her signature or thumb impression, as the case may be."

5. In the principal rules, in rule16,-

(i) in sub-rule (1),-

(a) in clause (m), the following Explanation shall be inserted, namely:-

"Explanation.- In case the subscriber is already holding a valid DIN, and the particulars provided therein have been updated as on the date of application, and the declaration to this effect is given in the application, the proof of identity and residence need not be attached.";

(b)"clause (q) shall be omitted;

(ii) in sub-rule (2) in clause (g), the words " or partnership firm" shall be omitted.

6. In the principal rules, for rule 26, the following rule shall be substituted, namely:-

"**26. Publication of name by company**.- (1) Every company which has a website for conducting online business or otherwise, shall disclose/publish its name, address of its registered office, the Corporate Identity Number, Telephone number, fax number if any, email and the name of the person who may be contacted in case of any queries or grievances on the landing/home page of the said website.

(2) The Central Government may as and when required, notify the other documents on which the name of the company shall be printed.".

7. In the principal rules, in rule 28, in sub-rule (2), after the second proviso, the following proviso shall be inserted, namely:-

"Provided also that on completion of such inquiry, inspection or investigation as a consequence of which no prosecution is envisaged or no prosecution is pending, shifting of registered office shall be allowed.".

8. In the principal rules, in rule 29, for sub-rule (1), the following shall be substituted, namely:-

"(1) The change of name shall not be allowed to a company which has not filed annual returns or financial statements due for filing with the Registrar or which has failed to pay or repay matured deposits or debentures or interest thereon:

Provided that the change of name shall be allowed upon filing necessary documents or payment or repayment of matured deposits or debentures or interest thereon as the case may be."

9. In the principal rules, in rule 30,-

(A) in sub-rule (1), after clause (i), the following shall be inserted namely:-

"(j) a copy of the No Objection Certificate from the Reserve Bank of India where the applicant is a registered Non-Banking Financial Company"

(B) in sub-rule (6), in clause (c) the words "and to the Securities and Exchange Board in the case of listed companies" shall be omitted;

(C) in sub-rule (10), after the proviso, the following Explanation shall be inserted, namely:-

"Explanation.- On completion of such inquiry, inspection or investigation as a consequence of which no prosecution is envisaged or no prosecution is pending, shifting of registered office shall be allowed.".

10. In the principal rules, after rule 36, the following rule shall be inserted, namely:-

"37. Conversion of unlimited liability company into a limited liability company by shares or guarantee.- (1) Without prejudice to any other provision in the Companies Act, for effecting the conversion of an unlimited liability company with or without share capital into limited liability company by shares or guarantee, such a company shall pass a special resolution in a general meeting and thereafter, an application shall be filed in Form No. INC-27 in the manner provided in sub-rules (2) and (3).

(2) The Company shall within seven days from the date of passing of the special resolution in a general meeting, publish a notice, in Form No. INC-27A of such proposed conversion in two newspapers (one in English and one in vernacular language) in the district in which the registered office of the company is situate and shall also place the same on the website of the Company, if any, indicating clearly the proposal of conversion of the company into a company limited by shares or guarantee, and seeking objections if any, from the persons interested in its affairs to such conversion and cause a copy of such notice to be dispatched to its creditors and debentures holders made as on the date of notice of the general meeting by registered post or by speed post or through courier with proof of dispatch. The notice shall also state that the objections, if any, may be intimated to the Registrar and to the company within twenty-one days of the date of publication of the notice, duly indicating nature of interest and grounds of opposition.

(3) The Company shall within forty five days of passing of the special resolution file an application as prescribed in sub rule (1) for its conversion into a company limited by shares or guarantee alongwith the fees as provided in the Companies (Registration offices and Fees) Rules, 2014, by attaching the following documents, namely:-

a. notice of the general meeting along with explanatory statement;
b. copy of the resolution passed in the general meeting;
c. copy of the newspaper publication;
d. a copy of altered Memorandum of Association as well as Articles of Association duly certified by any one of the Directors duly authorised in this behalf or Company Secretary of the Company, if any.

e. declaration signed by not less than two Directors of the Company, including Managing Director, if any, that such conversion shall not affect any debts, liabilities, obligations or contracts incurred or entered into by or on behalf of the Company before conversion (except to the extent that the liability of the members shall become limited).

f. a complete list of creditors and debenture holders, to whom individual notices have been sent under sub-rule (2) setting forth the following details, namely:-

(i) the names and address of every creditor and debenture holder of the Company;

(ii) the nature and respective amounts due to them in respect of debts, claims or liabilities:

(iii) declaration by a Director of the Company that notice as required under sub-rule (2) has been dispatched to all the creditors and debenture holders with proof of dispatch.

g. a declaration signed by not less than two Directors of the Company, one of whom shall be a Managing Director where there is one, to the effect that they have made a full enquiry into the affairs of the Company and, having done so, have formed an opinion that the list of creditors is correct, and that the estimated value as given in the list of the debts or claims payable on a contingency are proper estimates of the values of such debts and claims and that there are no other debts or claims against the company to their knowledge.

h. a declaration of solvency signed by at least two Directors of the Company, one of whom shall be the Managing Director, where there is one to the effect that the Board of Directors of the Company have made a full inquiry into the affairs of the company, as a result of which they have formed an opinion that it is capable of meeting its liabilities and will not be rendered insolvent within a period of one year from the date of declaration, through a resolution, passed in a duly convened meeting or by circulation.

i. The company shall also obtain a certificate from the Auditors that the company is solvent and that it is a going concern as on the date of passing of resolution by the Board certifying solvency as per clause (h) above.

j. No Objection Certificate from sectoral regulator, if applicable.

k. No Objection Certificate from all secured creditors, if any.

(4) Declaration signed by not less than two Directors including Managing Director, where there is one, that no complaints are pending against the company from the members or investors and no inquiry, inspection or investigation is pending against the company or its Directors or officers.

(5) The Registrar shall, after considering the application and objections if any, received by the Registrar and after ensuring that the company has satisfactorily addressed the objections received by the company, suitably decide whether the approval for conversion should or should not be granted.

(6) The certificate of incorporation consequent to conversion of unlimited liability company to into a company limited by shares or guarantee be in Form INC-11A issued to the company upon grant of approval for conversion.

(7) Conditions to be complied with, subsequent to conversion.-

(1) Company shall not change its name for a period of one year from the date of such conversion.

(2) The company shall not declare or distribute any dividend without satisfying past debts, liabilities, obligations or contracts incurred or entered into before conversion.

Explanation: For the purpose of this clause, past debts, liabilities, obligations or contracts does not include secured debts due to banks and financial institutions.

(8) An Unlimited Liability Company shall not be eligible for conversion into a company limited by shares or guarantee in case-

(a) its networth is negative, or

(b) an application is pending under the provisions of the Companies Act 1956 or the Companies Act, 2013 for striking off its name, or

(c) the company is in default of any of its Annual Returns or financial statements under the provisions of the Companies Act, 1956 or the Companies Act, 2013, or

(d) a petition for winding up is pending against the company, or

(e) the company has not received amount due on calls in arrears, from its directors, for a period of not less than six months from the due date; or

(f) an inquiry, inspection or investigation is pending against the company.

(9) The Registrar of Companies shall take a decision on the application filed under these rules within thirty days from the date of receipt of application complete in all respects.

11. In the principal rules, Form No. INC-10 shall be omitted.

12. In the principal rules, for Form No. INC-11, the following forms shall be substituted, namely:-

"Form No.INC-11

GOVERNMENT OF INDIA

MINISTRY OF CORPORATE AFFAIRS

Central Registration Centre

Certificate of Incorporation

[Pursuant to sub-section (2) of section 7 of the Companies Act, 2013 and rule 8 the Companies (Incorporation) Rules, 2014]

I hereby certify that <name of the company> is incorporated on this (i.e. FIRST, SECOND etc.) day of <Month of approval of work item in words> two thousand <YEAR of approval of work item in words> under the Companies Act, 2013 and that the company is <limited by shares/limited by guarantee/unlimited company>.

The CIN of the company is <CIN>.

Given under my hand at < Name of the city where the RoC Office is located > this < Date of approval of the work item in words (i.e FIRST, SECOND etc.)> day of < Month of approval of the work item in words > <YEAR of approval of the work item in words>.

DSC

<Full name of the Authorising officer approving the work-item>

<Assistant Registrar of Companies/ Deputy Registrar of Companies/ Registrar of Companies>

For and on behalf of the Jurisdictional Registrar of Companies

Registrar of Companies

Central Registration Centre

Disclaimer: This certificate only evidences incorporation of the company on the basis of documents and declarations of the applicant(s). This certificate is neither a license nor permission to conduct business or solicit deposits or funds from public. Permission of sector regulator is necessary wherever required. Registration status and other details of the company can be verified on www.mca.gov.in

Mailing Address as per the records available in Registrar of Companies office:

< Name of the company >

< Address of the correspondence/registered office of the company >".

Form No. INC-11A

Certificate of Incorporation pursuant to conversion of Unlimited Liability company into Limited Liability Company

[pursuant to section 18 of the Companies Act, 2013 read with rule 37 of the Companies (Incorporation) Rules, 2014]

I hereby certify that.....(name of the company prior to conversion) having unlimited liability has been converted into.....(name of the company after conversion) company having limited liability with effect from the date of this certificate and the company is limited by shares or limited by guarantee.

The CIN of the company is.....

Given under my hand at..... this..... day of..... two thousand.....

SEAL:

.....

Registrar of Companies

.....

(State)

13. in the principal rules, for Form INC-27, the following forms shall be inserted, namely:-

FORM NO. INC-27

[Pursuant to sections 14 and 18 of the Companies Act, 2013 and Rule 33 and Rule 37 made there under of the Companies Rules, 2013]

सत्यमेव जयते

Conversion of public company into private company or private company into public company and Conversion of Unlimited Liability Company into a Company Limited by shares or guarantee

Form language o English o Hindi

Refer the instruction kit for filing the form.

1. *Application for o Conversion of private company into public company
   o Conversion of public company into private company
   o Conversion of Unlimited Liability Company into Company Limited by shares or guarantee

Pre-fill

2. *(a) Corporate identity number(CIN) of company
   (b) Global Location Number

3. (a) Name of the Company
   (b) Address of registered office

   (c) email Id of the company

4. *Reason(s) for conversion

*Particulars of filing Form No. MGT-14 with Registrar of Companies (RoC)

(a) SRN of Form No. MGT-14

(b) Date of passing the special resolution (DD/MM/YYYY)

(c) Date of filing Form No. MGT-14 (DD/MM/YYYY) (DD/MM/YYYY)

5. *Particulars of the order of Tribunal
   (a) Date of passing the order

(b) Date of receiving the order

6. *Name of the company at the time of incorporation (to be displayed in the certificate)

7. (a) Details of members present at the meeting where the decision of conversion was taken and number of shares held by them

(i) *Number of members

(ii) Number of shares held by them

(b) Details of the members who voted in favour of the proposal and number of shares held by them

(i) *Number of members

(ii) Number of shares held by them

(c) Details of the members who voted against the proposal and number of shares held by them

(i) *Number of members

(ii) Number of shares held by them

(d) Details of members who abstained from voting and number of shares held by them

(i) *Number of members

(ii) Number of shares held by them

Attachments

List of attachments

1. *Minutes of the members' meeting; Attach
2. * Copy of altered Memorandum Articles of Association; Attach
3. Order for condonation of delay; Attach
4. *Copy of special resolution; Attach
5. *Copy of newspaper publication; Attach
6. Order of competent authority;
7. *Declaration of all Directors Attach

Remove Attachment

as per Rule 37(3)(e);

8. *Declaration of Directors As per Rule 37(3)(g); Attach

9. *Complete list of creditors and debentures holders; Attach

10. *Declaration of Solvency; Attach

11. *Declaration regarding no complaints As per Rule 37(4) Attach

12. * A copy of Statutory Auditors Certificate Attach

13. Optional attachment(s) (if any)

Declaration

To the best of my knowledge and belief, the information given in this application and its attachments are correct and complete. The company has obtained all the mandatory approvals from the concerned authorities, departments and substantial creditors. I have been authorized by the board of directors' resolution number * dated *

(DD/MM/YYYY) to sign and submit this application.

DSC BOX

To be digitally signed by

*Designation

*Director identification number of the director; or

DIN or PAN of the manager or CEO or CFO; or

Membership number of Company secretary

Note: Attention is drawn to provisions of Section 448 and 449 of the Companies Act, 2013 which provide for punishment for false statement / certificate and punishment for false evidence respectively.

Modify | Check Form | Prescrutiny | Submit

For office use only:

Affix filing details

eForm Service request number (SRN) | eForm filing date | (DD/MM/YYYY)

Digital signature of the authorising officer

This e-Form is hereby approved

This e-Form is hereby rejected

Confirm Submission

Date of signing (DD/MM/YYYY)

Form no INC-27A

[[*Pursuant to rule 37(2)* the Companies (Incorporation) Rules, 2014]

Advertisement to be published in the newspaper for conversion of unlimited liability into limited liability company

Before the Central Government

_____Region

In the matter of the Companies Act, 2013, Section 18 of Companies Act, 2013 and rule 37 of the Companies (Incorporation) Rules, 2014

AND

In the matter of _____ Limited (unlimited liability company) having its registered office at _____, Petitioner

Notice is hereby given to the General Public that the company proposes to make application to the Central Government under section 18 of the Companies Act, 2013 seeking confirmation of alteration of the Memorandum of Association of the Company in terms of the special resolution passed at the Annual General Meeting/ Extra ordinary general meeting held on _____ to enable the company to convert from unlimited liability into limited liability".

Any person whose interest is likely to be affected by the proposed conversion from unlimited liability into limited liability may deliver or cause to be delivered or send by registered post of his/her objections supported by an affidavit stating the nature of his/her interest and grounds of opposition to the Registrar of companies (address of the ROC) within twenty-one days from the date of publication of this notice with a copy to the applicant company at its registered office at the address mentioned below:

For and on behalf of the Applicant

.....

Director

Date.....

Place.....

[F. No. 1/13/2013 CL-V]

27/07/2016

AMARDEEP SINGH BHATIA, Jt. Secy.

Note: The principal notification was published in the Gazette of India, Extraordinary Part II, Section 3, Sub-section (i) *vide* number G.S.R. 250(E) dated 31st March, 2014 and subsequently amended *vide* the following notifications:-

Serial Number	Notification Number	Notification Date
1.	G.S.R. 349 (E)	01-05-2015
2.	G.S.R. 442 (E)	29-05-2015
3.	G.S.R. 99 (E)	22-01-2016
4.	G.S.R.336(E)	23-03-2016

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