# Impact of Companies Incorporation Third Amendment Rules, 2016 on company incorporation

MCA through Notification dated 27/07/2016 Amended the Companies (Incorporation) Rules, 2014 which now be called as Companies (Incorporation) Third Amendment Rules, 2016

Following below mentioned are the amended Provisions along with its impact:

1**. In Rule 3(2) o**f Companies (Incorporation) Rules, 2014 html) following substitution has been made:

**Earlier Provision:** No person shall be eligible to incorporate more than a One Person Company or become nominee in more than one such company.

**Amended Provision:** 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 nominee of more than a One Person company.

The above mentioned word ‘’Natural person’’ means a person who is Indian Citizen and resident in India.

**Impact of the Amended Provision**: A person can only be a member and a nominee in one OPC only.

Note: Resident in India means a person who has stayed in India for a Period of not less than 182 days during immediately preceding one Calendar Year.

2. **In Rule 8(2)(ii)** of Companies (Incorporation) Rules, 2014 following substitution has been made:

**Earlier Provision:** it includes the name of a registered trade mark or a trade mark which is subject of an application for registration, 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 promoters

**Amended Provision**: it includes the name of a registered trade mark or a trade mark which is subject of an application for registration under the Trade Marks Act, 1999 and rules framed there under, 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.

**Impact of the Amended Provision**: No such effect further

3. **In Rule 8(6)(n)** of Companies (Incorporation) Rules, 2014 following omission has been made:

**Earlier Provision**: The following words and combinations thereof shall not be used in the name of a company unless the previous approval of the Central Government has been obtained for the use of any such word or expression Financial, Corporation and the like;

**Amended Provision:** The following words and combinations thereof shall not be used in the name of a company unless the previous approval of the Central Government has been obtained for the use of any such word or expression Financial Corporation and the like;

Impact of the Amended Provision: approval of Central government required for use of word “Financial Corporation” as Comma between the words Financial Corporation has been omitted.

4. **In Rule 13(2)** of Companies (Incorporation) Rules, 2014 following explanation has been added

**Earlier Provision:**

i) The memorandum and articles of association of the company shall be signed by each subscriber to the memorandum, who shall add his name, address, description and occupation, if any, in the presence of at least one witness.

ii) Where a subscriber to the memorandum is illiterate, he shall affix his thumb impression or mark which shall be described as such by the person, writing for him, who shall place the name of the subscriber against or below the mark and authenticate it by his own signature

**Amended Provision**: For the purpose of sub rule (1) and sub rule (2) the type written or printed particulars of the subscribers and witness 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”

**Impact of the Amended Provision**: Now the “Type Written” or “Printed” particulars of the subscriber and witness shall be allowed. If subscriber or the witness appends his or her signature or thumb impression.

5. **In Rule 16(1)(m)** of Companies (Incorporation) Rules, 2014 following explanation has been added

**Earlier Provision**: Proof of Identity of every subscriber to the memorandum shall be filed with the Registrar.

**Amended Provision:** In case the subscriber is already holding a valid DIN, and the particular provided therein have been updated as on the date of application and the declaration on this effect is given in the application, the proof of identity and residence need not be attached.

**Impact of the Amended Provision**: There is no need to attach proof of identity in the incorporation form, if the subscriber holding din and same has been updated on MCA

6. In Rule 16(1) (q) of Companies (Incorporation) Rules, 2014 following omission has been made

**Earlier Provision**: the promoter or first director shall self attest his signature and latest photograph in Form No. INC10.

**Amended Provision**: FormINC10 is not required to be attached.

**Impact of the Amended Provision**: there is no need to attach INC10 for Director and Promoters Verification for Incorporation of Company.

7. In **Rule 16(2)(g)** of Companies (Incorporation) Rules, 2014 following omission has been made

**Earlier Provision**: Where the Subscriber to the memorandum is a body corporate, and if the body corporate is a limited liability partnership or partnership firm, certified true copy of the resolution agreed to by all the partners specifying inter alia the authorization to subscribe to the memorandum of association of the proposed company and to make investment in the proposed company, the number of shares proposed to be subscribed in the body corporate, and the name of the partner authorized to subscribe to the Memorandum;

**Amended Provision**: if the body corporate is a limited liability partnership, certified true copy of the resolution agreed to by all the partners specifying inter alia the authorization to subscribe to the memorandum of association of the proposed company and to make investment in the proposed company, the number of shares proposed to be subscribed in the body corporate, and the name of the partner authorized to subscribe to the Memorandum;

**Impact of the Amended Provision**: if a Body Corporate is a Partnership firm then the word Partnership firm has been omitted from filing certified true copy of the resolution agreed to by all the partners specifying inter alia the authorization to subscribe to the memorandum ofassociation of the proposed company and to make investment in the proposed company, the number of shares proposed to be subscribed in the body corporate, and the name of the partner authorized to subscribe to the Memorandum.

8. **In Rule 26** of Companies (Incorporation) Rules, 2014 following substitution has been made

**Earlier Provision**: The Central Government may as and when required, notify the other documents on which the name of the company shall be printed.

**Amended Provision**: Every Company which has a website for conducting online business or otherwise, shall disclose/ publish its name, address of its registered office, the CIN, Tel No, Fax No. if any, email and the name of person who may be contacted in case of any queries or grievances on the landing/ home page of the said website.

**Impact of the Amended Provision**: It is “mandatory for the companies having website to disclose all the details mentioned below on the home page of the website:

i) Name

ii) Registered Office

iii) CIN

iv) Tel No.

v) Fax if any

vi) Email ID

vii) Name of Person to contact for Query and Grievance

9. In **Rule 28(2)** of Companies (Incorporation) Rules, 2014 following Proviso has been added:

**Earlier Provision**: Provided further that the shifting of registered office shall not be allowed if any inquiry, inspection or investigation has been initiated against the company or any prosecution is pending against the company under the Act.

**Amended Provision**: 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.

**Provision Impact of the Amended**: Registered office shall be shifted after completion of inquiry, inspection or investigation

10. In **Rule 29(1)** of Companies (Incorporation) Rules, 2014 following Proviso has been added:

**Earlier Provision**: The change of name shall not be allowed to a company which has defaulted in filing its annual returns or financial statements or any document due for filing with the Registrar or which has defaulted in repayment of matured deposits or debentures or interest on deposits or debentures.

**Amended Provision**: Provided that a 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.

**Impact of the Amended Provision**: Change of name shall be allowed on completion of pending annual filing or payment of matured deposit or debenture or interest there on.

11. **In Rule 30** of Companies (Incorporation) Rules, 2014 following clause 30(1)(j) has been inserted:

**Earlier Provision**: Earlier no clause was there.

**Amended Provision**: A copy of the NOC from the RBI where the applicant is a registered NBFC.

**Impact of the Amended Provision**: In case of NBFC Company, NOC from the RBI is also required in case of NBFC Company.

12. **In Rule 30(6)(C**) of Companies (Incorporation) Rules, 2014 following omission has been made:

**Earlier Provision**: The company shall at least fourteen days before the date of hearing serve, by registered post with acknowledgement due, a notice together with the copy of the application to the Registrar and to the Securities and Exchange Board of India, in the case of listed companies and to the regulatory body, if the company is regulated under any special Act or law for the time being in force.

**Amended Provision**: The Company shall at least fourteen days before the date of hearing serve, by registered post with acknowledgement due, a notice together with the copy of the application to the Registrar and to the regulatory body, if the company is regulated under anyspecial Act or law for the time being in force.

**Impact of the Amended Provision**: Now, No need to serve notice to SEBI for shifting of registered office.

Apart from all above mentioned rules**, New Rule 37** has been inserted in relation to Conversion of unlimited liability company into Limited Liability Company by shares or guarantee.

Following are the Amended rules made under Inserted Rule 37:

1. Company shall pass a Special Resolution in a general meeting and the same shall be filed in Form No. INC27.

 ii) The Company shall publish a notice in FormINC27A within 7 days after passing Special Resolution and notice shall be published in English language and one in vernacular language where the registered office of the company is situated and same shall also be published onthe website of the Company, if any.

iii) The Company shall within 45 days of passing Special Resolution file an application in FormINC27 of its conversion into Limited Liability Company by shares or guarantee.

iv) A declaration is required to be signed by not less than 2 directors including MD, Where there is 1, that no complaints, no inquiry, no investigation is pending against the company or its directors or its officers.

v) The Registrar after considering all the documents filed by the company for its conversion will decide whether the approval for conversion should be granted or not.

vi) If approved, the Certificate of Incorporation will be issued in Form11A.

**Conditions to be Followed by the Company Subsequent to its Conversion:**

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

ii) The Company shall not declare or distribute any dividend without satisfying past debts. Liabilities, obligations or contracts incurred or entered into before conversion.

**Following are the Cases under which Conversion of unlimited liability company into Limited Liability Company by shares or guarantee shall not be considered Eligible:**

i) its net worth is negative, or

ii) An application is pending under Company Act, 156 or the Companies Act, 2013 for striking off its name or

iii) The company is in default in filing of annual returns or financial statements under Companies Act, 1956 or the Companies Act, 2013 or

iv) A petition for winding up is pending against the company or

v) An inquiry is pending against the company or

vi) the company has not received amount due on call in arrears, from its directors, for a period of not less than 6 months from the due date.

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