

[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, 18th December, 2018

G.S.R.(E)._ In exercise of the powers conferred by clause (41) of section 2, section 3, sub-section (1) of section 7, section 10A, section 14 and 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) **Fourth** Amendment Rules, 2018.
- (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 said rules), after rule 23, the following rule shall be inserted, namely:-

"23A. Declaration at the time of commencement of business.- The declaration under section 10A by a director shall be in **Form No.INC-20A** and shall be filed as provided in the Companies (Registration Offices and Fees) Rules, 2014 and the contents of the said form shall be verified by a Company Secretary or a Chartered Accountant or a Cost Accountant, in practice:

Provided that in the case of a company pursuing objects requiring registration or approval from any sectoral regulators such as the Reserve Bank of India, Securities and Exchange Board of India, etc., the registration or approval, as the case may be from such regulator shall also be obtained and attached with the declaration."

3. In the said rules, after rule 39, the following rules shall be inserted, namely:-

"40.Application under sub-section (41) of section 2 for change in financial year

(1) The application for approval of concerned Regional Director under sub-section (41) of section 2, shall be filed in **e-Form No.RD-1** along with the fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 and shall be accompanied by the following documents, namely:-

- (a) grounds and reasons for the application;

(b) a copy of the minutes of the board meeting at which the resolution authorising such change was passed, giving details of the number of votes cast in favour and or against the resolution;

(c) Power of Attorney or Memorandum of Appearance, as the case may be;

(d) details of any previous application made within last five years for change in financial year and outcome thereof along with copy of order.

(2) Where the Regional Director on examining the application, referred to in sub-rule (1), finds it necessary to call for further information or finds such application to be defective or incomplete in any respect, he shall give intimation of such information called for or defects or incompleteness, on the last intimated e-mail address of the person or the company, which has filed such application, directing the person or the company to furnish such information, or to rectify defects or incompleteness and to re-submit such application within a period of fifteen days, in e-Form No. **RD-GNL-5**.

Provided that a maximum of two re-submissions shall be allowed.

(3) (a) In case where such further information called for has not been provided or the defects or incompleteness has not been rectified to the satisfaction of the Regional Director within the period allowed under sub-rule (2), the Regional Director shall reject the application with reasons within thirty days from the date of filing application or within thirty days from the date of last re-submission made as the case may be.

(b) In case where the application is found to be in order, Regional Director shall allow and convey the order within thirty days from the date of application or within thirty days from the date of last re-submission, as the case may be.

(c) where no order for approval or re-submission or rejection has been explicitly made by the Regional Director within the stipulated time of thirty days, it shall be deemed that the application stands approved and an approval order shall be automatically issued to the applicant.

(4) The order conveyed by the Regional Director shall be filed by the company with the Registrar in Form No. INC-28 within thirty days from the date of receipt of the order along with fee as provided in the Companies (Registration Offices and Fees) Rules, 2014.

41. Application under section 14 for conversion of public company into private company. (1) An application under the second proviso to sub-section (1) of section 14 for the conversion of a public company into a private company, shall, within sixty days from the date of passing of special resolution, be filed with Regional Director in **e-Form No. RD-1** along with the fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 and shall be accompanied by the following documents, namely:-

(a) a draft copy of Memorandum of Association and Articles of Association, with proposed alterations including the alterations pursuant to sub-section (68) of section 2;

(b) a copy of the minutes of the general meeting at which the special resolution authorising such alteration was passed together with details of votes cast in favour and or against with names of dissenters;

(c) a copy of Board resolution or Power of Attorney dated not earlier than thirty days, as the case may be, authorising to file application for such conversion;