



Amendment under the Companies (Appointment and Qualification of Directors) Rules, 2014 – Concern on filing form DIR 9

The Ministry of Corporate Affairs (“MCA”) on January 23, 2023 amended Rule 14 of the Companies (Appointment and Qualification of Directors) Rules, 2014 (“Principal Rule”) with respect to the disqualification of directors.

As per the amendment in Rule 14(1), now every individual has to furnish form DIR-8 to the company, prior to his or her appointment or re-appointment in such company, disclosing the disqualification, if any, incurred under section 164(1) in addition to the previous section 164(2) of the Companies Act, 2013 (“Act”).

A new sub rule (1A) has been inserted after rule (1) thereby making it mandatory for a company to disclose every information so received in form DIR-8 with the MCA by filing e form DIR-9 within 30 days from the receipt of such information.

Considering rule 14 of the Principal Rule, the amendment made and the format of form DIR-8, it is clear that the intimation is required to be given by the individual in every case at the time of appointment or re-appointment, irrespective of the fact that he or she is disqualified or not. However, certain fields such as disqualification details and particulars of directors so disqualified during the relevant financial years are mandatorily required to be completed in order to submit the e-form DIR 9. Therefore, there seems to be a procedural issue in filing e-form DIR 9 for disclosing the details of the director having no disqualification under section 164(1) and section 164(2) of the Act.

In our view, the requirement to submit the e-form DIR 9 should only be applicable if a director has incurred disqualification under Section 164(1) and/or 164(2). Rule 14 (1A) needs to be reconsidered by the Ministry of Corporate Affairs.

Alternatively, e-form DIR 9 needs to be updated to provide the facility to submit the form disclosing the details of the director having no disqualification under section 164(1) and section 164(2) of the Act.

Disclaimer: This publication is based on the recent amendment made by the Ministry of Corporate Affairs under the Companies (Appointment and Qualification of Directors) Rules, 2014. The above publication has been prepared for information purposes only and should not be construed as legal advice.