

# UPDATES MINISTRY OF CORPORATE AFFAIRS

The amendments are introduced to bring the Act in line with the Foreign Exchange Management (Non-debt Instruments) Rules, 2019.



*Companies (Share  
Capital and Debentures)  
Amendment Rules, 2022*



*Companies (Prospectus  
and Allotment of  
Securities) Amendment  
Rules, 2022*



*Companies  
(Incorporation) Second  
Amendment Rules, 2022*

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Recently, the Ministry of Corporate Affairs (“MCA”) brought a number of amendments by issuing notifications under the Companies Act, 2013 (“Act”). The amendments are introduced to bring the Act in line with the Foreign Exchange Management (Non-debt Instruments) Rules, 2019.

Below are the recent notifications issued by the MCA in this regard:

### **1) Companies (Share Capital and Debentures) Amendment Rules, 2022**

MCA notified the Companies (Share Capital and Debentures) Amendment Rules, 2022 to further amend the Companies (Share Capital and Debentures) Rules, 2014 vide notification dated May 4, 2022. Through this amendment, MCA amended the format of share transfer form (form SH-4) with respect to Foreign Exchange Management (Non-debt Instruments) Rules, 2019. According to the amendment, the following declaration shall be inserted in the share transfer form:

- Transferee is not required to obtain the Government approval under the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 prior to the transfer of shares; or
- Transferee is required to obtain the Government approval under the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 prior to the transfer of shares and the same has been obtained and is enclosed herewith.

## **2) Companies (Prospectus and Allotment of Securities) Amendment Rules, 2022**

The MCA notified the Companies (Prospectus and Allotment of Securities) Amendment Rules, 2022 to further amend the Companies (Prospectus and Allotment of Securities) Rules, 2014 vide notification dated May 5, 2022. It has been provided that no offer or invitation of any securities shall be made to a body corporate incorporated in, or a national of a country which shares a land border with India, unless such body corporate or the national have obtained the Government approval under the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 and such approval is attached with the Form PAS-4.

Further, the format of Form PAS-4 in accordance with the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 has been amended to incorporate the aforesaid requirement.

## **3) Companies (Incorporation) Second Amendment Rules, 2022**

The MCA notified the Companies (Incorporation) Second Amendment Rules, 2022 ("**Amendment**") to further amend the Companies (Incorporation) Rules, 2014 vide notification dated May 20, 2022. Through this Amendment, form INC-9 (Declaration by Subscribers and First Directors) was substituted to bring the Companies (Incorporation) Rules, 2014 in line with the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 with

respect to obtaining approval from the Indian Government prior to subscription of shares in the company to be incorporated. Further, form INC-32 (SPICe+) Part-B was revised to include a declaration with respect to the nationality of the person being appointed as a director in such company.

#### **4) Companies (Compromises, Arrangements, and Amalgamations) Amendment Rules, 2022**

The MCA notified the Companies (Compromises, Arrangements, and Amalgamations) Amendment Rules, 2022 to further amend the Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016 vide notification dated May 30, 2022. It was provided that in case of a compromise or an arrangement or merger or demerger between an Indian company and a company or body corporate incorporated in a country that shares a land border with India, a declaration in form no. CAA-16 would need to be furnished declaring that:

- the company/body corporate is not required to obtain prior approval under the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019; or
- the company/body corporate is required to obtain prior approval under the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 and the same has been obtained and is enclosed herewith.

## 5) Companies (Appointment and Qualification of Directors) Amendment Rules, 2022

The MCA notified the Companies (Appointment and Qualification of Directors) Amendment Rules, 2022 to amend the Companies (Appointment and Qualification of Directors) Rules, 2014 (“Principal Rule”) vide notification dated June 1, 2022. Through this amendment, provisos have been inserted in rule 8 and rule 10 of the Principal Rule, which requires that the individuals to be appointed as a director in a company should attach, with form DIR-2 (**consent to act as a director**) and e-form DIR-3 (**application for DIN**), necessary security clearance from the Ministry of Home Affairs, Government of India if such individual is the national of a country which shares a land border with India. Accordingly, form DIR-2 and e-form DIR-3 have been modified to include a declaration in relation to the aforesaid.



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