

MCA amendments pertaining to Land border norms

Ministry of Corporate Affairs has amended various rules under the Companies Act, 2013 (“Act”) for the purpose of declaring and/or attaching the approval obtained from Government under the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 (**FEMA (NDI) Rules**) if the body corporate, Individual, Person is incorporated in, or a national of, a country which shares a land border with India.

To summarize, such approval under FEMA (NDI) Rules is to be provided or attached with respective Forms / events in terms of amended MCA rules in following cases:

SHARE TRANSFER MATTERS

Attach copy of approval obtained under FEMA (NDI) Rules, if applicable, with Securities Transfer Form (Form SH-4) at the time of execution of Form SH-4 for transfer of shares. Such approval is to be obtained by Transferee.

If not applicable, give declaration to that effect in Form SH-4.

Companies (Share Capital and Debentures) Amendment Rules, 2022 W.E.F. 04 May, 2022

PRIVATE PLACEMENT OF SECURITIES

Attach copy of approval obtained under FEMA (NDI) Rules, if applicable, with the Private Placement Offer cum application letter at the time of subscription of securities offered through Private Placement.

If not applicable, give declaration to that effect in application letter.

Companies (Prospectus and Allotment of Securities) Amendment Rules, 2022 W.E.F. 05 May 2022

MERGER AND AMALGAMATION

In case of a compromise or an arrangement or merger or demerger between an Indian company and a company or body corporate, declaration (in terms of Rule 25A of Companies (Compromises, Arrangements and Amalgamations) Rules, 2014, a declaration in Form No. CAA-16 shall be required at the stage of submission of application under section 230 of the Act.

Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2022 W.E.F. 30th May, 2022

INCORPORATION

Attach copy of approval obtained under FEMA (NDI) Rules, if applicable, along with Form INC-9 at the time of subscription of Memorandum during incorporation.

If not applicable, give declaration to that effect in Form INC-9.

Companies (Incorporation) Second Amendment Rules, 2022 W.E.F. 01 June, 2022

In addition to above amendments, MCA has also mandated to obtain the security clearance from Ministry of Home Affairs by a person before applying for Director Identification Number (DIN) or seeking appointment as Director in any Company, if such person is national of a country which shares land border with India.

Therefore, with effect from 01 June, 2022, obtaining of security clearance from Ministry of Home Affairs is necessary in the following events:

APPOINTMENT OF DIRECTOR

In case a person seeking appointment as Director in a Company (either in existing Company or at time of incorporation) and such person is national of a country which shares land border with India, then such person has to obtain security clearance from Ministry of Home Affairs and attach the same with the consent in Form DIR-2.

If not applicable, then given declaration to that effect in Form DIR-2.

Companies (Appointment and Qualification of Directors) Amendment Rules, 2022 W.E.F. 01 June, 2022

Companies (Incorporation) Second Amendment Rules, 2022 W.E.F. 01 June, 2022

OBTAINING DIN

In case a person applying for Director Identification Number (DIN) and such person is national of a country which shares land border with India, then such person has to obtain security clearance from Ministry of Home Affairs and attach the same with the Form DIR-3 i.e. application for DIN.

If not applicable, then given declaration to that effect in Form DIR-3.

Companies (Appointment and Qualification of Directors) Amendment Rules, 2022 W.E.F. 01 June, 2022

Relevant links of amended rules are as under:

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

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=Nzg2MjcwNzE=&docCategory=Notifications&type=open>

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

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=Nzg2MjU1Nzg=&docCategory=Notifications&type=open>

Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2022:

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MTEwNjc1OTYz&docCategory=Notifications&type=open>

Companies (Incorporation) Second Amendment Rules, 2022:

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=OTk2MzQ2NzU=&docCategory=Notifications&type=open>

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

<https://www.mca.gov.in/bin/dms/getdocument?mds=1QP%252Fckqk4ob6rHXFQrVew%253D%253D&type=open>

Suggestions may be sent to rupesh@cacsindia.com

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