

## Companies Act Series

February 05, 2016

### EASE OF DOING BUSINESS - MCA RELAXES NORMS FOR NAME APPROVAL

- Proposed name of the company need not indicate its business and need not be in consonance with the objects.
- Abbreviated name of the proposed company based on the name of the promoters is not an undesirable name.
- Proposed company can pursue altogether a new business activity without changing the existing name.
- NoC is not required to use the key words in the name of the proposed company, if the key word(s) used in the proposed name is the name of a person other than the name(s) of the promoters or their close blood relatives.
- Proof of relation is no more required to be attached incase the name of the proposed company includes name of the promoters or their relatives.
- Third opportunity to rectify the defects and to re-submit Form No. INC 29 (Integrated Incorporation Form) is given to the stakeholders.
- Central Government establishes "Central Registration Centre" under the administrative control of Registrar of Companies, Delhi for processing name reservation applications in Form No. INC-1.

### INTRODUCTION

The Ministry of Corporate Affairs ("MCA") has, vide its notification dated January 22, 2016, issued the Companies (Incorporation) Amendment Rules, 2016 ("**Amendment Rules**") amending the existing Companies (Incorporation) Rules, 2014 ("**Principal Rules**"). The Amendment Rules have brought about significant changes to Principal Rules and these rules came into force on January 26, 2016. MCA had earlier amended the Principal Rules by issuing the Companies (Incorporation) Amendment Rules, 2015 dated May 1, 2015. The Amendment Rules constitute the second amendment to the Principal Rules in furtherance to its objectives of ease of doing business in India.

While the Amendment Rules have come i into force from January 26, 2015 and aforesaid notification is yet to be published in the Gazette of India, our analysis on the key changes are provided as below.

Realizing the inefficiencies in the existing system that among other things, cause inordinate delays in the incorporation of entities, the Government, has introduced these changes.

The changes brought about in the Amendment Rules are a welcome measure in ensuring a hassle free and faster incorporation process. Having analysed the existing incorporation framework in the Companies Act, 2013 ("**CA 2013**") in the first part of this series [here](#), we now analyse the changes to the incorporation rules.

Chapter II of the CA 2013 along with Principal Rules primarily govern incorporation of Companies. These following important changes have been brought about by the Amendment Rules.

### I. NO NEED FOR CONNECTION BETWEEN OBJECTS AND NAME OF THE COMPANY

#### Existing position

Under the provisions of rule 8(2)(b)(ii) of Principal Rules, a proposed name (for the proposed company) is considered undesirable if it is not in consonance with the principal objects of the company as set out in the memorandum of association. Every name need not be necessarily indicative of the objects of the company, but there must be some indication of the objects of the company in its name.

#### Revised position under the Amendment Rules

The Amendment Rules omits sub-clause (ii) referred to as above. Hence, there is no requirement that the name of the Company should specify or indicate its object(s) in any manner or indicate what activity it will carry on.

#### Analysis

More freedom has been provided to a promoter to name his / her company as he deems fit, and he / she is not restricted to use names that indicate the objects or proposed activity of the company as earlier. However the name should not be misleading one. For example, a manufacturing company cannot call itself as *ABC Software Services Limited*, but it is not necessary for the name to indicate the manufacturing activity i.e. it could be called as *ABC Limited*.

However, more clarity would be required from MCA as to whether a company can have unrelated multiple principal objects.

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### Existing position

Under rule 8(2)(b)(x) of Principal Rules, the proposed name of a company is considered to be undesirable if the name is vague or an abbreviated name such as '*ABC Limited*' or '*23K Limited*' or '*DJMO Limited*'. An abbreviated name based on the name of the promoters is not allowed. For example: *BMCD Limited* representing first alphabet of the name of the promoters - Bharat, Mahesh, Chandan and David. There are two exceptions to this rule as provided below:

1. Existing company can use its abbreviated name as part of the name to set up a new company as its subsidiary or joint venture or associate company. For example, a joint venture between *Adarsh Limited* and *Bharat Limited* can be named *AB Limited*. Similarly, the subsidiary of *Santosh Bhatia Constructions Limited* can be named *SBC Private Limited*.
2. The companies well known in their respective field by abbreviated names are allowed to change their names to abbreviation of their existing name after following the requirements of CA 2013;

### Revised position under the Amendment Rules

The Amendment Rules omits sub-clause(x) referred to as above. Hence the proposed name of a company can be in abbreviated form.

### Analysis

The promoters of a company can now name the company using any abbreviation they deem fit. Therefore the name *BMCD Limited* in the example above, representing the names of each of the promoters is permitted.

However, it must be ensured that the name of the company is not identical with and does not closely resemble the name of an existing company or the use of such name constitutes an offence under any law for the time being in force or is undesirable in the opinion of the Central Government. These requirements contained in the provisions of section 4 and 16 of CA 2013 and in the remaining clauses of rule 8 of Principal Rules, which continue to apply.

## III. RESOURCES AT DISPOSAL AND PROPOSED ACTIVITIES ARE NO MORE DEPENDENT ON EACH OTHER FOR INCORPORATION

### Existing position

Rule 8(2)(b)(xvii) of Principal Rules provides that a proposed name of a company is considered undesirable, if the name is intended or likely to produce a misleading impression regarding the scope or scale of the company's proposed activities which would be beyond the resources at its disposal.

For example, if the name of the proposed company indicates the activity of manufacturing high value defence equipments, and the resources (i.e. capital of the proposed company) available are not sufficient or are nominal, then such a name could be rejected by the Registrar of Companies at his discretion.

### Revised position under the Amendment Rules 2016

The Amendment Rules omits sub-clause (xvii) referred to as above.

### Analysis

MCA has already vide the Companies (Amendment) Act, 2015 (published in the official Gazette of India on May 26, 2015) done away with the requirement of having minimum paid up share capital for all kinds of companies. This amendment brought about in the Amendment Rules further synchronizes the rules with CA 2013. With the omission of the aforesaid rule, a company with any scale of business is not limited in its choice of name on account of its scale of activity or resources

However, other laws including foreign exchange laws may have minimum capitalization requirements for certain entities engaged in certain activities.

## IV. NO NEED TO CHANGE THE NAME AFTER CHANGE IN BUSINESS ACTIVITIES

### Existing position

Rule 8(3) of Principal Rules provides that if a company has changed its activities (which are not reflected in its existing name), then it must change its name to reflect the new activities within a period of six months from the change in activity.

### Revised position under the Amendment Rules 2016

The Amendment Rules omits sub rule (3) of rule (8) of Principal Rules. Now there is no need to change the name of the company in case of change of its business activities.

### Analysis

Omission of this rule allows the existing companies to continue with the existing name of the company after the change in business activities even though the name of the company does not reflect the current activities or business. This omission has a huge benefit to well-established companies. The change in business will not affect or dilute the name, reputation and goodwill of the company in the market and this amendment helps them in developing new business under already a well-established tag.

However, on the down side, a company which includes 'software services' in its name and changes its business to something completely unrelated, would then have a very misleading name.

Note that a listed entity while changing its name must also comply with the provisions of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015. Regulation 45 requires that if a listed entity has changed its activities which are not reflected in its existing name, then it must change its name to reflect its activities within a period of six months from the change of activities in compliance of provisions as

## V. NO-OBJECTION CERTIFICATE FOR USE OF RELATIVE OF ANY OTHER PERSON'S NAME AS KEY WORD IS NO MORE A REQUIREMENT

### Existing position

Rule 8(4) of Principal Rules provides that, if a key word used in the name proposed is the name of a person other than the name(s) of the promoters or their close blood relatives, then a no objection is required from such other person(s). If the name includes the name of relatives of promoter(s), the proof of relation must be provided. Further, it is mandatory to furnish the significance and proof for use of any coined words made out of the name of the promoters or their relatives (including blood relatives).

### Revised position under the Amendment Rules 2016

Amendment Rules omits sub rule (4) of rule (8) of Principal Rules.

### Analysis

Omission of this rule results in a reduction in the number of documents that are required to be submitted. If the company is not required to reflect its business in its name and is now permitted to use abbreviation, this rule becomes redundant. There could be abuse with this omission because the promoters can now use their relatives or any other unrelated person's name(s) as a word in the proposed name of the company without the consent of such person. However using names of well-known personalities such as *Sachin Tendulkar Private Limited* for a sports related company will not be permitted since such name is considered undesirable under rule 8(b)(ix) as such name includes or implies association or connection with or patronage of a national hero or any person held in high esteem or important personages who occupied or occupying important positions in Government.

## VI. ESTABLISHMENT OF CENTRAL REGISTRATION CENTRE ("CRC") TO DEAL WITH NAME RESERVATION APPLICATIONS

### Existing position

Rule 9 of Principal Rules provides that an application for the reservation of a name shall be made in **Form No. INC.1** along with the fee as provided in the Companies (Registration offices and fees) Rules, 2014.

### Revised position under the Amendment Rules 2016

The Amendment Rules substitutes rule 9 of Principal Rules with the following new rule:

**"Reservation of name**—An application for the reservation of a name shall be made in Form No. INC 1 along with the fee as provided in the Companies (Registration offices and fees) Rules, 2014 which may be approved or rejected, as the case may be, by the Registrar, Central Registration Centre.

CRC will function under the administrative control of the Registrar of Companies, Delhi, who shall act as the Registrar of the CRC until a separate Registrar is appointed to the CRC. The CRC will be located at the Indian institute of Corporate Affairs (IICA), Plot No. 6, 7, 8, Sector 5, IMT Manesar, District Gurgaon (Haryana), 722050.

### Analysis

With the establishment of CRC, all applications for reservation of name would be directed to CRC (instead of to the respective Registrar of Companies). CRC would have territorial jurisdiction over all of India for approving applications for reservation of names. This initiative is intended to reduce the time taken for name reservation during incorporation process.

However, if the incorporation process is initiated under the integrated procedure (which involves filing of Form No. INC 29) then the name reservation would continue to be approved by the respective Registrar of Companies.

## VII. THIRD OPPORTUNITY TO RECTIFY THE DEFECTS AND TO RE-SUBMIT FORM NO. INC. 29 (INTEGRATED INCORPORATION FORM).

### Existing position

Rule 36(12) of Principal Rules provides for the process to be followed under the integrated process for incorporation effective from May 1, 2015.

1. "Where the Registrar, on examining e-form INC-29, finds that it is necessary to call for further information or finds such application or document to be defective or incomplete in any respect, he shall give intimation to the applicant to remove the defects and re-submit the e-form within fifteen days from the date of such intimation given by the Registrar.
2. After the resubmission of the document, if the registrar still finds that the document is defective or incomplete in any respect, he shall give one more opportunity of fifteen days to remove such defects or deficiencies.
3. In case, the Registrar is of the opinion that the document is defective or incomplete in any respect after giving such two opportunities, the e-form INC-29 of the proposed company shall be rejected."

### Revised position under the Amendment Rules

The Amendment Rules inserts following sub-clause (ba) after sub-clause (b) in sub-rule (12) of rules 36 of Principal Rules.

**"(ba)** After the resubmission of the documents and on completion of second opportunity, if the registrar still finds that the documents are defective or incomplete, he shall give third opportunity to remove such defects or deficiencies. Provided that the total period for re-submission of documents shall not exceed a total period of thirty days."

### Analysis

Insertion of the aforesaid sub-clause allows three opportunities instead of two opportunities for re-submission while

removing defects or deficiencies in Form No. INC 29. However, the total period for re-submission of documents in Form No. INC 29 for all the three opportunities shall not exceed a total period of 30 days.

## CONCLUSION

The Amendment Rules are welcome as they significantly reduce the restrictions in incorporation and give more options to the promoters. The changes seem to be the result of the thrust towards enhancing "ease of doing business in India" and the Prime Minister's latest announcement of the "Start-Up Action Plan" which encourages the entrepreneurs to set up business free of hurdles.

– **Janak Pandya & Santosh Gangavati**

You can direct your queries or comments to the authors

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