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Some important changes happened in the Corporate and Legal world in the month of August 2018:

1. Amendment in Companies (Prospectus and allotment of Securities) Rules, 2014

The Ministry of Corporate Affairs has introduced by notification dated 7th August, 2018 the Central Government hereby makes the following rules further to amend the Companies (Prospectus and Allotment of Securities) Rules, 2014:

These rules may be called the Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2018. They shall come into force from the date of their publication in the Official Gazette.

The following rule 14 shall be substituted as follows:

(1) A company shall not make an offer or invitation to subscribe to securities through private placement unless the proposal has been previously approved by the shareholders of the company, by a special resolution for each of the offers or invitations:

The following shall be disclosed in the statement annexed to the notice for shareholders approval:-

- (a) Particulars of the offer including date of passing of Board resolution;
- (b) Kinds of securities offered and the price at which security is being offered;
- (c) Basis or justification for the price (including premium, if any) at which the offer or invitation is being made;
- (d) Name and address of valuer who performed valuation;
- (e) Amount which the company intends to raise by way of such securities;
- (f) Material terms of raising such securities, proposed time schedule, purposes or objects of offer, contribution being made by the promoters or directors either as part of the offer or separately in furtherance of objects; principle terms of assets charged as securities:

Provided further that this sub-rule shall not apply in case of offer or invitation for non-convertible debentures, where the proposed amount to be raised through such offer or



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invitation does not exceed the limit as specified in clause (c) of sub-section (1) of section 180 and in such cases relevant Board resolution under clause (c) of sub section (3) of section 179 would be adequate:

Provided also that in case of offer or invitation for non-convertible debentures, where the proposed amount to be raised through such offer or invitation exceeds the limit as specified in clause (c) of sub-section (1) of section 180, it shall be sufficient if the company passes a previous special resolution only once in a year for all the offers or invitations for such debentures during the year.

(2) An offer or invitation to subscribe securities under private placement shall **not** be made to **persons more than two hundred in the aggregate in a financial year:**

Provided that any offer or invitation made to qualified institutional buyers, or to employees of the company under a scheme of employees stock option as per provisions of clause (b) of sub-section (1) of section 62 shall not be considered while calculating the limit of two hundred persons.

(3) A **private placement offer** cum application letter shall be in the form of an application in **Form PAS-4** serially numbered and addressed specifically to the person to whom the offer is made and shall be sent to him, either in writing or in electronic mode, within thirty days of recording the name of such person.

Provided that no person other than the person so addressed in the private placement offer cum application letter shall be allowed to apply through such application form and any application not conforming to this condition shall be treated as invalid.

(4) The company shall maintain a **complete record** of private placement offers in **Form PAS-5.**

(5) The payment to be made for subscription to securities shall be made from the bank account of the person subscribing to such securities and the company shall keep the record of the bank account from such payment for subscription has been received:

Provided that monies payable on subscription to securities to be held by joint holders shall be paid from the bank account of the person whose name appears first in the application:

Provided further that the provisions of this sub-rule shall not apply in case of issue of shares for consideration other than cash.



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(6) A **return of allotment** of securities under section 42 shall be filed with the Registrar **within fifteen days of allotment in Form PAS-3** and with the fee as provided in the Companies (Registration offices and Fees) Rules, 2014 along with a complete list of all the allottees containing-

- (i) the full name, address, permanent Account Number and E-mail ID of such security holder;
- (ii) the class of security held;
- (iii) the date of allotment of security ;
- (iv) the number of securities held, nominal value and amount paid on such securities; and particulars of consideration received if these securities were issued for consideration other than cash.

(7) The provisions of sub-rule (2) **shall not be applicable** to:-

- (a) Non-banking financial companies which are registered with the Reserve Bank of India under the Reserve Bank of India Act, 1934.
- (b) Housing finance companies which are registered with the National Housing Bank under the National Housing Bank Act, 1987.

(8) A company shall issue private placement offer cum application letter only after the relevant special resolution or Board resolution has been filed in the Registry

Provided that private companies shall file with the Registry copy of the Board resolution or special resolution with respect to approval under clause (c) of sub section (3) of section 179.

Impact: Rule 14 of Companies (Prospectus and Allotment of Securities) Rules, 2014 which refers to Private Placement has been substituted by the commencement of Companies Amendment Act, 2017.

2. Amendment in the Companies (Appointment and Qualification of Directors) Rules, 2014

All individuals who have been already been allotted a Director Identification Number (DIN) as at 31st March, 2018, shall submit e-form DIR-3 KYC on or before 31st August, 2018.



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MCA vide notification dated 21st August, 2018, has introduced Companies (Appointment and Qualification of Directors) Fifth Amendment Rules, 2018. They shall come into force from the date of their publication in the Official Gazette.

The above notification states that the deadline for filing form DIR3 KYC is extended from 31st August, 2018 to 15th September, 2018. New format for filing form DIR3 KYC has also been introduced.

Impact: This is a great relief for all the directors and designated partner for filing form DIR3 KYC as the timeline is extended by 15 days.

3. Amendment in the Companies (Registration Offices and Fees) Rules, 2014

MCA vide notification dated 21st August, 2018, has introduced Companies (Registration Offices and Fees) Fourth Amendment Rules, 2018. They shall come into force from the date of their publication in the Official Gazette.

In the Companies (Registration Offices and Fees) Rules, 2014, in the Annexure, the following note shall be substituted:-

“for the current financial (2018-2019), no fee shall be chargeable till the 15th September, 2018 and fee of Rs. 5,000 shall be payable on or after the 16th September, 2018”.

Impact: It means that no fees shall be chargeable for filing e-form DIR3 KYC before 15th September, 2018. After 15th September, 2018 a fee of Rs. 5,000 shall be levied.

4. Notification of Companies (Amendment) Act, 2017

The Ministry of Corporate Affairs has notified section 10 referring to Private Placement of Companies (Amendment) Act, 2017 which shall come into effect from 7th August, 2018.

Impact: Section have been amended & modified to bring consistency and transparency.



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We suggest readers to draw their conclusions after taking into consideration various other relevant sections, rules to be notified from time to time and applicable Secretarial Standards, Accounting Standards and Guidance notes and other notifications, circulars and amendments notified from time to time.

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