

# MINISTRY OF CORPORATE AFFAIRS

## NOTIFICATION

New Delhi, the 18th December, 2018

**G.S.R. 1219(E).**—In exercise of the powers conferred by clause (41) of section 2, section 3, sub-section (1) of section 7, section 10A, section 14 and sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Incorporation) Rules, 2014, namely: -

1. (1) These rules may be called the **Companies (Incorporation) Fourth Amendment Rules, 2018**.  
(2) They shall come into force on the date of their publication in the official Gazette.
2. In the Companies (Incorporation) Rules, 2014 (hereinafter referred to as the said rules), after rule 23, the following rule shall be inserted, namely:-

**“23A. Declaration at the time of commencement of business.**-The declaration under section 10A by a director shall be in **Form No.INC-20A** and shall be filed as provided in the Companies (Registration Offices and Fees) Rules, 2014 and

the contents of the said form shall be verified by a Company Secretary or a Chartered Accountant or a Cost Accountant, in practice:

Provided that in the case of a company pursuing objects requiring registration or approval from any sectoral regulators such as the Reserve Bank of India, Securities and Exchange Board of India, etc., the registration or approval, as the case may be from such regulator shall also be obtained and attached with the declaration.”.

3. In the said rules, after rule 39, the following rules shall be inserted, namely:-

**“40.Application under sub-section (41) of section 2 for change in financial year**

(1) The application for approval of concerned Regional Director under sub-section (41) of section 2, shall be filed in **e-Form No.RD-1** along with the fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 and shall be accompanied by the following documents, namely:-

- (a) grounds and reasons for the application;
- (b) a copy of the minutes of the board meeting at which the resolution authorising such change was passed, giving details of the number of votes cast in favour and or against the resolution;
- (c) Power of Attorney or Memorandum of Appearance, as the case may be;
- (d) details of any previous application made within last five years for change in financial year and outcome thereof along with copy of order.

(2) Where the Regional Director on examining the application, referred to in sub-rule (1), finds it necessary to call for further information or finds such application to be defective or incomplete in any respect, he shall give intimation of such information called for or defects or incompleteness, on the last intimated e-mail address of the person or the company, which has filed such application, directing the person or the company to furnish such information, or to rectify defects or incompleteness and to re-submit such application within a period of fifteen days, in e-Form No. **RD-GNL-5**.

Provided that a maximum of two re-submissions shall be allowed.

(3) (a) In case where such further information called for has not been provided or the defects or incompleteness has not been rectified to the satisfaction of the Regional Director within the period allowed under sub-rule (2), the Regional Director shall reject the application with reasons within thirty days from the date of filing application or within thirty days from the date of last re-submission made as the case may be.

(b) In case where the application is found to be in order, Regional Director shall allow and convey the order within thirty days from the date of application or within thirty days from the date of last re-submission, as the case may be.

(c) where no order for approval or re-submission or rejection has been explicitly made by the Regional Director within the stipulated time of thirty days, it shall be deemed that the application stands approved and an approval order shall be automatically issued to the applicant.

(4) The order conveyed by the Regional Director shall be filed by the company with the Registrar in Form No.INC-28 within thirty days from the date of receipt of the order along with fee as provided in the Companies (Registration Offices and Fees) Rules, 2014.

**41. Application under section 14 for conversion of public company into private company.** (1) An application under the second proviso to sub-section (1) of section 14 for the conversion of a public company into a private company, shall, within sixty days from the date of passing of special resolution, be filed with Regional Director in **e-Form No. RD-1** along with the fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 and shall be accompanied by the following documents, namely:-

- (a) a draft copy of Memorandum of Association and Articles of Association, with proposed alterations including the alterations pursuant to sub-section (68) of section 2;

(b) a copy of the minutes of the general meeting at which the special resolution authorising such alteration was passed together with details of votes cast in favour and or against with names of dissenters;

(c) a copy of Board resolution or Power of Attorney dated not earlier than thirty days, as the case may be, authorising to file application for such conversion;

(d) declaration by a key managerial personnel that pursuant to the provisions of sub-section (68) of section 2, the company limits the number of its members to two hundred and also stating that no deposit has been accepted by the company in violation of the Act and rules made thereunder;

(e) declaration by a key managerial personnel that there has been no non-compliance of sections 73 to 76A, 177, 178, 185, 186 and 188 of the Act and rules made thereunder;

(f) declaration by a key managerial personnel that no resolution is pending to be filed in terms of sub-section (3) of section 179 and also stating that the company was never listed in any of the Regional Stock Exchanges and if was so listed, all necessary procedures were complied with in full for complete delisting of the shares in accordance with the applicable rules and regulations laid down by Securities Exchange Board of India:

Provided that in case of such companies where no key managerial personnel is required to be appointed, the aforesaid declarations shall be filed any of the director.

(2) Every application filed under sub-rule (1) shall set out the following particulars, namely:-

(a) the date of the Board meeting at which the proposal for alteration of Memorandum and Articles was approved;

(b) the date of the general meeting at which the proposed alteration was approved;

(c) reason for conversion into a private company, effect of such conversion on shareholders, creditors, debenture holders, deposit holders and other related parties;

(d) details of any conversion made within last five years and outcome thereof along with copy of order;

(e) details as to whether the company is registered under section 8.

(3) There shall be attached to the application, a list of creditors, debenture holders, drawn up to the latest practicable date preceding the date of filing of application by not more than thirty days, setting forth the following details, namely:-

(a) the names and address of every creditor and debenture holder of the company;

(b) the nature and respective amounts due to them in respect of debts, claims or liabilities;

(c) in respect of any contingent or unascertained debt, the value, so far as can be justly estimated of such debt:

Provided that the company shall file an affidavit, signed by the Company Secretary of the company, if any, and not less than two directors of the company, one of whom shall be managing director, where there is one, to the effect that they have made a full enquiry into affairs of the company and, having done so, have formed an opinion that the list of creditors and debenture holders is correct, and that the estimated value as given in the list of the debts or claims payable on contingency or not ascertained are proper estimates of the values of such debts and claims that there are no other debts, or claims against, the company to their knowledge.

(4) A duly authenticated copy of the list of creditors and debenture holders shall be kept at the registered office of the company and any person desirous of inspecting the same may, at any time during the ordinary hours of business, inspect, and take extracts from the same on payment of ten rupees per page to the company.

(5) The company shall, atleast twenty-one days before the date of filing of the application\_

(a) advertise in the **Form No.INC.25A**, in a vernacular newspaper in the principal vernacular language in the district and in English language in an English newspaper, widely circulated in the State in which the registered office of the company is situated;

(b) serve, by registered post with acknowledgement due, individual notice on each debenture holder and creditor of the company; and

(c) serve, by registered post with acknowledgement due, a notice to the Regional Director and Registrar and to the regulatory body, if the company is regulated under any law for the time being in force.

(6) (a) Where no objection has been received from any person in response to the advertisement or notice referred to in sub-rule (5) and the application is complete in all respects, the same may be put up for orders without hearing and the concerned Regional Director shall pass an order approving the application within thirty days from the date of receipt of the application.

(b) Where the Regional Director on examining the application finds it necessary to call for further information or finds such application to be defective or incomplete in any respect, he shall within thirty days from the date of receipt of the application, give intimation of such information called for or defects or incompleteness, on the last intimated e-mail address of the person or the company, which has filed such application, directing the person or the company to furnish such information, to rectify defects or incompleteness and to re-submit such application within a period of fifteen days in e-Form No. **RD-GNL-5**:

Provided that maximum of two re-submissions shall be allowed.

(c) In cases where such further information called for has not been provided or the defects or incompleteness has not been rectified to the satisfaction of the Regional Director within the period allowed under sub- rule (6), the Regional Director shall reject the application with reasons within thirty days from the date of filing application or within thirty days from the date of last re-submission made, as the case may be.

(d) Where no order for approval or re-submission or rejection has been explicitly made by the Regional Director within the stipulated period of thirty days, it shall be deemed that the application stands approved and an approval order shall be automatically issued to the applicant.

(9) (i) Where an objection has been received or Regional Director on examining the application has specific objection under the provisions of Act, the same shall be recorded in writing and the Regional Director shall hold a hearing or hearings within a period thirty days , as required and direct the company to file an affidavit to record the consensus reached at the hearing, upon executing which, the Regional Director shall pass an order either approving or rejecting the application along with reasons within thirty days from the date of hearing, failing which it shall be deemed that application has been approved and approval order shall be automatically issued to the applicant.

(ii) In case where no consensus is received for conversion within sixty days of filing the application while hearing or otherwise, the Regional Director shall reject the application within stipulated period of sixty days:

Provided that the conversion shall not be allowed if any inquiry, inspection or investigation has been initiated against the company or any prosecution is pending against the company under the Act.

(10) On completion of such inquiry, inspection or investigation as a consequence of which no prosecution is envisaged or no prosecution is pending, conversion shall be allowed.

(11) The order conveyed by the Regional Director shall be filed by the company with the Registrar in Form No.INC-28 within fifteen days from the date of receipt of approval along with fee as provided in the Companies (Registration Offices and Fees) Rules, 2014.”.

4. In the said rules, after Form No.INC-20, in annexure, the following forms shall be inserted, namely:-



<b>*To be digitally signed by</b>	<b>DSC BOX</b>
Director	
*Director identification number	
<b>Certificate by practicing professional</b>	
I declare that I have been duly engaged for the purpose of certification of this form. It is hereby certified that I have gone through the provisions of the Companies Act, 2013 and Rules thereunder relevant to this form and I have verified the above particulars (including attachment(s)) from the original records maintained by the Company/applicant which is subject matter of this form and found them to be true, correct and complete and no information material to this form has been suppressed.	
* <input type="radio"/> Chartered accountant (in whole-time practice) or <input type="radio"/> Company secretary (in whole-time practice)	* <input type="radio"/> Cost accountant (in whole-time practice) or <input type="radio"/> Fellow
* Whether associate or fellow <input type="radio"/> Associate	<input type="radio"/> Fellow
* Membership number	<input type="text"/>
* Certificate of practice number	<input type="text"/>
<b>Note: Attention is drawn to provisions of Section 448 and 449 which provide for punishment for false statement / certificate and punishment for false evidence respectively.</b>	
<input type="button" value="Modify"/>	<input type="button" value="Check Form"/>
<input type="button" value="Prescrutiny"/>	<input type="button" value="Submit"/>
<b>This eForm has been taken on file maintained by the registrar of companies through electronic mode and on the basis of statement of correctness given by the company</b>	
..	

5. In the said rules, after form No. INC-25, the following form shall be inserted, namely:-

**“Form No. INC-25A**

**Advertisement to be published in the newspaper for conversion of public company into a private company**

Before the Regional Director, Ministry of Corporate Affairs

\_\_\_\_\_Region

In the matter of the Companies Act, 2013, section 14 of Companies Act, 2013 and rule 41 of the Companies (Incorporation) Rules, 2014

AND

In the matter of \_M/s..... (company name) having its registered office at \_\_\_\_\_, Applicant Notice is hereby given to the general public that the company intending to make an application to the Central Government under section 14 of the Companies Act, 2013 read with aforesaid rules and is desirous of converting into a private limited company in terms of the special resolution passed at the Annual General Meeting/ Extra Ordinary General Meeting held on \_\_\_\_\_ to enable the company to give effect for such conversion.

Any person whose interest is likely to be affected by the proposed change/status of the company may deliver or cause to be delivered or send by registered post of his objections supported by an affidavit stating the nature of his interest and grounds of opposition to the concerned Regional Director (complete address of the Regional Director to be given), within fourteen days from the date of publication of this notice with a copy to the applicant company at its registered office at the address mentioned below:

For and on behalf of the Applicant

.....

Director with DIN

Complete address of registered office

Date.....

Place.....”.

6. In the said rules, after form No. INC-34, the following forms shall be inserted, namely:-

**FORM NO.RD-1**

[Pursuant to the Companies Act, 2013  
and rule 40 and 41 of the Companies  
(Incorporation) Rules, 2014

**Form for filing application to  
Regional Director**

Form language  English  Hindi

**Note – All the fields marked in \* are to be mandatorily filled.**

1.\*(a) Corporate identity number (CIN) of company

Pre-fill

(b) Global location number (GLN) of company

2. (a) Name of the company

(b) Address of the registered office of the company

3.\*Please indicate the purpose of the application

- Rectification of Name  
 Change in financial year  
 Conversion of Public company into a Private company  
 Others

4. Specify 'others'

5. (a) CIN of company against which the application for rectification  
of name is being made

Pre-fill

(b) Name of the company against which the application is made

6.Details as to whether a company registered under section 8 of the Act

yes  No

7. the date of board meeting at which the proposal for alteration of Articles was approved

(a) Date of passing special resolution

(DD/MM/YYYY)

(b) Service request number of Form MGT-14

(c) Date of filing Form MGT-14

(DD/MM/YYYY)

8.\*Details of application

**Attachments**

1. \*Statement of the grounds on which the application is made
2. Copy of board resolution
3. Copy of special resolution
4. \*copy of advertisement
5. List of creditors and debenture holders
6. \*Declaration by KMP on compliance of section 2(68)
7. \*Other declarations
8. Optional attachment(s)- if any

Attach

Attach

**List of Attachments**Remove  
attachment**Declaration**

I am authorized by the Board of Directors of the company vide resolution number \* dated\* (DD/MM/YYYY) to sign this form and declare that all the requirements of the Companies Act 2013 and the rules made thereunder in respect of the subject matter of this form and matters incidental thereto have been complied with. I also declare that all the information given herein above is true, correct and complete including the attachments to this form and nothing material has been suppressed.

\*To be digitally signed by

DSC BOX

\*Designation

\*Director identification number of the director or Managing Director; or DIN or PAN of the Manager/CEO/CFO; or Membership Number of the Company Secretary

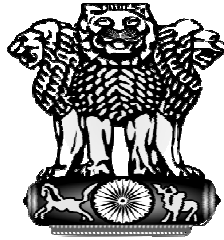
**Note:** Attention is also drawn to provisions of Section 448 and Section 449 of the Companies Act, 2013 which provide for punishment for false statement and false evidence.

Modify	Check Form	Prescribing	Submit
<b>For office use only:</b>			Affix filing details
eForm Service request number (SRN)	<input type="text"/>	eForm filing date	<input type="text"/> (DDMM/YYYY)
<b>Digital signature of the authorising officer</b>			
This e-Form is hereby approved	<input type="text"/>	Confirm submission	
This e-Form is hereby rejected	<input type="text"/>		
Date of signing	<input type="text"/>	(DDMM/YYYY)	



**FORM NO. RD GNL-5** Form for

[Pursuant to rule 40 and 41 of the  
Companies (Incorporation) Rules,  
2014 ]



सत्यमेव जयते

filing Addendum for rectification  
of defects or incompleteness

Form language  English  Hindi

Note - All fields marked in \* are to be mandatorily filled.

1. \* Service Request Number (SRN) of relevant form(s)

(Mention SRN of relevant form(s) in respect of which addendum is being filed. Ensure that correct SRN is mentioned in this field and verify the system displayed details below)

2.(a) Date of SRN  (DD/MM/YYYY)

(b) Form number(s)

3.(a) Corporate identity number(CIN) or Foreign company registration number(FCRN) of the company

(b) Global location number (GLN) of company

4.(a) Name of the company

(b) Address of the registered office or of the principal place of business in India of the company

(c) Name of the person filing form (applicable in case of filing with respect of non company or company yet to be incorporated)

(d)\* E-mail ID

5.(a) Details of the defects pointed out or further information called by the Regional Director or any other competent authority.

(b)\* Details of rectification of the defects or further information furnished

6.(a) SRN of additional(differential) stamp duty payment

**Details of additional(differential) stamp duty**

(b) (i) Amount of stamp duty	<input type="text"/>	Document name	<input type="text"/>
(ii) Amount of stamp duty	<input type="text"/>	Document name	<input type="text"/>
(iii) Amount of stamp duty	<input type="text"/>	Document name	<input type="text"/>

(Ensure that correct type of document is selected from the list of documents given in the drop down below. Maximum five documents can be attached ).

(7) (a) Type of document	<input type="text"/>	<input type="button" value="Attach"/>
(b) Type of document	<input type="text"/>	<input type="button" value="Attach"/>
(c) Type of document	<input type="text"/>	<input type="button" value="Attach"/>
(d) Type of document	<input type="text"/>	<input type="button" value="Attach"/>
(e) Type of document	<input type="text"/>	<input type="button" value="Attach"/>

List of attachments

**Verification**

To the best of my/our knowledge and belief, the information given above and in the attached documents is correct and complete.

**To be digitally signed by**

Director or Managing Director or Manager or CEO or CFO or Company Secretary (in case of existing Company); or Authorized representative (in case of foreign Company); or Authorized person of the bank; or Designated partner of a LLP

Designation

DIN of the director or Managing director; or PAN of the manager or CEO or CFO or Member or Authorized representative or Authorized Person; or Membership number of the Company Secretary; or DIN of the designated partner

Director or Member

Designation

DIN of the director; or DIN/PAN of the Member

Charge holder, Applicant, Promoter, Liquidator, Individual, Partner, Auditor, Partner of auditor's firm

Designation

Income tax PAN or Membership number

ARC or Assignee, Chairman, Person charged, others

Designation

Capacity

DIN or Income tax PAN or Membership number

**Certificate**

It is hereby certified that I have verified the above particulars (including attachment(s)) from the records of

and found them to be true and correct. I further certify that all required attachment(s) have been completely attached to this form.

**Category of professional**

- Chartered accountant(in whole-time practise) or  Cost accountant(in whole-time practise) or  
 Company secretary(in whole-time practise)

Whether associate or fellow  Associate  Fellow

Membership number or Certificate of practice number

**This form is not required to be signed by authorizing officer as this has been filled in respect of an already filled eForm**

[F. No. 1/13/2013 CL-V, Part-I, Vol.II]

K.V.R. MURTY, Jt. Secy.

**Note :** The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R. 250(E), dated the 31<sup>st</sup> March, 2014 and subsequently amended *vide* the following notifications:-

Serial Number	Notification Number	Notification Date
1.	G.S.R. 349 (E)	01-05-2015
2.	G.S.R. 442 (E)	29-05-2015
3.	G.S.R. 99 (E)	22-01-2016
4.	G.S.R.336(E)	23-03-2016
5.	G.S.R.743(E)	27-07-2016
6.	G.S.R.936(E)	01-10-2016
7.	G.S.R.1184 (E)	29-12-2016
8.	G.S.R. 70 (E)	25-01-2017
9.	G.S.R. 955 (E)	27-07-2017
10.	G.S.R. 49 (E)	20-01-2018
11.	G.S.R.284 (E)	23-03-2018
12.	G.S.R. 708 (E)	27-07-2018