

Latest Amendments: Companies (Incorporation) Amendment Rules, 2021

The Ministry of Corporate Affairs, Government of India (“MCA”) notified the Companies (Incorporation) Amendment Rules, 2021 (“Amendment Rules”).

The Amendment Rules modify Rule 41 of the Companies (Incorporation) Rules 2014 (“Rules”) set up a more restrictive regulatory framework for such conversion.

Section 14 of the Companies Act, 2013 permits a company to, by special resolution, carry out amendments to its articles. The second proviso to Section 14(1) mandates that a resolution having the effect of converting a public company into a private company shall not take effect except with the approval of the Central Government. This position has prevailed since 02 November 2018, prior to which approval was required from the National Company Law Tribunal. Rule 41 of the Rules prescribe the procedure for seeking approval from the Central Government, in terms of the second proviso to Section 14(1).

- Rule 41(6)(d) of the Rules was a deeming provision, stipulating that approval for the conversion would be deemed granted where no order of approval, resubmission, or submission of additional details, was made within 30 days of the date of application. This provision has been repealed.
- Rule 41(7) provided that the Regional Director, being the designated officer acting for the Central Government, could hold hearings to decide any issue, where objections were filed to the application or where the Regional Director, *suo motu*, had objections to the proposed conversion. The said Rule, earlier, provided that if no orders were passed within 30 days of the hearing, the application would be deemed granted. The Amendment Rules have eliminated the said deeming provision of sub-Rule 7.
- The Amendment Rules correct two draughtsman's errors in clause (c) of Rule 41(6).
 - I. clause (c) provides for rejection of an application for approval of conversion where defects were not rectified, or information called for was not given within the timeframe stipulated in clause (b) of Rule 41(6). However, instead of referencing clause (b), clause (c) stipulated rejection of the application if the timeframe in sub-rule (6) is not adhered to. This has been rectified in clause (b).
 - II. The Rules, as originally notified, contained sub-rules (9), (10) and (11) after sub-rule (6), *i.e.*, they skipped sub-rules (7) and (8) altogether.

Pertinently, the Amendment Rules renumber sub-rules (9), (10) and (11) as sub-rules (7), (8) and (9).

Consequently, the Amendment Rules provide that approval by deemed fiction, on lapse of stipulated period without orders, is now no longer available.