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Ministry of Finance
(Department of Company Affairs)
NOTIFICATION

New Delhi, the 21st October , 2003

G.S.R. 830 (E).- In exercise of the powers conferred by clause (b) of sub-section (1) of section 642 of the Companies Act, 1956 (1 of 1956), the Central Government hereby makes the following rules to carry out the purpose of clause (g) of sub-section (1) of section 274 of the said Act, namely :-

1. Short title, commencement and extent.-

(1) These rules may be called the **Companies (Disqualification of Directors under section 274(1)(g) of the Companies Act, 1956) Rules, 2003.**

(2) These rules shall come into force from the date of their notification in the Official Gazette.

(3) These rules shall apply to all public limited companies registered under the Companies Act, 1956.

2. Definitions –

In these rules, unless the context otherwise requires, -

(a) "disqualifying company" is the company in which the default has occurred on account of which a director stands disqualified;

(b) "appointing company" is the company in which an individual is seeking appointment as a director, including re-appointment as director.

3. Disqualifications under clause (g) of sub-section (1) of section 274 of the Companies Act, 1956.-

(a) Whenever a company fails to file the annual accounts and annual returns, as described in sub-clause (A) of clause (g) of sub-section (1) of section 274, persons who are directors on the last due date for filing the annual accounts and the annual returns for any continuous three financial years commencing on and after the first day of April, 1999, shall be disqualified.

(b) If a company has failed to repay any deposit, irrespective of the enactment, rules or regulations under which the deposits have been accepted by the companies, or interest thereon, or redeem its debentures, or pay any dividend declared on the respective due dates, and if such failure continues for one year, as described in sub-clause (B) of clause (g) of sub-section (1) of section 274, then the directors of that company shall stand disqualified immediately on expiry of that one year from the respective due dates: Provided that all the directors who have been directors in the relevant year, from the due date to the expiry of one year after the due date, will be disqualified:

Provided further that disqualification on account of the reasons cited under this Rule shall also apply to the reappointment as a director.

Explanation.- For the purpose of this rule, it is clarified that non-payment of dividend referred to in sub-clause (B) of clause (g) of sub-section (1) of section 274 due to the reason of dividend not being claimed or kept in separate bank account as required under section 205A of Companies Act, 1956 or paid into Investors Education & Protection Fund as required under section 205C of that Act shall not be deemed to be a failure to make payment of dividend.

4. Duty of Statutory Auditor to report on disqualification.-

(a) It shall be the duty of statutory auditor of the appointing company as well as disqualifying company, as required under section 227(3)(f) to report to the members of the company whether any director is disqualified from being appointed as director under clause (g) of sub-section (1) of section 274 and to furnish a certificate each year as to whether on the basis of his examination of the books and records of the company, any director of the company is disqualified for appointment as a director or not.

(b) It shall be the duty of the statutory auditors of the "disqualifying company" as required in section 227(3)(f) to report to the members of the company whether any director in the company has been disqualified during the year from being re-appointed as director, or being appointed as director in another company under clause (g), of sub-section (1) of section 274.

5. Duty of company to intimate disqualification.-

Whenever a company fails to file the annual accounts and returns, or fails to repay any deposit, interest, dividend, or fails to redeem its debentures, as described in clauses (A) and (B) of clause (g) of sub-section (1) of section 274, the company shall immediately file a return in duplicate in Form "DD-B", prescribed under these rules for this purpose, to the Registrar of Companies, furnishing therein the names and addresses of all the Directors of the company during the relevant financial years:

Provided that names of such directors who have been exempted from application of Section 274(1)(g) by the Central Government, from time to time, shall be excluded.

Provided further that no unusual abbreviations or short forms shall be used in filling up the Form "DD-B", which shall give such details as may be necessary to distinguish and identify each director without any ambiguity.

6. Failure to intimate disqualification shall render director as officer in default.-

When a company fails to file the Form "DD-B" as above within 30 days of the failure that would attract disqualification under Section 274(1)(g), officers of the company listed in section 5 of the Companies Act, 1956 shall be officers in default.

7. (a) Upon receipt of the Form "DD-B" in duplicate under Rule 5, the Registrar of Companies shall immediately register the document and place one copy of it in the document file for public inspection.

(b) The Registrar of Companies shall forward the other copy to the Central Government.

8. Names of the disqualified directors on the web-site etc.-

(a) The Central Government shall place on the web-site of the Department of Company Affairs the names and addresses and such other details including names and details of the companies concerned, as may be necessary, in respect of all the disqualified directors.

(b) The Central Government may also publicize the names of disqualified directors in such manner as it may consider appropriate.

(c) The Central Government shall take such steps as may be required to update its web-site to ensure that name of the person, in whose respect disqualification period has expired after 5 years, is deleted from the web-site.

9. Duty of every director.-

Every director in a public company registered under the Companies Act, 1956 shall file Form "DD-A", prescribed under these Rules, before he is appointed or re-appointed.

10. If any question arises as to whether these rules are or are not applicable to a particular company, such question shall be decided by the Central Government.

11. Punishment for contravention of the rules.-

If a company or any other person contravenes any provision of these rules for which no punishment is provided in the Companies Act, 1956, the company and every officer of the company who is in default or such other person shall be punishable with fine which may extend to five thousand rupees and where the contravention is a continuing one, with a further fine which may extend to five hundred rupees for every day after the first, during which the contravention continues.

12. On the commencement of these rules, all rules, orders or directions in force in relation to any matter for which provision is made in these Rules shall stand repealed, except as respects things done or omitted to be done before such repeal.

[F. No.1/8/2002-CL.V]

Rajiv Mehrishi,
Joint Secretary

FORM "DD-A"

Companies (Disqualification of Directors under section 274(1)(g) of the Companies Act, 1956)
Rules, 2003

Intimation by Director

[Pursuant to Section 274(1)(g)]

Registration No. of Company _____

Nominal Capital Rs. _____

Paid-up Capital Rs. _____

Name of Company _____

Address of its Registered Office _____

To

The Board of Directors

of _____

I _____ son/daughter/wife of _____ resident of _____
director/managing director/manager in the company hereby give notice that I am/was a director in the
following companies during the last 3 years:-

<u>Name of the Company</u>	<u>Date of Appointment</u>	<u>Date of Cessation</u>
1.....		
2.....		

I further confirm that I have not incurred disqualification under section 274(1)(g) of the Companies Act, 1956 in any of the above companies, in the previous financial year, and that I, at present, stand free from any disqualification from being a director.

or

I further confirm that I have incurred disqualifications under section 274(1)(g) of the Companies Act, 1956 in the following company(s) in the previous financial year, and that I, at present stand disqualified from being a director.

<u>Name of the Company</u>	<u>Date of Appointment</u>	<u>Date of Cessation</u>
1.....		
2.....		

Signature

(Full Name)

Dated this _____ day of _____

FORM "DD-B"

Report by a public company

[Pursuant to Section 274(1)(g) read with rule 5 of Companies (Disqualification of Directors under section 274(1)(g) of the Companies Act, 1956) Rules, 2003]

Registration No. of Company _____
Nominal Capital Rs. _____
Paid-up Capital Rs. _____
Name of Company _____
Address of its Registered Office _____

To
The Registrar of Companies,

It is hereby reported under section 274(1)(g) of Companies Act, 1956, that M/s. _____ have failed to (i) file the annual accounts and annual returns for the last three financial years, or (ii) repay deposits or interest thereon on due date being _____ or redeem its debentures on due date being _____ or pay dividend declared by the company since _____ or both. The period of one year has expired on _____.

The name and address of directors at the relevant period are as under :-

- (a) Directors name in full, without abbreviations
- (b) Directors name as per company records
(abbreviations may be expanded and shown)
- (c) Address of the Director : - (i) Permanent
(ii) Present
- (d) Positions held by the director in the last 5 years, prior to disqualification:

Signature
Designation*
Dated this _____ day of _____

*State whether Director, Managing Director, Manager or Secretary

Note:-

Under sub-clause (A), a person shall not be capable of being appointed as a director of any company, if he is a director of a public company and such public company has not filed the annual accounts and annual returns for any continuous three financial years commencing on and after the first day of April, 1999.

Thus, Failure should be to file both - annual accounts and returns, and failure to file any one of them will not be a failure, as contemplated in sub-clause (A) to attract the disqualification. Also, the failure to file annual returns and annual accounts should be for a period commencing from 1st April, 1999 and not prior to that.

Failure to file annual accounts and annual returns should be for a continuous period of three years. Therefore, any intermittent failures for three years will not attract disqualification.

Also, it is to be noted that the disqualification under sub-clause (A) is for appointment as a director in both public and private companies, but ineligibility for a period of five years under proviso applies for directorship in a public company only. Therefore, a person, who is a director of a public company, which has committed default under sub-clause (A) can be appointed as a director of any private company after he has resigned as a director from the public company, which has committed default or even if he continues to be such director after the public company has filed the annual accounts and annual returns even though belatedly when failure no longer continues.

Section 274 prescribes only the disqualification of a director, while Section 283 prescribes when the office of director shall become vacant. Since Section 283 is not amended, the disqualification u/s 274 (1) (g) will not entail vacation of a office by a director. Only implication will be that he cannot be appointed as a fresh director in any company nor can he be re-appointed after he retires by rotation or otherwise.

Thus, the intention and purpose of the provisions of Section 274 (1) (g) of the Companies Act, 1956 is to disqualify the delinquent director and to induce good corporate governance in the regulation of corporate affairs in the country and not to punish those who are disqualified.