Series
408

PROCESS OF ALTERATION IN FINANCIAL YEAR

REGIONAL DIRECTOR

Section 2(41)

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As per Section 2(41) for change in financial year of Company approval of Tribunal was required:

[1]**By ordinance, 2018:** Power of Tribunal has been transferred to **Central Government.** Therefore, after notification of ordinance Financial Year of Company can be change with approval of Central Government:

MCA on 18th December, 2018 has published Companies (Incorporation) Fourth Amendment Rules, 2018. They shall come into effect from 18th December, 2018.

By these rules MCA amended Rule 40 "application under section 2(41) change in financial year"

Power of Central Government assigned to Regional Director for approval of Change in Financial year of Company.

In this editorial the author shall discuss the process of Change in Financial Year of Company after 02nd November, 2018.

This is article no. 408 of the series of editorials written by the author on corporate laws {Including Companies Act, 2013, SEBI, RBI Regulations, IBC, LLP Act, 2008 etc.}.

Short Summary:

Keeping in view the provisions of Section 137 in relation to **Consolidation of Financial Statement** many companies having foreign subsidiaries or associates required to change its financial year as per foreign company.

Through this brief write up an attempt has been made to unlock the technicalities related to Change in Financial Year of Companies prescribed under Companies Act, 2013.

[1] All the matters filed with NCLT before date of commencement of the Ordinance, 2018 shall be disposed off by the Tribunal in according with earlier provisions.

We believe that the procedure for Change in Financial Year of Companies along with sample resolutions discussed through this article would be of some help for everyone.

REGULATORY REQUIREMENTS:

The procedure for Change in financial year is expounded within the Act with certain statutory requirements such as alteration of Articles of Association (AOA) of the company.

Legal Provisions related to Change in financial year are given in Section 2(41) of the Companies Act, 2013 read with Rule 40 of Companies (Incorporation) [2]Rules, 2014.

RELEVANT SECTIONS & RULES OF THE ACT:

1. Section 2(41): It provides for Financial Year.
2. Rule 40 of Companies (Incorporation) Fourth Amendment Rules, 2018: Application under sub-section (41) of section 2 for change in financial year.

EXTRACT OF PROVISION:

financial year", in relation to any company or body corporate, means the period ending on the 31st day of March every year, and where it has been incorporated on or after the 1st day of January of a year, the period ending on the 31st day of March of the following year, in respect whereof financial statement of the company or body corporate is made up:

[2] Companies (Incorporation) Fourth Amendment Rules, 2018

Provided that where a company or body corporate, which is a holding company or a subsidiary or associate company of a company incorporated outside India and is required to follow a different financial year for consolidation of its accounts outside India, the Central Government may, on an application made by that company or body corporate in such form and manner as may be prescribed, allow any period as its financial year, whether or not that period is a year:

DETAILED PROCEDURE FOR CONVERSION OF PUBLIC COMPANY INTO PRIVATE COMPANY:

FIRST STEP:

STEP – I: Convey Board Meeting of Directors: (As per section 173 and SS-1)

To Pass a board resolution to get in principal approval of Directors for Change in Financial Year subject to the approval of Central Government (Power of Central Government assigned to RD).

STEP –II: Held Board Meeting: (As per section 173 and SS-1)

- To consider In-principal approval Change in Financial Year by altering Articles.
- Get Approval to Alteration in Article of Association and recommending the proposal for members' consideration by way of special resolution.
- Fixing the date, time, and venue of the general meeting and authorizing a director or any other person to send the notice for the same to the members.

- To approve Notice of EGM along with explanatory statement to be annexed with the notice as per Section 102(1) of the Act.

STEP- III: Issue Notice of General Meeting: (Section 101)

Notice of EGM **shall** be given at least 21 days before the actual date of EGM. EGM can be called on Shorter Notice with the consent of atleast majority in number and ninety five percent of such part of the paid up share capital of the company giving a right to vote at such a meeting:

- All the Directors.
- Members
- Auditors of Company

The notice shall specify the place, date, day and time of the meeting and contain a statement on the business to be transacted at the EGM

SECOND STEP:

STEP- IV: Hold General Meeting: (Section 101)

- Check the Quorum.
- Check whether auditor is present, if not. Then Leave of absence is Granted or Not. (As per Section- 146).
- Pass Special Resolution.[Section-114(2)]
- Approval of Alteration in AOA for Change in Financial Year

STEP- V: Filing of form with ROC: (Section 117)

File Form MGT-14 (Filing of Resolutions and agreements to the Registrar under section117) with the Registrar along with the requisite filing within 30 days of passing the special resolution, along with given documents:-

- Certified True Copies of the Special Resolutions along with explanatory statement;
- Copy of the Notice of meeting send to members along with all the annexure;

- A printed copy of the Altered Article of Associations.

Note: It is relevant to note that First you have to file form MGT.14

THIRD STEP:

STEP- VI: Drafting an Filing of Application with Regional Director (in Form RD-1)-

Application in Regional Director shall be file at within 60 days from passing of Special Resolution in e-form RD-1.

APPLICATION SHALL BE ACCOMPANIED BY FOLLOWING DOCUMENTS:

Following documents are required to be attached with application for change in financial year under Section 2(41) of the Act:

- Copy of articles of association with proposed alterations
- Copy of Minutes of General Meeting (mentioning details of votes cast in favour or against)
- Copy of Attendance Sheet of General Meeting
- Copy of Minutes of Board Meeting.
- Certified true copy of Board Resolution.
- Power of Attorney or Memorandum of Appearance
- Details of any previous application made within last five years for change in financial year and outcome thereof along with copy of order, if any.

APPLICATION SHALL MENTIONED FOLLOWING INFORMATION:

- Grounds and reasons for the Application.

FOURTH STEP:

File Form **RD-1** with the Regional Director with all the above mentioned annexure like:

- MOA & AOA
- General Meeting Minutes and Attendance Sheet
- Copy of Board Minutes along with CTC of Board Resolution

FORM REQUIRED FILING WITH ROC: File e-form INC-28 with ROC within 30 days of confirmation of change in financial year from Regional Director.

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