

Application of section 159 to Foreign Companies Rules, 1975

CONTENTS

1. Short title and commencement
2. Definitions
3. Adaptation of section 159 in its application to foreign companies
4. Penalty

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¹1 . See section 600(3)(b)(i) of the Companies Act, 1956. In exercise of the powers conferred by sub-clause (i) of clause (b) of sub-section (3) of section 600, read with section 642 of the Companies Act, 1956 (1 of 1956), the Central Government hereby makes the following Rules, namely.-

1. Short title and commencement :-

(1) These Rules may be called the Application of section 159 to Foreign Companies Rules, 1975.

(2) They shall come into force on the date of their publication in the Official Gazette.¹

1. Published in the Gazette of India, Extraordinary, Part II, section 3(0), page 267, dated 20, February, 1975.

2. Definitions :-

In these Rules, unless the context otherwise requires,-

(a) "Act" means the Companies Act, 1956 (1 of 1956);

(b) "foreign company" has the meaning assigned to it by section 591 ;

(c) "section" means a section of the Act; and

(d) "specified day" means the last day of the financial year of the foreign company.

3. Adaptation of section 159 in its application to foreign

companies :-

The provisions of section 159 shall, in its application to a foreign company, apply subject to the following modifications and adaptations, namely.- In section 159 ,-

(A) for sub-section (1), the following sub-section shall be substituted, namely:-

"(1) Every foreign company having a share capital shall in each year prepare and file with the Registrar, within sixty days from the last day of its financial year, a return containing the particulars, as on that day, regarding the following matters, namely:-

- (i) the address of the registered or principal office of the company;
- (ii) if any part of the register of members or debenture-holders of the company is kept in India, the address of the place where such part of the register is kept;
- (iii) the shares issued for cash, bonus shares, and shares (other than bonus shares) issued (otherwise than for cash) as fully or partly paid-up shares, and the following particulars shall be specified in respect of each such class of shares.-
 - (a) the amount of the nominal share capital of the company and the number of shares into which it is divided;
 - (b) the number of shares taken, from the incorporation of the company up to the specified day;
 - (c) the amount called up on each share up to the specified day;
 - (d) the total amount of calls received up to the specified day;
 - (e) the total amount of calls unpaid on the specified day;
 - (f) the total amount of the sums (if any) paid by way of commission in respect of any shares or debentures up to the specified day;
 - (g) the discount allowed on the issue of any shares issued at a discount or so much of that discount as has not been written off on the specified day;
 - (h) the total amount of the sums (if any) allowed by way of discount in respect of any debentures since the last day of the financial year with reference to which the last return was submitted;

(i) the total number of shares forfeited up to the specified day;

(j) the total amount of shares for which share warrants are outstanding on the specific day and of share warrants issued and surrendered respectively since the day referred to in sub-clause (h) and the number of shares comprised in each warrant;

(k) the total amount of the indebtedness of the company on the specified day in respect of all charges (including mortgages), on properties in India, requiring registration under section 600 ;

(i) the names, addresses, descriptions and occupations, if any, of all persons, who, on the specified day are members or debenture-holders of the company, and of persons who have ceased to be members or debenture-holders on or before the specified day and since the day referred to in sub-clause (h),

(m) the number of shares or debentures held by each of the existing members or debentures-holders, as the case may be, on the specified day, specifying the number of shares or debentures transferred since the day referred in sub-clause (h), by persons who are still members or debenture-holders and by persons who have ceased to be members or debenture-holders respectively, and the dates of registration of transfers and the names of transferees shall be arranged in the alphabetical order;

(n) the persons who on the specified day are the directors, managing director, manager or Secretary of the company and persons who had ceased to hold such offices on or before that day and since the day referred to in sub-clause (h): Provided that if any of the two immediately preceding returns has given as at the last day of the financial .year with reference to which it was submitted, the full particulars required as to past and present members and the shares held and transferred by them, the return in question may contain only such of the particulars as relate to persons ceasing to be or becoming members since that day and to shares transferred since that day or to changes as compared with that day as to the number of shares held by a member,"

3"(iv) The Forms prescribed in these rules may be filed through electronic media or through any other computer readable media as referred under Section 610-A of the Companies Act, 1956 (1 of 1956).

(v) The electronic form shall be authenticated by the authorized

signatories using digital signatures, as defined under the Information Technology Act, 2000 (21 of 2000).

(vi) The Forms prescribed in these rules, when filed in physical form, may be authenticated by authorized signatory by affixing his signature manually."

(B) for sub-section (2) and the proviso thereto, the following sub-section shall be substituted, namely.-

"(2) The said return shall be in the Form set out in Part II of Schedule V (as applicable to the foreign company under these Rules) or as near thereto as circumstances admit."

(C) In Schedule V, for Part II, the following shall be substituted, namely:- PART 2 FORM⁴

In the Foreign Companies Rules, 1975. in Rule 3, in Section 159 as modified by the said rule, in sub-section (1), after Clause (iii), the following clauses shall be inserted, namely: "(iv) The Forms prescribed in these rules may be filed through electronic media or through any other computer readable media as referred under Section 610-A of the Companies Act, 1956 (1 of 1956). (v) The electronic form shall be authenticated by the authorized signatories using digital signatures, as defined under the Information Technology Act, 2000 (21 of 2000). (vi) The Forms prescribed in these rules, when filed in physical form, may be authenticated by authorized signatory by affixing his signature manually.". by the Application of Section 159 to Foreign Companies (Amendment) Rules, 2006.

In the Foreign Companies Rules, 1975, in the Form in Part II, shall be substituted, by the Application of Section 159 to Foreign Companies (Amendment) Rules, 2006.

4. Penalty :-

(1) If a foreign company fails to comply with any provisions contained in these Rules, the company, and every officer of the company in default, shall be punishable with fine which may extend to five hundred rupees, and, where the contravention is a continuing one, with a further fine which may extend to fifty rupees for every day, after the first during which such contravention continues.

(2) For the purposes of these Rules, "every officer of the company in default" means the person or persons whose names and addresses have been delivered to the Registrar under clause (d) of sub-section (1) of section 592 .

