

Know Your Directors now!

-KYC of directors by MCA

By

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The Ministry of Corporate Affairs (MCA) vide its notification Companies (Appointment and Qualification of Directors) Fourth Amendment Rules, 2018 (Amendment Rules) dated 5th July, 2018¹ notified amendment with relation to *inter-alia* sections 149, 150, 151, 152 read with the relevant Rules which was followed by the news flashed on the MCA portal. The buzzing change is one with respect to filing of updated KYC of directors vide DIR 3 KYC.

The Rules have come into effect on and from 10th July, 2018.

Why DIR 3 KYC?

In its attempt to zero down on the shell companies including identification of shadow directors and eliminating the menace of black money, this seems to be another move by MCA, wherein MCA would be updating its registry with respect to KYC of all existing directors of companies registered with the Registrar of Companies (RoC), thereby causing removal of the dummy directors from the board since the requirements for filing DIR 3 KYC are more actual such as own personal Id and mobile number, which many may not even have. As of now this seems the whole purpose of the introducing the provision.

Below are set of questions to answer the queries related to the compliance to be made:

Who all have to file DIR-3 KYC?

For immediate compliance, *every* director who has been allotted DIN on or before 31st March, 2018 and whose DIN status is 'Approved'. This apart every director allotted DIN as on 31st March of a year needs to file by April of the immediate next year.

Whether Disqualified Directors required filing DIR-3 KYC?

Yes, filing of DIR-3 KYC would be mandatory for disqualified directors also.

Mr. A is not a director in a company but is a partner in an LLP, will he be required to file DIR 3 KYC?

Yes, since the partners of LLP are also holding DIN.

¹ The notification can be read on:

http://www.mca.gov.in/Ministry/pdf/CompaniesAppointmentQualificationRules_06072018.pdf

What is due date of filing of DIR-3 KYC?

For immediate compliance the due date of filing of DIR-3 KYC is on or before 31st August, 2018.

What is the pre-requisite for filing of DIR 3 KYC?

The Digital Signature (DSC) of the director to be used should be PAN based, i.e. the DSC should match with the PAN as specified in the form.

In case of foreign nationals, the applicant's name in DSC would be matched with the name entered while filing of form DIR 3 KYC.

Where, either the PAN or the name does not match with the PAN/name entered in the e-form, the applicant would be required to get a fresh DSC with the PAN/name as specified in the e-form. However, if there is a mismatch in the PAN details then the director would be required to first get his OAN rectified with the Income Tax department.

What the mandatory requirements for filing are of form DIR-3 KYC?

Apart from the DSC what is most important now is the:

- Unique Personal Mobile Number (therefore, two DINs cannot be registered under same number)
- Personal Email ID
- DSC of the director

Since an OTP will be sent on email ID and Mobile No. of the director, therefore, one needs to ensure to give their personal details only in the e-forms. Therefore, one needs to recheck the email ids registered at the time of filing of DIR 3 as well if the same is same or not, though this system is anyways for updation of the KYC.

Further, we need to realize that many senior directors who hold good experience may not be very technology savvy and therefore at times may even not have an email id especially the non-executive directors. Therefore, in such situations it is difficult as may be a mail id will have to be first created and then filing of form would be required. Likewise there may be many persons who by choice may not have one, therefore, those will also have to comply with the same. This is a difficult compliance when it comes to large listed company especially with foreign directors on board.

What are the documents to be annexed to DIR-3 KYC?

- a. Proof of address
- b. Proof of residence
- c. Further, passport is mandatory in case of foreign nationals.
- d. In case of foreign nations, the documents should be attested by relevant authorities as the professional certifying the form will certify on the same basis. Therefore, whether the same will be apostilled or consularised is not sure as of now.

Who has the onus of compliance?

The responsibility of filing DIR 3 KYC is of the Applicant. However, since the same has come by way of the amendment rules which have force on the Company therefore, the company or the LLP in question needs to ensure that the compliance is done within time.

Who is required to certify DIR-3 KYC?

Apart from the director himself, the form has to be also certified by a practicing professional who is either a practicing Company Secretary or a Chartered Accountant or a Cost Accountant.

What is the certification about?

While the applicant certifies that he the particulars entered by him in the DIR 3 KYC is correct including that the mobile no. and email id belong to him personally and he does not hold any other DIN, the professional certifying the form has to verify that the identification proof and residential proof and details entered therein are matched with the originals. He has to further certify that the mobile number and the email id belong to the Applicant and that the documents attached are also legible.

Therefore, considering that non-compliance may attract the provisions of section 448 of the Companies Act, 2013 one needs to be additionally caution about the above verifications and procure necessary certificate/representation letter from the Applicant.

Is there any fee for filing of DIR 3 KYC?

There is no fees payable for filing upto 31st August, 2018.

Is there any fee for filing beyond 31st August, 2018?

Yes, after 31st August, 2018 one will have to pay Rs. 5000 as additional fees for filing of DIR 3 KYC.

What are the consequences of non-filing of DIR 3 KYC?

After expiry of the due date the Central Government or the Regional Director (Northern Region) or any other officer authorized by the Central Government or the Regional Director (Northern Region), shall deactivate the DIN as 'Non-filing of DIR 3 KYC'. The same is provided in sub-rule (1) of the Amendment Rules.

What are the consequences of filing of DIR 3 KYC after due date?

After the due date, i.e. 31st August, 2018, filing of DIR-3 KYC in respect of such deactivated DINs shall be allowed upon payment of a additional fees of Rs. 5000/-, without prejudice to any other action that may be taken.

What is the difference between DIR-3 Form and DIR 3 KYC Form?

DIR 3 KYC form will be a new form that is different from the DIR 3 form. While the DIR 3 form is used to generate DIN, DIR 3 KYC form would be used to complete KYC procedure each year. Further, it can be ascertained from the MCA notification that DIR-3 KYC form would have to be filed every year.

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[Recent changes to the Company incorporation process has made DIR-3 form not applicable for obtaining DIN during new company incorporation, as DIN is automatically issued under SPICe Form.]

Is filing of DIR 3 KYC a continuous compliance?

Pursuant to Rule 12A as inserted vide the Amendment Rules, every director having DIN as on 31st March of a financial year *shall* submit e-form DIR 3 KYC to the Central Government on or before 30th April of immediate next financial year. Accordingly, every director/LLP Partner who is issued a new DIN during the year and holds it in approved status as son 31st March needs to comply with the said requirement by 30th April of the immediate next financial year.

Actions to be taken now

- To match the email id and telephone number of the directors/LLP partners with DIR 3 form/SPICe forms to ensure the details are same.
- To ensure that each director has a DSC and the same is registered
- If not, to immediately apply for DSC and given the lengthy procedure of DSC application with the recent changes one needs to act fast.
- To immediately inform all the directors with respect to the said compliance and seek their time for confirmation of OTP.

Conclusion

While the same is a welcome move keeping in mind that KYC needs to be updated just the way we update our PAN and Aadhaar, but what is to be seen is the difficulty in compliance by the compliance officers. Further, if the form is made publicly available while inspection of public inspection then the information such as mobile number which should be privy would be made publicly available which may be misused in many ways.

Contact US

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