



NEW ANNUAL KYC CHECK REQUIREMENT FOR INDIVIDUALS HOLDING DIRECTOR IDENTIFICATION NUMBER

In 2006, the Indian government introduced the concept of a director identification number (“**DIN**”), and consequently, an individual could be appointed as a director of a company only if he or she had obtained a DIN. A DIN is allotted by the Ministry of Corporate Affairs upon receipt of an application in a prescribed form listing the personal information of the person, namely, the full name, the current and permanent residential address, the telephone number, the e-mail address, the date and place of birth, the occupation, the educational qualifications, and the nationality. Once the DIN is allotted, the individual is eligible to be appointed as a director of Indian companies.

Recently, the Indian government has released a new annual KYC check requirement for individuals holding a DIN. As on March 31 every year, any individual who has obtained a DIN from the Indian government will be required to file e-form DIR-3 KYC (the “**KYC Form**”) with the Registrar of Companies. For individuals who have a DIN as on March 31, 2018, the KYC Form has to be filed by August 31, 2018. For every subsequent year, the KYC Form will have to be filed by April 30 of that year.

In the KYC Form, all details provided at the time of applying for the DIN, including copies of the identity proof and the current residential address proof have to be furnished again. Once the KYC Form is filed, a one-time password will be sent on the registered e-mail address and the phone number of the applicant, which will have to be keyed in the system to complete the process. The KYC Form has to be filed using the digital signature certificate (“**DSC**”) of the individual obtained from Indian authorized agencies.

If an individual fails to file the KYC Form within the prescribed date, his or her DIN will be deactivated, which means that he or she will no longer be eligible to act as a director, and any current directorships held by the individual will be deemed to have been automatically vacated pursuant to Section 167 of the Companies Act, 2013. The deactivated DIN may be activated once again upon payment of a penalty of INR5,000 (approx. US\$77) and filing the KYC Form.

Our comments

In recent years, a number of new reporting requirements have been introduced under Indian company and foreign investment laws, and many existing reporting requirements have been made more extensive and detailed. Already directors of Indian companies are required to provide to the companies on whose boards they sit, a disclosure of interest and a declaration of no disqualification every financial year. To add to these existing reporting requirements, the KYC Form seems unnecessary and burdensome.

Further, the requirement that the KYC Form has to be filed using the DSC of the individual is likely to cause more inconvenience, as all individuals having a DIN may not have an active DSC. This is because having a DSC is not a mandatory requirement for being appointed as a director of an Indian company. Therefore, if an individual has a DIN but not a DSC, he or she will first have to obtain a DSC from authorized Indian agencies prior to filing the KYC Form.

Furthermore, this requirement has been made applicable to all individuals holding a DIN and not just to individuals who are currently directors of Indian companies. Therefore, if an individual is currently not a



director of any Indian company, he or she will still have to file the KYC Form if he or she anticipates that he or she may be a director of an Indian company in the future.

Please let us know if you need any clarifications or assistance in filing the KYC Form.