

Supplement for
COMPANY LAW
Executive Programme (Old Syllabus)
June – 2020 Examination

This supplement is for Executive programme (Old Syllabus). The students are advised to read their Study Material along with these updates. These academic updates are to facilitate the students to acquaint themselves with the amendments in various laws and regulatory prescriptions upto December, 2019, applicable for June, 2020 Examination. The students are advised to read all the relevant regulatory amendments made applicable upto December, 2019 along with the study material. In the event of any doubt, students may write to the Institute for clarifications at academics@icsi.edu

Disclaimer

These Academic Updates have been prepared purely for academic purposes only and it does not necessarily reflect the views of ICSI. Any person wishing to act on the basis of these Academic Updates should do so only after cross checking with the original source. This document is released with an understanding that the Institute shall not be responsible for any errors, omissions and/or discrepancies or actions taken in that behalf.

Students are advised to read the Companies Act, 2013 along with the Companies (Amendment) Act, 2019 and Rules made thereunder.

It is to be noted that The Companies (Amendment) Ordinance, 2018 was promulgated by the President on the 2nd day of November, 2018 and to give continued effect to the provisions of the Companies (Amendment) Ordinance, 2018, the Companies (Amendment) Ordinance, 2019 was promulgated on the 12th day of January, 2019; further to give continued effect to the provisions of the Companies (Amendment) Ordinance, 2019; the Companies (Amendment) Second Ordinance, 2019 was promulgated on the 21st February, 2019 and finally the Companies (Amendment) Act was notified on 31st July, 2019.

The provisions of Companies (Amendment) Act, 2019, except sections 6, 7 and 8, clauses (i), (iii) and clause (iv) of section 14, sections 20 and 21, section 31, sections 33, 34 and 35, sections 37 and 38 shall be deemed to have come into force on the 2nd day of November, 2018.

LESSON WISE UPDATES FOR THE SUBJECT COMPANY LAW

| Lesson 3: Promotion and Incorporation of Companies | |
|--|--|
| The Companies (Incorporation) Third Amendment Rules, 2019 (effective from 29 th March, 2019) | 38A. Application for registration of Goods and Service Tax Identification Number (GSTIN), Employee State Insurance Corporation (ESIC) registration and Employees' Provident Fund Organisation (EPFO) registration The application for incorporation of a company under rule 38 shall be accompanied by e-form AGILE (INC-35) containing an application for registration of the following numbers, namely:- (a) GSTIN with effect from 31st March, 2019 (b) EPFO with effect from 8th April, 2019 (c) ESIC with effect from 15th April, 2019 For further details visit link: https://www.mca.gov.in/Ministry/pdf/companiesINC3rdAmendmentRules_30032019.pdf |
| The Companies (Incorporation) 6th Amendment Rules, 2019 (notification date 7 th June 2019) (effective from 15 th August, 2019) | Rule-19 of the Companies (Incorporation) Rules, 2014- License Under Section 8 for New Companies With Charitable Objects etc. (1) in sub-rule (1), for the word and figures Form No.INC.12 <i>the following shall be substituted namely,</i> Form No.INC-32(SPICE). (2) in sub-rule (3), clause (a) |

| | |
|--|--|
| | <p>the draft memorandum</p> <p><i>the following shall be substituted namely,</i></p> <p>the memorandum.</p> <p>(3) in sub-rule (3), clause (b)</p> <p>the draft memorandum</p> <p><i>the following shall be substituted namely,</i></p> <p>the memorandum</p> <p>(4) in Form no.INC-11, in the heading, after the words and figures “sub-section (2) of section 7”, the words and figures “and sub-section (1) of section 8” shall be inserted.</p> <p>For further details visit Link</p> <p>https://www.mca.gov.in/Ministry/pdf/Rules_07062019.pdf</p> |
| <p>The Companies (Amendment) Act, 2019</p> <p>(effective from 02nd November, 2018)</p> | <p>Insertion of new section 10A. Commencement of business, etc</p> <p>A company incorporated after the commencement of the Companies (Amendment) Act, 2019 and having a share capital shall not commence any business or exercise any borrowing powers unless—</p> <p>(a) a declaration in Form No-INC-20A is filed by a director within a period of one hundred and eighty days of the date of incorporation of the company in such form and verified in such manner as may be prescribed, with the Registrar that every subscriber to the memorandum has paid the value of the shares agreed to be taken by him on the date of making of such declaration; and</p> <p>(b) the company has filed with the Registrar a verification of its registered office as provided in sub-section (2) of section 12.</p> <p>(2) If any default is made in complying with the requirements of this section, the company shall be liable to a penalty of fifty thousand rupees and every officer who is in default shall be liable to a penalty of one thousand rupees for each day during which such default continues but not exceeding an amount of one lakh rupees.</p> <p>(3) Where no declaration has been filed with the Registrar under clause (a) of sub-section (1) within a period of one hundred and eighty days of the date of incorporation of the company and the Registrar has reasonable cause to believe that the company is not carrying on any business or operations, he may, without prejudice to the provisions of sub-section (2), initiate action for the removal of the name of the company from the register of</p> |

| | |
|--|---|
| | <p>companies under Chapter XVIII.”</p> <p>Impact of Amendment <i>Re-introduction of section 11 omitted under the Companies (Amendment) Act, 2015 (after doing away with the requirements of minimum paid up capital) to provide for a declaration by a company having share capital before it commences its business or exercises borrowing power.</i></p> <p>For further details visit the: https://www.mca.gov.in/Ministry/pdf/AMENDMENTACT_01082019.pdf</p> |
| <p>The Companies (Incorporation) Eighth Amendment Rules, 2019</p> <p>(effective from 16th October, 2019)</p> | <p>Rule 8A of the Companies (Incorporation) Rules, 2014- Undesirable names.-</p> <p>As per sub-rule (1), in clause (b)- save as provided in section 35 of the Trade Marks Act, 1999 (47 of 1999), the name includes a trade mark registered under the Trade Marks Act, 1999 and the rules framed thereunder in the same class of goods or services in which the activity of the company is being carried out or is proposed to be carried out, unless the consent of the owner or applicant for registration, of the trade mark, as the case may be, has been obtained and produced by the promoters.</p> <p>In above stipulated rule, the words and figure “or applicant for registration,” shall be omitted.</p> <p>Impact of Amendment <i>-In Rule 8A, the name of the company is undesirable if the name includes a trade mark registered under the Trade Marks Act, 1999 and the rules framed thereunder. However, if only the consent of the owner of the trade mark has been obtained and produced by the promoters, the name is not undesirable and can be allocated to a company.</i></p> <p>For further details visit Link: https://www.mca.gov.in/Ministry/pdf/CompIncEighthAmndtRules_18102019.pdf</p> |
| <p align="center">Lesson 4:Memorandum of Association and Articles of Association</p> | |
| <p>The Companies (Incorporation) Eighth Amendment Rules, 2019</p> <p>(effective from 16th October, 2019)</p> | <p>Rule 28 of the Companies (Incorporation) Rules, 2014- Shifting of Registered office within the same State:</p> <p>In the said rule 28, after sub-rule (1), <i>the following rules shall be inserted, namely.-</i></p> <p>(2) The Regional Director shall examine the application referred to in sub-rule (1) and the application may be put up for orders without hearing and the order either approving or rejecting the application shall be passed within fifteen days of the receipt of</p> |

| | |
|---|---|
| | <p>application complete in all respects.</p> <p>(3) The certified copy of order of the Regional Director, approving the alteration of memorandum for transfer of registered office company within the same State, shall be filed in Form No.INC-28 along with fee with the Registrar of State within thirty days from the date of receipt of certified copy of the order.</p> <p>Impact of the Amendment- <i>In Rule 28, there is an insertion of two sub rules viz. sub rule (2) & sub rule (3), after sub rule (1).</i></p> <p><i>In Sub rule (2), to speed up the entire process, the application for change in registered office address of the company within same state, may be put up with the RD (Regional Director) without hearing, & the decision on the same shall be provided within a period of 15 days from the receipt of complete application.</i></p> <p><i>Sub rule (3) directs filing of order by the RD in Form INC 28 along with requisite fees within 30 days from the date of receipt of the certified copy of the order from RD.</i></p> <p>For further details visit Link: https://www.mca.gov.in/Ministry/pdf/CompIncEighthAmndtRules_18102019.pdf </p> |
| Lesson 5: Contracts and Conversions | |
| <p>The Companies (Amendment) Act, 2019</p> <p>(effective from 02nd November 2018)</p> | <p>In section 14-Alteration of Articles</p> <p>under sub-section (1), for the second proviso,</p> <p>Provided further that any alteration having the effect of conversion of a public company into a private company shall not take effect except with the approval of the Tribunal which shall make such order as it may deem fit.</p> <p><i>the following provisos shall be substituted, namely:</i></p> <p>“Provided further that any alteration having the effect of conversion of a public company into a private company shall not be valid unless it is approved by an order of the Central Government on an application made in such form and manner as may be prescribed.</p> <p>Provided also that any application pending before the Tribunal, as on the date of commencement of the Companies (Amendment) Act, 2019, shall be disposed of by the Tribunal in accordance with the provisions applicable to it before such commencement.”;</p> <p>(ii) in sub-section (2), for the word “Tribunal”, the words</p> |

| | |
|--|--|
| | <p>“Central Government” shall be substituted.</p> <p>Impact of Amendment: <i>Shifting the power from Tribunal to Central Government delegated to Regional Director for approving application for Alteration of AoA for conversion of a public company to a private company.</i></p> <p>For further details visit Link: https://www.mca.gov.in/Ministry/pdf/AMENDMENTACT_01082019.pdf </p> |
| Lesson 6: Concept of Capital and Financing of Capital | |
| <p>The Companies (Prospectus and Allotment of Securities) Amendment Rules, 2019</p> <p>(effective from 22nd January, 2019)</p> | <p>Rule 9A of The Companies (Prospectus and Allotment of Securities) Rules, 2014</p> <p>Issue of securities in dematerialised form by unlisted public companies</p> <p>This rule shall not apply to an unlisted public company which is:-</p> <p>(a) a Nidhi;</p> <p>(b) a Government company or</p> <p>(c) a wholly owned subsidiary.</p> <p>Impact of Amendment</p> <p><i>Above mentioned rule for the mandatory Issue of securities in dematerialised form by unlisted public companies shall not apply to an unlisted public company which is:-</i></p> <p>(a) a Nidhi;</p> <p>(b) a Government company or</p> <p>(c) a wholly owned subsidiary.</p> <p>For further details visit Link: https://www.mca.gov.in/Ministry/pdf/CompaniesProspectusAllotmentRule_23012019.pdf </p> |
| <p>The Companies (Prospectus and Allotment of Securities) Third Amendment Rules, 2019</p> <p>(effective from 30th September, 2019)</p> | <p>Rule 9A of The Companies (Prospectus and Allotment of Securities) Rules, 2014</p> <p>Issue of securities in dematerialised form by unlisted public companies</p> <p>in sub-rule 7, for the word and figures</p> <p>Regulations, 1996</p> <p><i>the following shall be substituted namely,</i></p> <p>Regulations, 2018</p> <p>For further details visit Link: https://www.mca.gov.in/Ministry/pdf/Rules_23052019.pdf </p> |

| | |
|--|---|
| <p>The Companies (Prospectus and Allotment of Securities) Third Amendment Rules, 2019</p> <p>(effective from 30th September, 2019)</p> | <p>Rule 9A of The Companies (Prospectus and Allotment of Securities) Rules, 2014</p> <p>Issue of securities in dematerialised form by unlisted public companies</p> <p>in sub-rule 8,</p> <p>The audit report provided under regulation 55A of the securities and Exchange Board of India (Depositories and participants) Regulations, 1996 shall be submitted by the unlisted public company on a half-yearly basis to the Registrar under whose jurisdiction the registered office of the company is situated.</p> <p><i>the following sub-rule shall be substituted namely,</i></p> <p>(8) Every unlisted public company governed by this rule shall submit Form PAS-6 to the Registrar with such fee as provided in Companies (Registration Offices and Fees) Rules, 2014 within sixty days from the conclusion of each half year duly certified by a company secretary in practice or chartered accountant in practice.</p> <p>(8A) The company shall immediately bring to the notice of the depositories any difference observed in its issued capital and the capital held in dematerialised form.</p> <p>Impact of Amendment</p> <p><i>Introduction of new form PAS-6 to be filed with registrar within sixty days from the conclusion of each half year by unlisted Public Company.</i></p> <p><i>The Company shall immediately inform registrar regarding any difference observed in its issued capital and the capital held in dematerialised form.</i></p> <p>For further details visit Link: https://www.mca.gov.in/Ministry/pdf/Rules_23052019.pdf</p> |
| <p>The Companies (Amendment) Act, 2019,</p> <p>(effective from 02nd November 2018)</p> | <p>Section 53-Prohibition on Issue of Shares at Discount</p> <p>for sub-section (3),</p> <p>Pre Amendment</p> <p>Where a company contravenes the provisions of this section, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every officer who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than one lakh rupees but</p> |

| | |
|--|--|
| | <p>which may extend to five lakh rupees, or with both.</p> <p>Post Amendment</p> <p><i>the following sub-section shall be substituted, namely:—</i></p> <p>“(3) Where any company fails to comply with the provisions of this section, such company and every officer who is in default shall be liable to a penalty which may extend to an amount equal to the amount raised through the issue of shares at a discount or five lakh rupees, whichever is less, and the company shall also be liable to refund all monies received with interest at the rate of twelve per cent. per annum from the date of issue of such shares to the persons to whom such shares have been issued.”</p> <p>Impact of Amendment-</p> <p><i>Non-compliance with sub-section (3) of Section 53 shall result in the company and any officer in default being liable to a penalty, instead of being punishable with fine or imprisonment or with both.</i></p> <p>For Further details visit link</p> <p>https://www.mca.gov.in/Ministry/pdf/AMENDMENTACT_01082019.pdf</p> |
| <p>The Companies (Share Capital and Debentures) Amendment Rules, 2019</p> <p>(effective from 16th August, 2019)</p> | <p>1) Rule 4 of The Companies (Share Capital and Debentures) Rules, 2014 - Equity Shares With Differential Rights</p> <p>in sub-rule (1), for clause (c)</p> <p>(c) the shares with differential rights shall not exceed twenty-six percent of the total post-issue paid up equity share capital including equity shares with differential rights issued at any point of time;</p> <p><i>the following shall be substituted namely:-</i></p> <p>(c) the voting power in respect of shares with differential rights of the company shall not exceed seventy four per cent. of total voting power including voting power in respect of equity shares with differential rights issued at any point of time;</p> <p>Impact of Amendment</p> <p><i>The condition for issue of equity shares with differential rights for voting power in respect of shares with differential rights of the company shall not exceed seventy four per cent. of total voting power which has been increased from twenty-six percent to seventy four per cent and earlier it was 26% of total post-issue paid up equity share capital and now it is 74% of total voting power.</i></p> |

| | |
|---|---|
| | <p>2) Clause (d) of Rule 4 of The Companies (Share Capital and Debentures) Rules, 2014</p> <p>The company having consistent track record of distributable profits for the last three years;</p> <p>Omitted by The Companies (Share Capital and Debentures) Amendment Rules, 2019.</p> <p>Impact of Amendment</p> <p><i>Requirement of the Company of having consistent track record of distributable profits for the last three years is no longer required.</i></p> <p>For further details visit link</p> <p>https://www.mca.gov.in/Ministry/pdf/ShareCapitalRules_16082019.pdf</p> |
| <p>The Companies (Share Capital and Debentures) Amendment Rules, 2019</p> <p>(effective from 16th August, 2019)</p> | <p>Rule-5 of The Companies (Share Capital and Debentures) Rules, 2014 - Certificate of Shares (Where Shares are Not in Demat Form)</p> <p>in sub-rule (3), in the Explanation,</p> <p>(b) a *[director] shall be deemed to have signed the share certificate if his signature is printed thereon as facsimile signature by means of any machine, equipment or other mechanical means such as engraving in metal or lithography or digitally signed, but not by means of rubber stamp, provided that the *[director] shall be personally responsible for permitting the affixation of his signature thus and the safe custody of any machine, equipment or other material used for the purpose.</p> <p>for the word ‘director’,</p> <p><i>the following word shall be substituted, namely:-</i></p> <p>*director or company secretary.</p> <p>Impact of Amendment</p> <p><i>Either the director or Company Secretary shall be deemed to have signed the certificate if their signature is printed thereon as facsimile signature and condition of personal responsibility for permitting the affixation of his signature will be levied either on director or company secretary whose signature has been printed on the share certificate.</i></p> <p>For further details visit link</p> <p>https://www.mca.gov.in/Ministry/pdf/ShareCapitalRules_16082019.pdf</p> |
| The Companies (Share Capital and Debentures) | Rule 12 of The Companies (Share Capital and Debentures) Rules, 2014 - Issue of Employee Stock Options |

| | |
|---|---|
| <p>Amendment Rules, 2019</p> <p>(effective from 16th August, 2019)</p> | <p>(i) in sub-rule (1), in proviso to Explanation for the letters, figures, brackets and words,</p> <p>GSR 180(E) dated 17th February, 2016 issued by the Department of Industrial Policy and Promotion</p> <p><i>the following shall be substituted namely:-</i></p> <p>G.S.R. 127(E), dated 19th February, 2019 issued by the Department for Promotion of industry and Internal Trade.</p> <p>(ii) in sub-rule (1), in proviso to Explanation for the words,</p> <p>five years</p> <p>the following shall be substituted namely:-</p> <p>ten years.</p> <p>Impact of Amendment</p> <p><i>Definition of Start-up Company has changed and now it is according to [G.S.R. 127(E), dated 19th February, 2019 issued by the Department for Promotion of industry and Internal Trade], Ministry of Commerce and Industry Government of India, Government of India.</i></p> <p><i>Now the conditions mentioned in sub-clause (i) and (ii) of clause (c) of Sub-rule 1 of Rule 12 of the Companies (Share Capital and Debentures) Rules, 2014 shall not apply upto ten years in place of five years from the date of its incorporation or registration in case of start-up Company.</i></p> <p>For further details visit link</p> <p>https://www.mca.gov.in/Ministry/pdf/ShareCapitalRules_16082019.pdf</p> |
| <p align="center">Lesson 7-Alteration of Share Capital</p> | |
| <p>The Companies (Amendment) Act, 2019</p> <p>(effective from 02nd November 2018)</p> | <p>Section 64- Notice to be Given to Registrar for Alteration of Share Capital</p> <p>For sub-section (2),</p> <p>Pre-Amendment</p> <p>If a company and any officer of the company who is in default contravenes the provisions of sub-section (1), it or he shall be punishable with fine which may extend to one thousand rupees for each day during which such default continues, or five lakh</p> |

| | |
|--|---|
| | <p>rupees, whichever is less.</p> <p>Post-Amendment</p> <p><i>the following sub-section shall be substituted, namely:—</i></p> <p>(2) Where any company fails to comply with the provisions of sub-section (1), such company and every officer who is in default shall be liable to a penalty of one thousand rupees for each day during which such default continues, or five lakh rupees whichever is less.</p> <p>Impact of the Amendment</p> <p><i>Non-compliance with sub-section (1) of Section 64 shall result in the company and any officer in default being liable to a penalty, instead of being punishable with fine.</i></p> <p>For further details visit link</p> <p>https://www.mca.gov.in/Ministry/pdf/AMENDMENTACT_01082019.pdf</p> |
| Lesson 8: Private Placement and Prospectus | |
| <p>The Companies (Amendment) Act, 2019</p> <p>(effective from 15th August, 2019)</p> | <p>In section 26 - Matters to be Stated in Prospectus</p> <p>(i) in sub-sections (4), (5) and (6), for the word “registration”, the word “filing” shall be substituted;</p> <p>Impact of Amendment- <i>The requirement of registration of prospectus with the Registrar of Companies has been done away with. Instead the prospectus would be filed with the Registrar.</i></p> <p>For Further details visit link</p> <p>https://www.mca.gov.in/Ministry/pdf/AMENDMENTACT_01082019.pdf</p> |
| <p>The Companies (Amendment) Act, 2019</p> <p>(effective from 15th August, 2019)</p> | <p>(ii) sub-section (7) of Section 26 shall be omitted. the Section 26(7) was provided as under:</p> <p>In section 26 - Matters to be Stated in Prospectus</p> <p>Sub-Section 7 of Section 26- The Registrar shall not register a prospectus unless the requirements of this section with respect to its registration are complied with and the prospectus is accompanied by the consent in writing of all the persons named in the prospectus has been omitted now.</p> <p>Impact of Amendment- <i>The requirement of registration of prospectus with the Registrar of Companies unless the requirements of this section with respect to its registration are complied and the consent in writing of all the persons named in the prospectus has been done away with. Instead the prospectus would be filed with the Registrar.</i></p> |

| | |
|---|--|
| | <p>For Further details visit link</p> <p>https://www.mca.gov.in/Ministry/pdf/AMENDMENTACT_01082019.pdf</p> |
| <p>The Companies (Amendment) Act, 2019</p> <p>(effective from 15th August 2019)</p> | <p>In section 29- Public Offer of Securities to be in Dematerialised Form</p> <p>(i) in sub-section (1), in clause (b), the word “public” shall be omitted;</p> <p>(ii) after sub-section (1), the following sub-section shall be inserted, namely:—</p> <p>“(1A) In case of such class or classes of unlisted companies as may be prescribed, the securities shall be held or transferred only in dematerialised form in the manner laid down in the Depositories Act, 1996 and the regulations made thereunder.”</p> <p>Impact of Amendment</p> <p><i>The term ‘public’ has been omitted under section 29(1) (b). The class of companies (not restricted to public companies), which would be mandatorily required to issue the securities only in dematerialised form will be notified by the MCA through Rules.</i></p> <p>For Further details visit link</p> <p>https://www.mca.gov.in/Ministry/pdf/AMENDMENTACT_01082019.pdf</p> |
| <p>The Companies (Amendment) Act, 2019</p> <p>(effective from 15th August 2019)</p> | <p>In section 35- Civil Liability for Mis-statements in Prospectus</p> <p>in sub-section (2), in clause (c), for the words “delivery of a copy of the prospectus for registration”, the words “filing of a copy of the prospectus with the Registrar” shall be substituted.</p> <p>Impact of Amendment</p> <p><i>The reference of ‘delivery of a copy of the Prospectus for registration’ is replaced by ‘Filing of a copy of the Prospectus with the Registrar’.</i></p> <p>For Further details visit link</p> <p>https://www.mca.gov.in/Ministry/pdf/AMENDMENTACT_01082019.pdf</p> |
| Lesson 9: Debt Capital | |
| <p>The Companies (Share Capital and Debentures) Amendment Rules, 2019</p> <p>(effective from 16th</p> | <p>Rule 18 of (Share Capital and Debentures) Rules, 2014- Debentures</p> <p>Pre-Amendment</p> |

| | |
|--------------|---|
| August,2019) | <p>for sub-rule (7),</p> <p>The company shall create a Debenture Redemption Reserve for the purpose of redemption of debentures, in accordance with the conditions given below-</p> <p>(a) The Debenture Redemption Reserve shall be created out of the profits of the company available for payment of dividend;</p> <p>(b) The company shall create Debenture Redemption Reserve (DRR) in accordance with following conditions:-</p> <p>(i) No DRR is required for debentures issued by All India Financial Institutions (AIFIs) regulated by Reserve Bank of India and Banking Companies for both public as well as privately placed debentures. For other Financial Institutions (FIs) within the meaning of clause (72) of section 2 of the Companies Act, 2013, DRR will be as applicable to NBFCs registered with RBI.</p> <p>(ii) For NBFCs registered with the RBI under Section 45-IA of the RBI (Amendment) Act, 1997 and for housing finance companies registered with the national housing bank 'the adequacy' of DRR will be 25% of the value of outstanding debentures issued through public issue as per present SEBI (Issue and Listing of Debt Securities) Regulations, 2008, and no DRR is required in the case of privately placed debentures.</p> <p>(iii) For other companies including manufacturing and infrastructure companies, the adequacy of DRR will be 25% of the value of outstanding debentures issued through public issue as per present SEBI (Issue and Listing of Debt Securities), Regulations 2008 and also 25% DRR is required in the case of privately placed debentures by listed companies. For unlisted companies issuing debentures on private placement basis, the DRR will be 25% of the value of outstanding debentures.</p> <p>"Provided that where a company intends to redeem its debentures prematurely, it may provide for transfer of such amount in Debenture Redemption Reserve as is necessary for redemption of such debentures even if it exceeds the limits specified in this sub-rule."</p> <p>(c) every company required to create Debenture Redemption Reserve shall on or before the 30th day of April in each year,</p> |
|--------------|---|

| | |
|--|--|
| | <p>invest or deposit, as the case may be, a sum which shall not be less than fifteen percent, of the amount of its debentures maturing during the year ending on the 31st day of March of the next year, in any one or more of the following methods, namely:-</p> <p>(i) in deposits with any scheduled bank, free from any charge or lien;</p> <p>(ii) in unencumbered securities of the Central Government or of any State Government;</p> <p>(iii) in unencumbered securities mentioned in sub-clauses (a) to (d) and (ee) of section 20 of the Indian Trusts Act, 1882;</p> <p>(iv) in unencumbered bonds issued by any other company which is notified under sub-clause (f) of section 20 of the Indian Trusts Act, 1882;</p> <p>(v) the amount invested or deposited as above shall not be used for any purpose other than for redemption of debentures maturing during the year referred above:</p> <p>Provided that the amount remaining invested or deposited, as the case may be, shall not at any time fall below fifteen per cent of the amount of the debentures maturing during the year ending on the 31st day of March of that year;</p> <p>(d) in case of partly convertible debentures, Debenture Redemption Reserve shall be created in respect of non-convertible portion of debenture issue in accordance with this sub-rule.</p> <p>(e) the amount credited to the Debenture Redemption Reserve shall not be utilised by the company except for the purpose of redemption of debentures.</p> <p>Post-Amendment</p> <p><i>The following shall be substituted</i></p> <p>“(7) The company shall comply with the requirements with regard to Debenture Redemption Reserve (DRR) and investment or deposit of sum in respect of debentures maturing during the year ending on the 31st day of March of next year, in accordance with the conditions given below:-</p> <p>(a) Debenture Redemption Reserve shall be created out of</p> |
|--|--|

| | |
|--|---|
| | <p>profits of the company available for payment of dividend;</p> <p>(b) The limits with respect to adequacy of Debenture Redemption Reserve and investment or deposits, as the case may be, shall be as under;-</p> <p>(i) Debenture Redemption Reserve is not required for debentures issued by All India Financial Institutions regulated by Reserve Bank of India and Banking Companies for both public as well as privately placed debentures;</p> <p>(ii) For other Financial Institutions within the meaning of clause (72) of section 2 of the Companies Act, 2013, Debenture Redemption Reserve shall be as applicable to Non –Banking Finance Companies registered with Reserve Bank of India.</p> <p>(iii) For listed companies (other than All India Financial Institutions and Banking Companies as specified in sub-clause (i)), Debenture Redemption Reserve is not required in the following cases -</p> <p>(A) in case of public issue of debentures –</p> <p>A. for NBFCs registered with Reserve Bank of India under section 45-IA of the RBI Act, 1934 and for Housing Finance Companies registered with National Housing Bank;</p> <p>B. for other listed companies;</p> <p>(B) in case of privately placed debentures, for companies specified in sub-items A and B.</p> <p>(iv) for unlisted companies, (other than All India Financial Institutions and Banking Companies</p> <p>as specified in sub-clause (i)) -</p> <p>(A) for NBFCs registered with RBI under section 45-IA of the Reserve Bank of India Act, 1934 and for Housing Finance Companies registered with National Housing Bank, Debenture Redemption Reserve is not required in case of privately placed debentures.</p> <p>(B) for other unlisted companies, the adequacy of Debenture Redemption Reserve shall be ten percent. of the value of the outstanding debentures;</p> <p>(v) In case a company is covered in item (A) or item (B) of sub-</p> |
|--|---|

| | |
|--|--|
| | <p>clause (iii) of clause (b) or item (B) of sub-clause (iv) of clause (b), it shall on or before the 30th day of April in each year, in respect of debentures issued by a company covered in item (A) or item (B) of sub-clause (iii) of clause (b) or item (B) of sub-clause (iv) of clause (b), invest or deposit, as the case may be, a sum which shall not be less than fifteen per cent., of the amount of its debentures maturing during the year, ending on the 31st day of March of the next year in any one or more methods of investments or deposits as provided in sub-clause (vi):</p> <p>Provided that the amount remaining invested or deposited, as the case may be, shall not at any time fall below fifteen percent. of the amount of the debentures maturing during the year ending on 31st day of March of that year.</p> <p>(vi) for the purpose of sub-clause (v), the methods of deposits or investments, as the case may be, are as follows:—</p> <p>(A) in deposits with any scheduled bank, free from any charge or lien;</p> <p>(B) in unencumbered securities of the Central Government or any State Government;</p> <p>(C) in unencumbered securities mentioned in sub-clause (a) to (d) and (ee) of section 20 of the Indian Trusts Act, 1882;</p> <p>(D) in unencumbered bonds issued by any other company which is notified under sub-clause(f) of section 20 of the Indian Trusts Act, 1882:</p> <p>Provided that the amount invested or deposited as above shall not be used for any purpose other than for redemption of debentures maturing during the year referred above.</p> <p>(c) in case of partly convertible debentures, Debenture Redemption Reserve shall be created in respect of non-convertible portion of debenture issue in accordance with this sub-rule.</p> <p>(d) the amount credited to Debenture Redemption Reserve shall not be utilized by the company except for the purpose of redemption of debentures.</p> <p>For further details visit Link</p> <p>https://www.mca.gov.in/Ministry/pdf/ShareCapitalRules_16082019.</p> |
|--|--|

[pdf](#)

Impact of Amendment

Rule 18 of the Companies (Share Capital and Debentures) Rules, 2014 are as follows:

| S.No. | Class of Company | Condition |
|-------|---|--|
| 1 | All India Financial Institutions (AIFIs) regulated by Reserve Bank of India and Banking Companies | No DRR for debentures issued by for both public as well as privately placed debentures |
| 2 | For other Financial Institutions (FIs) within the meaning of clause (72) of section 2 of the Companies Act, 2013 | DRR shall be applicable as applicable to NBFCs registered with RBI. |
| 3 | For NBFCs registered with the RBI under Section 45-IA of the RBI (Amendment) Act, 1934 and Housing finance companies registered with the National Housing Bank: | |
| 3A | Listed NBFCs and Housing Finance Companies | No DRR required for debentures issued for both public as well as privately placed debentures |
| 3B | Unlisted NBFCs and Housing Finance Companies | No DRR is required in case of privately placed Debentures |
| 4A | For other Listed Companies | No DRR required for debentures issued for both public as well as privately placed debentures |
| 4B | Unlisted companies | Adequacy of DRR shall be 10% of the value of outstanding debentures. |

Lesson 10: Charges

| | |
|--|--|
| <p>The Companies (Amendment) Act, 2019</p> <p>(effective from 02nd November 2018)</p> | <p>Section 77-Duty to Register the Charge</p> <p>in sub-section (1), for the first and second provisos, the following provisos shall be substituted, namely:—</p> <p>“Provided that the Registrar may, on an application by the company, allow such registration to be made—</p> <p>(a) in case of charges created before the commencement of the Companies (Amendment) Act, 2019, within a period of three hundred days of such creation; or</p> <p>(b) in case of charges created on or after the commencement of the Companies (Amendment) Act, 2019, within a period of sixty days of such creation, on payment of such additional fees as may be prescribed:</p> <p>Provided further that if the registration is not made within the period specified—</p> <p>(a) in clause (a) to the first proviso, the registration of the charge shall be made within six months from the date of commencement of the Companies (Amendment) Act, 2019, on payment of such additional fees as may be prescribed and different fees may be prescribed for different classes of companies;</p> <p>(b) in clause (b) to the first proviso, the Registrar may, on an application, allow such registration to be made within a further period of sixty days after payment of such ad valorem fees as may be prescribed.”.</p> <p>Impact of Amendment</p> <p><i>There is a change in period for the registration of charge along with additional and ad-valorem fees.</i></p> <p>For Further details visit link https://www.mca.gov.in/Ministry/pdf/AMENDMENTACT_01082019.pdf</p> |
| <p>The Companies (Amendment) Act, 2019,</p> <p>(effective from 02nd November 2018)</p> | <p>Section 86-Punishment for Contravention</p> <p><i>the following sub-section shall be inserted after sub-section 1</i></p> <p>(2) If any person wilfully furnishes any false or incorrect information or knowingly suppresses any material information, required to be registered in accordance with the provisions of section 77, he shall be liable for action under section 447.</p> <p>For Further details visit link https://www.mca.gov.in/Ministry/pdf/AMENDMENTACT_01082019.pdf</p> |

| | |
|---|---|
| <p>The Companies (Amendment) Act, 2019</p> <p>(effective from 02nd November 2018)</p> | <p>In section 87-Rectification by Central Government in Register of Charges</p> <p>Pre-Amendment</p> <p>The Central Government on being satisfied that —</p> <p>(a) the omission to give intimation to the Registrar of the payment or satisfaction of a charge, within the time required under this Chapter; or</p> <p>(b) the omission or misstatement of any particulars with respect to any such charge or modification or with respect to any memorandum of satisfaction or other entry made in pursuance of section 82 or section 83,</p> <p>was accidental or due to inadvertence or some other sufficient cause or it is not of a nature to prejudice the position of creditors or shareholders of the company, it may, on the application of the company or any person interested and on such terms and conditions as the Central Government deems just and expedient, direct that the time for the giving of intimation of payment or satisfaction shall be extended or, as the case may require, that the omission or misstatement shall be rectified.</p> <p>Post-Amendment</p> <p><i>the following shall be substituted namely:</i></p> <p>Section -87 The Central Government on being satisfied that —</p> <p>(a) the omission to give intimation to the Registrar of the payment or satisfaction of a charge, within the time required under this Chapter; or</p> <p>(b) the omission or misstatement of any particulars in any filing previously made to the Registrar with respect to any such charge or modification thereof or with respect to any memorandum of satisfaction or other entry made in pursuance of section 82 or section 83,</p> <p>was accidental or due to inadvertence or some other sufficient cause or it is not of a nature to prejudice the position of creditors or shareholders of the company, it may, on the application of the company or any person interested and on such terms and conditions as it deems just and expedient, direct that the time for the giving of intimation of payment or satisfaction shall be extended or, as the case may require, that the omission or misstatement shall be rectified".</p> <p>Impact of Amendment</p> <p><i>Rectification of Register of Charge by Central Government is allowed for the omission or misstatement of any particulars in any filing previously made to the Registrar with respect to any</i></p> |
|---|---|

| | |
|--|---|
| | <p><i>such charge or modification thereof.</i></p> <p>For Further details visit link https://www.mca.gov.in/Ministry/pdf/AMENDMENTACT_01082019.pdf</p> |
|--|---|

Lesson 12: Membership in a Company

| | |
|--|---|
| <p>The Companies (Significant Beneficial Owners) Amendment Rules, 2019</p> <p>(effective from 08th Feb 2019)</p> | <p>The Companies (Significant Beneficial Owners) Amendment Rules, 2019 further amend the Companies (Significant Beneficial Owners) Rules, 2018.</p> <p>(Rule 2) Definitions</p> <p>(a) "Act" means the Companies Act, 2013 (18 of 2013);</p> <p>(b) "control" means control as defined in clause (27) of section 2 of the Act</p> <p>(c) "form" means the form specified in Annexure to these rules;</p> <p>(d) "majority stake" means;-</p> <p>(i) holding more than one-half of the equity share capital in the body corporate; or</p> <p>(ii) holding more than one-half of the voting rights in the body corporate; or</p> <p>(iii) having the right to receive or participate in more than one-half of the distributable dividend or any other distribution by the body corporate;</p> <p>(e) "partnership entity" means a partnership firm registered under the Indian Partnership Act, 1932 (9 of 1932) or a limited liability partnership registered under the Limited Liability Partnership Act, 2008 (6 of 2009);</p> <p>(f) "reporting company" means a company as defined in clause (20) of section 2 of the Act, required to comply with the requirements of section 90 of the Act;</p> <p>(g) "section" means a section of the Act;</p> <p>(h) "significant beneficial owner" in relation to a reporting</p> |
|--|---|

| | |
|--|--|
| | <p>company means an individual referred to in sub-section (1) of section 90, who acting alone or together, or through one or more persons or trust, possesses one or more of the following rights or entitlements in such reporting company, namely:-</p> <p>(i) holds indirectly, or together with any direct holdings, not less than ten per cent. of the shares;</p> <p>(ii) holds indirectly, or together with any direct holdings, not less than ten per cent. of the voting rights in the shares;</p> <p>(iii) has right to receive or participate in not less than ten per cent. of the total distributable dividend, or any other distribution, in a financial year through indirect holdings alone, or together with any direct holdings;</p> <p>(iv) has right to exercise, or actually exercises, significant influence or control, in any manner other than through direct-holdings alone:</p> <p>Explanation I - For the purpose of this clause, if an individual does not hold any right or entitlement indirectly under sub-clauses (i), (ii) or (iii), he shall not be considered to be a significant beneficial owner.</p> <p>Explanation II - For the purpose of this clause, an individual shall be considered to hold a right or entitlement directly in the reporting company, if he satisfies any of the following criteria, namely.'</p> <p>(i) the shares in the reporting company representing such right or entitlement are held in the name of the individual;</p> <p>(ii) the individual holds or acquires a beneficial interest in the share of the reporting company under sub-section (2) of section 89, and has made a declaration in this regard to the reporting company.</p> <p>Explanation III - For the purpose of this clause, an individual shall be considered to hold a right or entitlement indirectly in the reporting company, if he satisfies any of the following criteria, in respect of a member of the reporting company, namely: -</p> <p>(i) where the member of the reporting company is a body corporate (whether incorporated or registered in India or abroad), other than a limited liability partnership, and the</p> |
|--|--|

| | |
|--|---|
| | <p>individual,-</p> <p>(a) holds majority stake in that member; or</p> <p>(b) holds majority stake in the ultimate holding company (whether incorporated or registered in India or abroad) of that member;</p> <p>(ii) where the member of the reporting company is a Hindu Undivided Family (HUF) (through karta), and the individual is the karta of the HUF;</p> <p>(iii) where the member of the reporting company is a partnership entity (through itself or a partner), and the individual,-</p> <p>(a) is a partner; or</p> <p>(b) holds majority stake in the body corporate which is a partner of the partnership entity; or</p> <p>(c) holds majority stake in the ultimate holding company of the body corporate which is a partner of the partnership entity.</p> <p>(iv) where the member of the reporting company is a trust (through trustee), and the individual,-</p> <p>(a) is a trustee in case of a discretionary trust or a charitable trust;</p> <p>(b) is a beneficiary in case of a specific trust;</p> <p>(c) is the author or settlor in case of a revocable trust.</p> <p>(v) where the member of the reporting company is,-</p> <p>(a) a pooled investment vehicle; or</p> <p>(b) an entity controlled by the pooled investment vehicle,</p> <p>based in member State of the Financial Action Task Force on Money Laundering and the regulator of the securities market in such member State is a member of the International Organization of Securities Commissions, and the individual in relation to the pooled investment vehicle,-</p> <p>(A) is a general partner; or</p> <p>(B) is an investment manager; or</p> |
|--|---|

| | |
|--|---|
| | <p>(C) is a Chief Executive Officer where the investment manager of such pooled vehicle is a body corporate or a partnership entity.</p> <p>Explanation IV-Where the member of a reporting company is,</p> <p>(i) a pooled investment vehicle; or</p> <p>(ii) an entity controlled by the pooled investment vehicle,</p> <p>based in a jurisdiction which does not fulfil the requirements referred to in clause (v) of Explanation III, the provisions of clause (i) or clause (ii) or clause (iii) or clause (iv) of Explanation III, as the case may be, shall apply.</p> <p>Explanation V - For the purpose of this clause, if any individual, or individuals acting through any person or trust, act with a common intent or purpose of exercising any rights or entitlements, or exercising control or significant influence, over a reporting company, pursuant to an agreement or understanding, formal or informal, such individual, or individuals, acting through any person or trust, as the case may be, shall be deemed to be 'acting together'.</p> <p>Explanation VI - For the purposes of this clause, the instruments in the form of global depository receipts, compulsorily convertible preference shares or compulsorily convertible debentures shall be treated as 'shares'.</p> <p>(i) "significant influence" means the power to participate, directly or indirectly, in the financial and operating policy decisions of the reporting company but is not control or joint control of those policies</p> <p>For further details kindly visit the following link:</p> <p>http://www.mca.gov.in/Ministry/pdf/CompaniesOwnersAmendmentRules_08020219.pdf</p> |
| <p>Inserted by the Companies (Significant Beneficial Owners) Amendment Rules, 2019 Dated 08.02.2019</p> | <p>(Rule 2A) Duty of the reporting company</p> <p>(1) Every reporting company shall take necessary steps to find out if there is any individual who is a significant beneficial owner, as defined in clause (h) of rule 2, in relation to that reporting company, and if so, identify him and cause such</p> |

| | |
|---|--|
| | <p>individual to make a declaration in Form No. BEN-1.</p> <p>(2) Without prejudice to the generality of the steps stated in sub-rule (1), every reporting company shall in all cases where its member (other than an individual), holds not less than ten per cent of its;-</p> <p>(a) shares, or</p> <p>(b) voting rights, or</p> <p>(c) right to receive or participate in the dividend or any other distribution payable in a financial year,</p> <p>give notice to such member, seeking information in accordance with subsection (5) of section 90, in Form No. BEN-4.</p> <p>http://www.mca.gov.in/Ministry/pdf/CompaniesOwnersAmendmentRules_08020219.pdf</p> |
| <p>Substituted by the Companies (Significant Beneficial Owners) Amendment Rules, 2019 Dated 08.02.2019</p> | <p>(Rule 3) Declaration of significant beneficial ownership under section 90</p> <p>(1) On the date of commencement of the Companies (Significant Beneficial Owners) Amendment Rules, 2019, every individual who is a significant beneficial owner in a reporting company, shall file a declaration in Form No. BEN-1 to the reporting company within ninety days from such commencement.</p> <p>(2) Every individual, who subsequently becomes a significant beneficial owner, or where his significant beneficial ownership undergoes any change shall file a declaration in Form No. BEN-1 to the reporting company, within thirty days of acquiring such significant beneficial ownership or any change therein.</p> <p>Explanation.- Where an individual becomes a significant beneficial owner, or where his significant beneficial ownership undergoes any change, within ninety days of the commencement of the Companies (Significant Beneficial Owners) Amendment Rules, 2019, it shall be deemed that such individual became the significant beneficial owner or any change therein happened on the date of expiry of ninety days from the date of commencement of said rules, and the period of thirty days for filing will be reckoned accordingly.</p> <p>http://www.mca.gov.in/Ministry/pdf/CompaniesOwnersAmendmentRules_08020219.pdf</p> |

| | |
|--|---|
| | |
| <p>Substituted by the Companies (Significant Beneficial Owners) Amendment Rules, 2019 Dated 08.02.2019 and</p> <p>Substituted by the Companies (Significant Beneficial Owners) second Amendment Rules, 2019 Dated 01.07.2019</p> | <p>(Rule 4) Return of significant beneficial owners in shares</p> <p>Upon receipt of declaration under rule 3, the reporting company shall file a return in Form No. BEN-2 with the Registrar in respect of such declaration, within a period of thirty days from the date of receipt of such declaration by it, along with the fees as prescribed in Companies (Registration offices and fees) Rules, 2014</p> <p>http://www.mca.gov.in/Ministry/pdf/CompaniesOwnersAmendmentRules_08020219.pdf</p> <p>http://www.mca.gov.in/Ministry/pdf/CompaniesSignificantRules_01072019.pdf</p> |
| | <p>(Rule 5) Register of significant beneficial owners</p> <p>(1) The company shall maintain a register of significant beneficial owners in Form No. BEN-3.</p> <p>(2) The register shall be open for inspection during business hours, at such reasonable time of not less than two hours, on every working day as the board may decide, by any member of the company on payment of such fee as may be specified by the company but not exceeding fifty rupees for each inspection</p> |
| | <p>(Rule 6) Notice seeking information about significant beneficial owners.-</p> <p>A company shall give notice seeking information in accordance with under sub-section (5) of section 90, in Form No. BEN-4.</p> |
| <p>Substituted by the Companies (Significant Beneficial Owners) Amendment Rules, 2019 Dated 08.02.2019</p> | <p>(Rule 7) Application to the Tribunal</p> <p>The reporting company shall apply to the Tribunal,</p> <p>(i) where any person fails to give the information required by the notice in Form No. BEN-4, within the time specified therein; or</p> <p>(ii) where the information given is not satisfactory,</p> <p>in accordance with sub-section (7) of section 90, for order directing that the shares in question be subject to restrictions, including</p> |

| | |
|--|--|
| | <p>(a) restrictions on the transfer of interest attached to the shares in question;</p> <p>(b) suspension of the right to receive dividend or any other distribution in relation to the shares in question;</p> <p>(c) suspension of voting rights in relation to the shares in question;</p> <p>(d) any other restriction on all or any of the rights attached with the shares in question</p> <p>http://www.mca.gov.in/Ministry/pdf/CompaniesOwnersAmendmentRules_08020219.pdf</p> |
| <p>Substituted by the Companies (Significant Beneficial Owners) Amendment Rules, 2019 Dated 08.02.2019 and</p> <p>Substituted by the Companies (Significant Beneficial Owners) second Amendment Rules, 2019 Dated 01.07.2019</p> | <p>(Rule 8) Non-Applicability</p> <p>These rules shall not be made applicable to the extent the share of the reporting company is held by,</p> <p>(a) the authority constituted under sub-section (5) of section 125 of the Act;</p> <p>(b) its holding reporting company:</p> <p>Provided that the details of such holding reporting company shall be reported in Form No. BEN-2.</p> <p>(c) the Central Government, State Government or any local Authority;</p> <p>(d) (i) a reporting company, or</p> <p>(ii) a body corporate, or</p> <p>(iii) an entity,</p> <p>controlled by the Central Government or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments;</p> <p>(e) Securities and Exchange Board of India registered Investment Vehicles such as mutual funds, alternative investment funds (AIF), Real Estate Investment Trusts (REITs), Infrastructure Investment Trust (InVITs) regulated by the Securities and Exchange Board of India,</p> <p>(f) Investment Vehicles regulated by Reserve Bank of India, or Insurance Regulatory and Development Authority of India, or</p> |

| | |
|---|--|
| | <p>Pension Fund Regulatory and Development Authority.</p> <p>http://www.mca.gov.in/Ministry/pdf/CompaniesOwnersAmendmentRules_08020219.pdf</p> <p>http://www.mca.gov.in/Ministry/pdf/CompaniesSignificantRules_01072019.pdf</p> |
| <p>The Companies (Amendment) Ordinance, 2019</p> <p>(effective from 12th January, 2019)</p> | <p>Section 90- Register of significant beneficial owners in a company In sub-section 10</p> <p>(a) after the word punishable the words ‘with imprisonment for a term which may extend to one year or’ shall be inserted.</p> <p>(b) After the words ‘ten lakh rupees’, the words ‘or with both’ shall be inserted.</p> <p>If any person fails to make a declaration as required under sub-section (1), he shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than one lakh rupees but which may extend to ten lakh rupees or with both and where the failure is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the failure continues.</p> <p>Impact of Amendment</p> <p><i>Considering the importance of the disclosures under section 90, the punishment for violation of section 90(1) prescribed under section 90(10) is enhanced to the effect that the contravention is punishable with fine or imprisonment or both, instead of being punishable with only fine.</i></p> <p><i>(This amendment was provided in the Companies (Amendment) Second Ordinance, 2019 but is not there in the Companies (Amendment) Act, 2019.</i></p> <p>For further details visit link http://www.mca.gov.in/Ministry/pdf/NotificationCAO2019_26032019.pdf</p> |
| <p>The Companies (Amendment) Act, 2019</p> <p>(effective from 15th August, 2019)</p> | <p>Section 90- Register of significant beneficial owners in a company</p> <p>(i) after sub-section (4), the following sub-section shall be inserted, namely:—</p> |

| | |
|--|---|
| | <p>Section-4A- Every company shall take necessary steps to identify an individual who is a significant beneficial owner in relation to the company and require him to comply with the provisions of this section.</p> <p>Impact of Amendment</p> <p><i>Obligation on the part of company to take necessary steps to identify SBO and require him to disclose.</i></p> <p>For sub section (9):</p> <p>The company or the person aggrieved by the order of the Tribunal may make an application to the Tribunal for relaxation or lifting of the restrictions placed under sub-section (8).</p> <p>Provided that if no such application has been filed within a period of one year from the date of the order under sub-section (8), such shares shall be transferred to the authority constituted under sub-section (5) of section 125, in such manner as may be prescribed.</p> <p><i>the following sub-section shall be substituted, namely:—</i></p> <p>The company or the person aggrieved by the order of the Tribunal may make an application to the Tribunal for relaxation or lifting of the restrictions placed under sub-section (8), within a period of one year from the date of such order:</p> <p>Provided that if no such application has been filed within a period of one year from the date of the order under sub-section (8), such shares shall be transferred, without any restrictions, to the authority constituted under sub-section (5) of section 125, in such manner as may be prescribed.</p> <p>Impact of Amendment</p> <p><i>Providing a time period of 1 year from the date of order to the aggrieved party to make an application to Tribunal for relaxing or lifting restrictions on the shares u/s 90.</i></p> <p>(iii) after sub-section (9), as so substituted, the following sub-section shall be inserted, namely:—</p> <p>Section 9A- The Central Government may make rules for the purposes of this section.</p> <p>Impact of Amendment</p> |
|--|---|

| | |
|---|--|
| | <p><i>Prescriptive power to Central Government to come out with related rules for Section 90.</i></p> <p>(iv) in sub-section (11), after the word, brackets and figure “sub-section (4)”, the words, brackets, figure and letter “or required to take necessary steps under sub-section (4A)” shall be inserted.</p> <p>Impact of Amendment <i>The words inserted “or required to take necessary steps under sub-section (4A)”, the Company has to do additional compliance as per Rule 4A also.</i></p> <p>For further details visit link https://www.mca.gov.in/Ministry/pdf/AMENDMENTACT_01082019.pdf</p> |
| Lesson 14: Institution of Directors | |
| <p>The Companies (Appointment and Qualification of Directors) Second Amendment Rules, 2019</p> <p>(effective from 16th May ,2019)</p> | <p>Rule 12B of The Companies (Appointment and Qualification of Directors) Rules, 2014- Directors of company required to file e-form ACTIVE.-</p> <p>(1) Where a company governed by Rule 25A of the Companies (Incorporation) Rules, 2014, fails to file the e-form ACTIVE within the period specified therein, the Director Identification Number (DIN) allotted to its existing directors, shall be marked as “Director of ACTIVE non-compliant company”.</p> <p>(2) Where the DIN of a director has been marked as “Director of ACTIVE non-compliant company”, such director shall take all necessary steps to ensure that all companies governed by rule 25A of the Companies (Incorporation) Rules, 2014, where such director has been so appointed, file e-form ACTIVE.</p> <p>(3) After all the companies referred to in sub-rule (2) file the e-form ACTIVE, the DIN of such director shall be marked as “Director of ACTIVE compliant company”</p> <p>For further details visit link https://www.mca.gov.in/Ministry/pdf/CompaniesRules_16052019.p df</p> |
| <p>The Companies (Appointment and Qualification of Directors) Third Amendment Rules, 2019</p> | <p>Rule 11 of The Companies (Appointment and Qualification of Directors) Rules, 2014 Cancellation or Surrender or Deactivation of DIN</p> <p>In Rule 11 of the Companies (Appointment and Qualification of Directors) Rules, 2014, under sub-rule (2) and sub-rule (3), after</p> |

| | | | | | | | |
|--|--|--|------------|-------------------------------------|-----------------|--|-----------------|
| <p>(effective from 25th July,2019)</p> | <p>the letters, words and figure “e-form DIR-3-KYC” the words, letters and figures “or the web service DIR-3-KYC-WEB” as the case may be” shall be inserted.</p> <p>Impact of Amendment</p> <p><i>Web-form DIR-3 KYC-WEB through the web service has been introduced to be filed in subsequent year for those who has already submitted e-form DIR-3 KYC in relation to any previous financial year.</i></p> <p><i>If the Directors do not file Web service DIR-3-KYC-WEB,the Central Government or Regional Director (Northern Region), or any officer authorized by the Central Government or Regional Director (Northern Region) shall, deactivate the Director Identification Number (DIN).</i></p> <p><i>The deactivated Din can only be re-activated after filing DIR-3KYC WEB as the case may be, along with stipulated fees.</i></p> <p>For further details visit link http://www.mca.gov.in/Ministry/pdf/ThirdAmendRules_25072019.p df </p> | | | | | | |
| <p>The Companies (Registration Offices and Fees) Fourth Amendment Rules, 2019.</p> <p>(effective from 25th July,2019)</p> | <p>Rule 12 of The Companies (Registration Offices and Fees) Rules,2014- Fees</p> <p>in the Annexure, for item VII</p> <p>FEE FOR FILING e- Form DIR-3 KYC or DIR-3 KYC-WEB under rule 12A of the Companies (Appointment and Qualification of Directors) Rules, 2014.</p> <table border="1" data-bbox="571 1384 1410 1973"> <tr> <td data-bbox="571 1384 1038 1682">(i) Subject to serial number (iii) below, fee payable till the 30th September of every financial year in respect of e-form DIR-3 KYC or DIR-3 KYC- WEB through web service, as the case may be, for the immediate previous financial year.</td><td data-bbox="1038 1384 1410 1682">Nil</td></tr> <tr> <td data-bbox="571 1682 1038 1749">(ii) Fee payable (in delayed case).</td><td data-bbox="1038 1682 1410 1749">Rs. 5000</td></tr> <tr> <td data-bbox="571 1749 1038 1973">(iii) Fee payable if the individual failed to file e-form DIR-3 KYC or DIR-3 KYC-WEB through web service, as the case may be, for the immediate previous financial year (in delayed case).</td><td data-bbox="1038 1749 1410 1973">Rs. 5000</td></tr> </table> | (i) Subject to serial number (iii) below, fee payable till the 30 th September of every financial year in respect of e-form DIR-3 KYC or DIR-3 KYC- WEB through web service, as the case may be, for the immediate previous financial year. | Nil | (ii) Fee payable (in delayed case). | Rs. 5000 | (iii) Fee payable if the individual failed to file e-form DIR-3 KYC or DIR-3 KYC-WEB through web service, as the case may be, for the immediate previous financial year (in delayed case). | Rs. 5000 |
| (i) Subject to serial number (iii) below, fee payable till the 30 th September of every financial year in respect of e-form DIR-3 KYC or DIR-3 KYC- WEB through web service, as the case may be, for the immediate previous financial year. | Nil | | | | | | |
| (ii) Fee payable (in delayed case). | Rs. 5000 | | | | | | |
| (iii) Fee payable if the individual failed to file e-form DIR-3 KYC or DIR-3 KYC-WEB through web service, as the case may be, for the immediate previous financial year (in delayed case). | Rs. 5000 | | | | | | |

| | |
|--|--|
| | <p>For further link visit</p> <p>http://www.mca.gov.in/Ministry/pdf/FourthAmedRules_25072019.pdf</p> |
|--|--|

| | |
|---|---|
| <p>The Companies (Appointment and Qualification of Directors) Third Amendment Rules, 2019</p> <p>(effective from 25th July, 2019)</p> | <p>Rule 12A of The Companies (Appointment and Qualification of Directors) Rules, 2014 - Directors KYC</p> <p>In the said rules, in rule 12A,-</p> <p>(i) for the words “who has been allotted”, the words “who holds” shall be substituted;</p> <p>(ii) for the words, letters and figures “submit e-form DIR-3-KYC to the Central Government on or before 30th June of immediate next financial year”, the words, letters and figures “submit e-form DIR-3-KYC for the said financial year to the Central Government on or before 30th September of immediate next financial year” shall be substituted;</p> <p>(iii) after the proviso, the following provisos shall be inserted, namely:- “Provided further that where an individual who has already submitted e-form DIR-3 KYC in relation to any previous financial year, submits web-form DIR-3 KYC-WEB through the web service in relation to any subsequent financial year it shall be deemed to be compliance of the provisions of this rule for the said financial year.</p> <p>Provided also that in case an individual desires to update his personal mobile number or the e-mail address, as the case may be, he shall update the same by submitting e-form DIR-3 KYC only.</p> <p>Provided also that fee for filing e-form DIR-3 KYC or web-form DIR-3 KYC-WEB through the web service, as the case may be, shall be payable as provided in Companies (Registration Offices and Fees) Rules, 2014.”</p> <p>Impact of Amendment</p> <p><i>a. E- Form DIR-3 KYC is to be filed by an individual who holds DIN and is filing his KYC details for the first time or by the DIN holder who has already filed his KYC once in e-form DIR-3 KYC but wants to update his details.</i></p> <p><i>b. Web service DIR-3-KYC-WEB is to be used by the DIN holder who has submitted DIR-3 KYC e-form in the previous financial year and no update is required in his details.</i></p> <p><i>c. Due date for filing the KYC form is 30th September of immediate next financial year..</i></p> <p>For further details visit link</p> |
|---|---|

| | |
|---|---|
| | http://www.mca.gov.in/Ministry/pdf/ThirdAmendRules_25072019.pdf |
| The Companies (Amendment) Act, 2019 (effective from 02 nd November 2018) | Section 157-Company to inform Director Identification Number to Registrar Pre-Amendment for sub-section (2), If a company fails to furnish Director Identification Number under sub-section (1), the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees. Post Amendment <i>the following sub-section shall be substituted, namely:-</i> If any company fails to furnish the Director Identification Number under sub-section (1), such company shall be liable to a penalty of twenty-five thousand rupees and in case of continuing failure, with further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of one lakh rupees, and every officer of the company who is in default shall be liable to a penalty of not less than twenty-five thousand rupees and in case of continuing failure, with further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of one lakh rupees. Impact of Amendment <i>Non-compliance with sub-section (1) of Section 157 shall result in the company and every officer in default being liable to a penalty, instead of being punishable with fine and there will be an imposition of further penalty of one hundred rupees for each day for continuous default.</i> For further details visit link https://www.mca.gov.in/Ministry/pdf/AMENDMENTACT_01082019.pdf |
| The Companies (Amendment) Act, 2019 (effective from 02 nd November 2018) | Section 159-Penalty for Default of Certain Provisions Pre-Amendment If any individual or director of a company, contravenes any of the provisions of section 152, section 155 and section 156, such individual or director of the company shall be punishable with |

| | |
|---|--|
| | <p>imprisonment for a term which may extend to six months or with fine which may extend to fifty 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.</p> <p>Post Amendment <i>the following section shall be substituted, namely:</i></p> <p>If any individual or director of a company makes any default in complying with any of the provisions of section 152, section 155 and section 156, such individual or director of the company shall be liable to a penalty which may extend to fifty thousand rupees and where the default is a continuing one, with a further penalty which may extend to five hundred rupees for each day after the first during which such default continues.</p> <p>Impact of Amendment</p> <p><i>Penalty for default in certain provisions Non-compliance with Section 152 (Appointment of directors), Section 155 (Prohibition to obtain more than one Director Identification Number) and Section 156 (Director to intimate Director Identification Number) shall result in any individual or director of a company in default being liable to a penalty, instead of being punishable with fine or imprisonment.</i></p> <p>For further details visit link https://www.mca.gov.in/Ministry/pdf/AMENDMENTACT_01082019.pdf</p> |
| <p>The Companies (Amendment) Act, 2019</p> <p>(effective from 02nd November 2018)</p> | <p>Section 164 : Disqualifications for Appointment of Director</p> <p>in sub-section (1), after clause (h), the following clause shall be inserted, namely:— “(i) he has not complied with the provisions of sub-section (1) of section 165.”</p> <p>Impact of Amendment</p> <p><i>A new clause (i) after clause (h) in section 164(1) inserted, whereby a person shall be subject to disqualification if he accepts directorships exceeding the maximum number of directorships provided in section 165.</i></p> <p>For further details visit link https://www.mca.gov.in/Ministry/pdf/AMENDMENTACT_01082019.pdf</p> |
| <p>The Companies (Amendment) Act, 2019</p> <p>(effective from 02nd November 2018)</p> | <p>Section-165-Number of Directorships</p> <p>in sub-section (6), punishable with fine which shall not be less than five thousand rupees but which may extend to twenty-five thousand rupees for every day after the first during which the contravention continues.</p> |

| | |
|--|--|
| | <p><i>the following words shall be substituted namely:-</i></p> <p>liable to a penalty of five thousand rupees for each day after the first during which such contravention continues.</p> <p>Impact of Amendment</p> <p><i>If a person accepts appointment as a director in contravention of sub-section (1) of Section 165 such person shall be liable to a penalty, instead of being punishable with fine.</i></p> <p>For further details visit link</p> <p>https://www.mca.gov.in/Ministry/pdf/AMENDMENTACT_01082019.pdf</p> |
| Lesson 15: Independent Directors | |
| <p>The Companies (Appointment and Qualification of Directors) Fifth Amendment Rules, 2019 (notification date 22nd October, 2019)</p> <p>(effective from 1st December, 2019)</p> | <p>Rule 6 Compliances required by a person eligible and willing to be appointed as an independent director of The Companies (Appointment and Qualification of Directors), 2014</p> <p>Pre-Amendment</p> <p>Rule 6- Creation and Maintenance of Databank of Persons Offering to Become Independent Directors</p> <p>(1) Anybody, institute or association (hereinafter to be referred as "the agency"), which has been authorised in this behalf by the Central Government shall create and maintain a data bank of persons willing and eligible to be appointed as independent director and such data bank shall be placed on the website of the Ministry of Corporate Affairs or on any other website as may be approved or notified by the Central Government.</p> <p>(2) The data bank referred to in sub-rule (1) shall contain the following details in respect of each person included in the data bank to be eligible and willing to be appointed as independent director-</p> <p>(a) DIN (Director Identification Number);</p> <p>(b) the name and surname in full;</p> <p>(c) [Omitted]</p> <p>(d) the father's name</p> <p>(e) the date of Birth;</p> <p>(f) gender;</p> <p>(g) the nationality;</p> <p>(h) the occupation;</p> <p>(i) full Address with PIN Code (present and permanent);</p> <p>(j) phone number;</p> |

| | |
|--|---|
| | <p>(k) e-mail id;</p> <p>(l) the educational and professional qualifications;</p> <p>(m) experience or expertise, if any;</p> <p>(n) any legal proceedings initiated or pending against such person;</p> <p>(o) the list of limited liability partnerships in which he is or was a designated partner along with –</p> <p>(i) the name of the limited liability partnership;</p> <p>(ii) the nature of industry; and</p> <p>(iii) the duration- with dates;</p> <p>(p) the list of companies in which he is or was director along with-</p> <p>(i) the name of the company;</p> <p>(ii) the nature of industry;</p> <p>(iii) the nature of directorship – Executive or Non-executive or Managing Director or Independent Director or Nominee Director; and</p> <p>(iv) duration – with dates.</p> <p>(3) A disclaimer shall be conspicuously displayed on the website hosting the databank that a company must carry out its own due diligence before appointment of any person as an independent director and "the agency" maintaining the databank or the Central Government shall not be held responsible for the accuracy of information or lack of suitability of the person whose particulars form part of the databank.</p> <p>(4) Any person who desires to get his name included in the data bank of independent directors shall make an application to "the agency".</p> <p>(5) The agency may charge a reasonable fee from the applicant for inclusion of his name in the data bank of independent directors.</p> <p>(6) Any person who has applied for inclusion of his name in the data bank of independent directors or any person whose name appears in the data bank , shall intimate to the agency about any changes in his particulars within fifteen days of such change.</p> <p>(7) The databank posted on the website shall –</p> <p>(a) be accessible at the specified website;</p> <p>(b) be substantially identical to the physical version of the data bank;</p> <p>(c) be searchable on the parameters specified in sub-rule (2);</p> |
|--|---|

| | |
|--|---|
| | <p>(d) be presented in a format or formats convenient for both printing and viewing online; and</p> <p>(e) contain a link to obtain the software required to view or print the particulars free of charge.</p> <p>Substituted by the Companies (Appointment and Qualification of Directors) Fifth Amendment Rules, 2019.</p> <p>Rule 6- Compliances required by a person eligible and willing to be appointed as an independent director.</p> <p>(1) Every individual –</p> <p>(a) who has been appointed as an independent director in a company, on the date of commencement of the Companies (Appointment and Qualification of Directors) Fifth Amendment Rules, 2019, shall within a period of three months from such commencement; or</p> <p>(b) who intends to get appointed as an independent director in a company after such commencement, shall before such appointment, apply online to the institute for inclusion of his name in the data bank for a period of one year or five years or for his life-time, and from time to time take steps as specified in sub-rule (2), till he continues to hold the office of an independent director in any company:</p> <p>Provided that any individual, including an individual not having DIN, may voluntarily apply to the institute for inclusion of his name in the data bank.</p> <p>(2) Every individual whose name has been so included in the data bank shall file an application for renewal for a further period of one year or five years or for his life-time, within a period of thirty days from the date of expiry of the period upto which the name of the individual was applied for inclusion in the data bank, failing which, the name of such individual shall stand removed from the data bank of the institute:</p> <p>Provided that no application for renewal shall be filed by an individual who has paid life-time fees for inclusion of his name in the data bank.</p> <p>(3) Every independent director shall submit a declaration of compliance of sub-rule (1) and sub-rule (2) to the Board, each time he submits the declaration required under sub-section (7) of section 149 of the Act.</p> <p>(4) Every individual whose name is so included in the data bank under sub-rule (1) shall pass an online proficiency self-assessment test conducted by the institute within a period of one year from the date of inclusion of his name in the data bank, failing which, his name shall stand removed from the databank of the institute:</p> <p>Provided that the individual who has served for a period of not</p> |
|--|---|

| | |
|--|--|
| | <p>less than ten years as on the date of inclusion of his name in the databank as director or key managerial personnel in a listed public company or in an unlisted public company having a paid-up share capital of rupees ten crore or more shall not be required to pass the online proficiency self-assessment test:</p> <p>Provided further that for the purpose of calculation of the period of ten years referred to in the first proviso, any period during which an individual was acting as a director or as a key managerial personnel in two or more companies at the same time shall be counted only once.</p> <p>Explanation: For the purposes of this rule,-</p> <p>(a) the expression “institute” means the ‘Indian Institute of Corporate Affairs at Manesar’ notified under sub-section (1) of section 150 of the Companies Act, 2013 as the institute for the creation and maintenance of data bank of Independent Directors;</p> <p>(b) an individual who has obtained a score of not less than sixty percent. in aggregate in the online proficiency self-assessment test shall be deemed to have passed such test;</p> <p>(c) there shall be no limit on the number of attempts an individual may take for passing the online proficiency self-assessment test.</p> <p>http://www.mca.gov.in/Ministry/pdf/CmpFifthAmndtRules_22102019.pdf</p> |
| <p>The Companies (Creation and Maintenance of databank of Independent Directors) Rules, 2019)</p> <p>(effective from 22nd October, 2019)</p> | <p>Rule 2 Definitions of (Creation and Maintenance of databank of Independent Directors) Rules, 2019</p> <p>(a) “Act” means the Companies Act, 2013 (18 of 2013);</p> <p>(b) “institute” means the ‘Indian Institute of Corporate Affairs’ notified under sub-section (1) of section 150 of the Companies Act, 2013.</p> <p>(2) Words and expressions used and not defined in these rules but defined in the Act shall have the same meanings as respectively assigned to them in the Act.</p> <p>For further details visit link</p> <p>http://www.mca.gov.in/Ministry/pdf/CmplnptdDirectorsRules_22102019.pdf</p> |
| <p>The Companies (Creation and Maintenance of databank of Independent Directors) Rules,</p> | <p>Rule 3 of the Companies (Creation and Maintenance of databank of Independent Directors) Rules, 2019</p> <p>Creation and maintenance of data bank (1) The institute shall create and maintain a databank of persons willing and eligible to be appointed as independent directors, and such</p> |

| | |
|---|--|
| <p>2019(notification of 22nd October,2019)</p> <p>(effective from 1st day of December, 2019)</p> | <p>databank shall be an online databank which shall be placed on the website of the institute.</p> <p>(2) The data bank referred to in sub-rule (1) shall contain the following details in respect of each person included in the data bank to be eligible and willing to be appointed as independent director</p> <ul style="list-style-type: none"> (a) DIN (Director Identification Number), if applicable; (b) Income Tax PAN; (c) the name and surname in full; (d) the father's name; (e) the date of Birth; (f) gender; (g) the nationality; (h) the occupation; (i) full Address with PIN Code (present and permanent); (j) phone number; (k) e-mail id; (l) the educational and professional qualifications; (m) experience or expertise, if any; (n) any pending criminal proceedings as specified in clause (d) of sub-section (1) of section 164; (o) the list of limited liability partnerships in which he is or was a designated partner along with- <ul style="list-style-type: none"> (i) the name of the limited liability partnership; (ii) the nature of industry; and (iii) the duration- with dates; (p) the list of companies in which he is or was director along with- <ul style="list-style-type: none"> (i) the name of the company; (ii) the nature of industry; (iii) the nature of directorship-Executive or Non-executive or Managing Director or Independent Director or Nominee Director; and (iv) duration – with dates. <p>(3) The information available in the data bank shall be provided only to companies required to appoint independent director after paying a reasonable fees to the institute.</p> <p>(4) A person whose name is included in the data bank, may</p> |
|---|--|

| | |
|---|---|
| | <p>restrict his personal information to the institute, to be disclosed in the data bank.</p> <p>(5) Any individual whose name appears in the data bank, shall make changes in his particulars within thirty days of such change through web based framework made available by the institute for this purpose.</p> <p>(6) A disclaimer shall be conspicuously displayed on the website hosting the data bank that a company must carry out its own due diligence before appointment of any person as an independent director.</p> <p>(7) The institute, shall with the prior approval of the Central Government, fix a reasonable fee to be charged from :-</p> <p>(a) individuals for inclusion of their names in the data bank of independent directors; and</p> <p>(b) companies for providing the information on independent directors available on the data bank.</p> <p>Explanation:- For the purpose of this rule, the expression “persons willing and eligible to be appointed as independent director” shall include individuals already serving as independent directors on the Board of companies.</p> <p>For further details visit link http://www.mca.gov.in/Ministry/pdf/CmplnprdtDirectorsRules_22102019.pdf</p> |
| <p>The Companies (Creation and Maintenance of databank of Independent Directors) Rules, 2019</p> <p>(effective from 1st December, 2019)</p> | <p>Rule 4 of The Companies (Creation and Maintenance of databank of Independent Directors) Rules, 2019- Duties of the institute:</p> <p>(1) The institute shall comply with the following, in respect of individuals referred to in sub-rule (1) of rule 6 of the Companies (Appointment and Qualification of Directors) Rules, 2014 , namely:—</p> <p>(a) conduct an online proficiency self-assessment test covering companies law, securities law, basic accountancy, and such other areas relevant to the functioning of an individual acting as an independent director;</p> <p>(b) prepare a basic study material, online lessons, including audio-visuals for easy reference of individuals taking the online proficiency self-assessment test;</p> <p>(c) provide an option for individuals to take advanced tests in the areas specified in clause (a) and prepare the necessary advanced study material in this respect</p> <p>Provided that no separate fees shall be charged by the institute in respect of clauses (a), (b) and (c).</p> <p>(2) The institute shall daily, share with the Central</p> |

| | |
|--|--|
| | <p>Government, a cumulative list of all individuals—</p> <p>(a) whose names have been included in the data bank along with the date of inclusion and their Income Tax PAN or Passport number in case of foreign director (not required to have Income-Tax PAN);</p> <p>(b) whose applications for inclusion in the data bank have been rejected along with grounds and the dates of such rejection; and</p> <p>(c) whose names have been removed from the data bank along with grounds and the dates of such removal.</p> <p>For further details visit link http://www.mca.gov.in/Ministry/pdf/CmplnpdtDirectorsRules_22102019.pdf</p> |
| <p>The Companies (Creation and Maintenance of databank of Independent Directors) Rules, 2019)</p> <p>(effective from 22nd October, 2019)</p> | <p>Rule 5 of The Companies (Creation and Maintenance of databank of Independent Directors) Rules, 2019- Panel</p> <p>(1) There shall be a panel of not more than ten members nominated by the Central Government, for the purpose of approving the outline of the courses and study material prepared by the institute.</p> <p>(2) Panel referred to in sub-rule (1) shall consist of:-</p> <p>(a) Secretary, Ministry of Corporate Affairs or his nominee;</p> <p>(b) Director General and Chief Executive Officer of the institute or his nominee;</p> <p>(c) one member nominated by the Department of Economic Affairs;</p> <p>(d) one member nominated by the Department of Public Enterprises;</p> <p>(e) one member nominated by the Securities and Exchange Board of India;</p> <p>(f) at-least one representative from the stock exchange nominated by the Central Government;</p> <p>(g) at-least one representative from the industry nominated by the Central Government; and</p> <p>(h) at-least one representative from the academia nominated by the Central Government</p> <p>For further details visit link http://www.mca.gov.in/Ministry/pdf/CmplnpdtDirectorsRules_22102019.pdf</p> |

Lesson 16: Board and its Powers

| | |
|---|--|
| <p>The Companies (Amendment) Act, 2019</p> <p>(effective from 02nd November 2018)</p> | <p>Section 191- Payment to Director for Loss of Office, etc., in Connection with Transfer of Undertaking, Property or Shares</p> <p>for sub-section (5)</p> <p>If a director of the company contravenes the provisions of this section, such director shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.</p> <p><i>the following sub-section shall be substituted, namely:-</i></p> <p>If a director of the company makes any default in complying with the provisions of this section, such director shall be liable to a penalty of one lakh rupees.</p> <p>Impact of Amendment</p> <p><i>Non-compliance with Section 191 shall result in the director of the company being liable to a penalty, instead of being punishable with fine.</i></p> <p>For further details visit link</p> <p>https://www.mca.gov.in/Ministry/pdf/AMENDMENTACT_01082019.pdf</p> |
| <p>The Companies (Meetings of Board and its Powers) Amendment Rules, 2019.</p> <p>(effective from 11th October, 2019)</p> | <p>Rule 11 of The Companies (Meetings of Board and its Powers) Rules, 2014</p> <p>Pre-Amendment</p> <p>sub-rule 2 - For the purposes of clause (a) of sub-section (11) of section 186, the expression ["business of financing of companies"] shall include, with regard to a Non-Banking Financial Company registered with Reserve Bank of India, "business of giving of any loan to a person or providing any guaranty or security for due repayment of any loan availed by any person in the ordinary course of its business".</p> <p>Post Amendment</p> <p><i>the following words shall be substituted namely,</i></p> <p>For the purposes of clause (a) of sub-section (11) of section 186, the expression ["business of financing industrial enterprises"] shall include, with regard to a Non-Banking Financial Company registered with Reserve Bank of India, "business of giving of any loan to a person or providing any guaranty or security for due repayment of any loan availed by any person in the ordinary course of its business".</p> <p>Impact of Amendment</p> |

| | |
|---|---|
| | <p>"business of financing of companies"</p> <p><i>the following words shall be substituted namely,</i></p> <p>"business of financing industrial enterprises"</p> <p><i>The amendment has widened the meaning from business of financing of companies to business of financing industrial enterprises</i></p> <p>For further details visit link https://www.mca.gov.in/Ministry/pdf/MeetingsBoardPowersAmendRules11102019.pdf</p> |
| <p>The Companies(Meeting of Board and its Powers)Second Amendment Rules,2019</p> <p>(effective from 18th November,2019)</p> | <p>Rule 15 of The Companies(Meeting of Board and its Powers) Rules,2014 -Contract or Arrangement with Related Party</p> <p>Pre-Amendment</p> <p>in sub rule 3, in clause (a), in sub clause (i) & (ii)</p> <p>(i) sale, purchase or supply of any goods or material, directly or through appointment of agent, amounting to ten percent or more of the turnover of the company or rupees one hundred crore, whichever is lower, as mentioned in clause (a) and clause (e) respectively of sub-section (1) of section 188;</p> <p>(ii) selling or otherwise disposing of or buying property of any kind, directly or through appointment of agent, amounting to ten percent or more of net worth of the company or rupees one hundred crore, whichever is lower, as mentioned in clause (b) and clause (e) respectively of sub-section (1) of section 188;</p> <p>Post Amendment</p> <p>(i) sale, purchase or supply of any goods or material, directly or through appointment of agent, amounting to ten percent or more of the turnover of the company, as mentioned in clause (a) and clause (e) respectively of sub-section (1) of section 188;</p> <p>(ii) selling or otherwise disposing of or buying property of any kind, directly or through appointment of agent, amounting to ten percent or more of net worth of the company, as mentioned in clause (b) and clause (e) respectively of sub-section (1) of section 188;</p> <p>Impact of Amendment</p> <p><i>Now the prior approval of the company by a resolution shall be required only for those transactions involving sale, purchase or supply of any goods or material, directly or</i></p> |

| | |
|---|---|
| | <p><i>through appointment of agent, amounting to ten percent or more of the turnover of the company and</i></p> <p><i>For selling or otherwise disposing of or buying property of any kind, directly or through appointment of agent, amounting to ten percent or more of net worth of the company is required.</i></p> <p>For further details visit link</p> <p>http://www.mca.gov.in/Ministry/pdf/Comp2Amndt_18112019.pdf</p> |
| <p>The Companies(Meeting of Board and its Powers)Second Amendment Rules,2019</p> <p>(effective from 18th November,2019)</p> | <p>Rule 15 of The Companies(Meeting of Board and its Powers) Rules,2014 -Contracts or Arrangements with Related Party</p> <p>in sub rule 3, in clause (a), in sub clause (iii)</p> <p>Pre-Amendment</p> <p>leasing of property of any kind amounting to ten percent or more of the net worth of the company or ten percent or more of turnover of the company or rupees one hundred crore whichever is lower as mentioned in clause (c) of sub-section (1) of section 188</p> <p>“for the words “amounting to ten per cent or more of the net worth of the company or ten per cent or more of turnover of the company or rupees one hundred crore, whichever is lower”</p> <p><i>the following shall be substituted namely;</i></p> <p>Post Amendment</p> <p>leasing of property any kind amounting to ten per cent or more of the turnover of the company, as mentioned in clause (c) of sub-section (1) of section 188</p> <p>Impact of Amendment</p> <p><i>Now the prior approval of the company by a resolution shall be required only for transaction leasing of property any kind amounting to ten per cent or more of the turnover of the company.</i></p> <p>For further details visit link</p> <p>http://www.mca.gov.in/Ministry/pdf/Comp2Amndt_18112019.pdf</p> |
| <p>The Companies(Meeting of Board and its Powers)Second</p> | <p>Rule 15 of The Companies(Meeting of Board and its Powers) Rules,2014 -Contracts or Arrangements with Related Party</p> |

| | |
|---|--|
| <p>Amendment Rules,2019</p> <p>(effective from 18th November,2019)</p> | <p>in sub-clause (iv)</p> <p>Pre-Amendment availing or rendering of any services, directly or through appointment of agent, amounting to ten percent or more of the turnover of the company or rupees fifty crore, whichever is lower as mentioned in clause (d) and clause (e) respectively of sub-section (1) of section 188.</p> <p><i>The following shall be substituted</i></p> <p>"or rupees fifty crore, whichever is lower" is omitted.</p> <p>Post-Amendment availing or rendering of any services, directly or through appointment of agent, amounting to ten percent or more of the turnover of the company as mentioned in clause (d) and clause (e) respectively of sub-section (1) of section 188</p> <p>Impact of Amendment <i>Now the prior approval of the company by a resolution shall be required only for transaction for availing or rendering of any services, directly or through appointment of agent, amounting to ten percent or more of the turnover of the company.</i></p> <p>For further details visit link http://www.mca.gov.in/Ministry/pdf/Comp2Amndt_18112019.pdf</p> |
| <p>Lesson-17 Appointment and Remuneration of Key Managerial Personnel</p> | |
| <p>The Companies (Amendment) Act, 2019</p> <p>(effective from 02nd November 2018)</p> | <p>Section 197-Overall Maximum Managerial Remuneration and Managerial Remuneration in case of Absence or Inadequacy of Profits</p> <p>Sub-section (7)- Notwithstanding anything contained in any other provision of this Act but subject to the provisions of this section, an independent director shall not be entitled to any stock option and may receive remuneration by way of fees provided under sub-section (5), reimbursement of expenses for participation in the Board and other meetings and profit related commission as may be approved by the members.</p> <p>This sub-section 7 of Section 197 has been omitted as the provision is provided in Section 149 (9) of the Companies Act, 2013 provided for the same.</p> <p>For sub-section 15</p> <p>If any person contravenes the provisions of this section, he shall be punishable with fine which shall not be less than one lakh</p> |

| | |
|--|---|
| | <p>rupees but which may extend to five lakh rupees.</p> <p><i>The following sub section shall be substituted, namely :-</i></p> <p>If any person makes any default in complying with the provisions of this section, he shall be liable to a penalty of one lakh rupees and where any default has been made by a company, the company shall be liable to a penalty of five lakh rupees.</p> <p>Impact of Amendment</p> <p><i>Under sub-section (15) Non-compliance with Section 197 shall result in any person in default being liable to a penalty, instead of being punishable with fine.</i></p> <p>For further details visit link https://www.mca.gov.in/Ministry/pdf/AMENDMENTACT_01082019.pdf</p> |
| <p>The Companies (Amendment) Act, 2019</p> <p>(effective from 02nd November 2018)</p> | <p>Section 203-Appointment of Key Managerial Personnel For sub-section 5</p> <p>Pre-Amendment</p> <p>If a company contravenes the provisions of this section, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every director and key managerial personnel of the company who is in default shall be punishable with fine which may extend to fifty thousand rupees and where the contravention is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the contravention continues.</p> <p>Post-Amendment</p> <p><i>the following sub-section shall be substituted, namely:</i></p> <p>If any company makes any default in complying with the provisions of this section, such company shall be liable to a penalty of five lakh rupees and every director and key managerial personnel of the company who is in default shall be liable to a penalty of fifty thousand rupees and where the default is a continuing one, with a further penalty of one thousand rupees for each day after the first during which such default continues but not exceeding five lakh rupees.</p> <p>Impact of Amendment</p> <p><i>Non-compliance with Section 203 shall result in the company, every director and key managerial personnel of the company who is in default being liable to a penalty, instead of being punishable with fine.</i></p> <p>For further details visit link</p> |

| | |
|---|--|
| | https://www.mca.gov.in/Ministry/pdf/AMENDMENTACT_01082019.pdf |
| Lesson 18:General Meetings | |
| The Companies (Amendment) Act, 2019 (effective from 02 nd November 2018) | Section 102-Statement to be Annexed to Notice Pre-Amendment for sub-section (5) - If any default is made in complying with the provisions of this section, every promoter, director, manager or other key managerial personnel who is in default shall be punishable with fine which may extend to fifty thousand rupees or five times the amount of benefit accruing to the promoter, director, manager or other key managerial personnel or any of his relatives, whichever is more. Post-Amendment <i>the following sub-section shall be substituted, namely:—</i> sub-section (5) Without prejudice to the provisions of sub-section (4), if any default is made in complying with the provisions of this section, every promoter, director, manager or other key managerial personnel of the company who is in default shall be liable to a penalty of fifty thousand rupees or five times the amount of benefit accruing to the promoter, director, manager or other key managerial personnel or any of his relatives, whichever is higher. Impact of Amendment <i>Non-compliance with Section 102 shall result in every promoter, director, manager or other key managerial personnel who is in default being liable to a penalty, instead of being punishable with fine.</i> For further details visit link https://www.mca.gov.in/Ministry/pdf/AMENDMENTACT_01082019.pdf |
| The Companies (Amendment) Act, 2019 (effective from 02 nd November 2018) | Section 105-Proxies in sub-section (3), for the words “punishable with fine which may extend to five thousand rupees”, the words “liable to a penalty of five thousand rupees” shall be substituted. Impact of Amendment <i>Non-compliance with sub-section (2) of Section 105 shall result in every officer in default being liable to a penalty, instead of being punishable with fine.</i> For further details visit link |

| | |
|---|--|
| | https://www.mca.gov.in/Ministry/pdf/AMENDMENTACT_01082019.pdf |
| The Companies (Amendment) Act, 2019 (effective from 02 nd November 2018) | Section 117-Resolutions and Agreements to be Filed Pre-Amendment for sub-section (2)- If a company fails to file the resolution or the agreement under sub-section (1) before the expiry of the period specified therein, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default, including liquidator of the company, if any, shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees. Post-Amendment <i>the following sub-section shall be substituted, namely:—</i> “(2) If any company fails to file the resolution or the agreement under sub-section (1) before the expiry of the period specified therein, such company shall be liable to a penalty of one lakh rupees and in case of continuing failure, with a further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of twenty-five lakh rupees and every officer of the company who is in default including liquidator of the company, if any, shall be liable to a penalty of fifty thousand rupees and in case of continuing failure, with a further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees.” Impact of Amendment <i>Non-compliance with sub-section (1) of Section 117 shall result in the company and every officer in default including liquidator of a company, if any, being liable to a penalty, instead of being punishable with fine.</i> For further details visit link https://www.mca.gov.in/Ministry/pdf/AMENDMENTACT_01082019.pdf |
| The Companies (Amendment) Act, 2019 (effective from 02 nd November 2018) | Section 121-Report on Annual General Meeting Pre-Amendment for sub-section (3), If the company fails to file the report under sub-section (2) before the expiry of the period specified therein, |

| | |
|---|--|
| | <p>the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.</p> <p>Post-Amendment</p> <p><i>the following sub-section shall be substituted, namely:-</i></p> <p>If the company fails to file the report under sub-section (2) before the expiry of the period specified therein, such company shall be liable to a penalty of one lakh rupees and in case of continuing failure, with further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees and every officer of the company who is in default shall be liable to a penalty which shall not be less than twenty-five thousand rupees and in case of continuing failure, with further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of one lakh rupees.</p> <p>Impact of Amendment</p> <p><i>Non-compliance with sub-section (2) of Section 121 shall result in the company and every officer in default being liable to a penalty, instead of being punishable with fine.</i></p> <p>For further details visit link</p> <p>https://www.mca.gov.in/Ministry/pdf/AMENDMENTACT_01082019.pdf</p> |
| Lesson21:Accounts and Audit | |
| <p>The Companies (Amendment) Act, 2019</p> <p>(effective from 02nd November 2018)</p> | <p>Section 140-Removal,Resignation of Auditor and giving of Special Notice</p> <p>for sub-section (3) If the auditor does not comply with sub-section (2), he or it shall be punishable with fine which shall not be less than fifty thousand rupees or the remuneration of the auditor, whichever is less, but which may extend to five lakh rupees.</p> <p><i>the following sub-section shall be substituted, namely:—</i></p> <p>If the auditor does not comply with the provisions of sub-section (2), he or it shall be liable to a penalty of fifty thousand rupees or an amount equal to the remuneration of the auditor, whichever is less, and in case of continuing failure, with further penalty of five hundred rupees for each</p> |

| | |
|---|---|
| | <p>day after the first during which such failure continues, subject to a maximum of five lakh rupees.</p> <p>Impact of Amendment</p> <p><i>Non-compliance with sub-section (2) of Section 140 shall result in the auditor being liable to a penalty, instead of being punishable with fine and imposition of further penalty of five hundred rupees for each day after the first during which such failure continues.</i></p> <p>For further details visit link</p> <p>https://www.mca.gov.in/Ministry/pdf/AMENDMENTACT_01082019.pdf</p> |
| <p>The Companies (Amendment) Act, 2019</p> <p>(effective from 02nd November 2018)</p> | <p>Section 2(41)- Financial Year</p> <p>In section 2 of the Companies Act, 2013 in clause (41), (a) for the first proviso</p> <p>Provided that on an application made by 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 Tribunal may, if it is satisfied, allow any period as its financial year, whether or not that period is a year.</p> <p><i>the following shall be substituted, namely.-</i></p> <p>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.</p> <p>Provided further that any application pending before the Tribunal as on the date of commencement of the Companies (Amendment) Act, 2019, shall be disposed of by the Tribunal in accordance with the provisions applicable to it before such commencement.”;</p> <p>(b) in the second proviso, for the words “Provided further that”, the words “Provided also that” shall be substituted.</p> <p>Impact of Amendment</p> <p>Vesting in the Central Government the power to approve the alteration in the financial year of a</p> |

| | |
|--|---|
| | <p>company under section 2(41)</p> <p><i>As per Companies Act, in case of Indian company having Holding/ subsidiary/ Associate Company situated outside India, it is allowed the change the financial year as per such company with the approval of Tribunal. Through this Amendment, Power of Tribunal has been transferred from Tribunal to Central Government, therefore, financial year of Company can be changed with approval of Central Government.</i></p> <p>For further details visit link</p> <p>https://www.mca.gov.in/Ministry/pdf/AMENDMENTACT_01082019.pdf</p> |
| <p>The Companies (Amendment) Act,2019</p> <p>(effective from 15th August 2019)</p> | <p>Section 132-Constitution of National Financial Reporting Authority. ,—</p> <p>(a) after sub-section (1), the following sub-section shall be inserted, namely:—</p> <p>(1A) The National Financial Reporting Authority shall perform its functions through such divisions as may be prescribed.</p> <p>(b) after sub-section (3), the following sub-sections shall be inserted, namely:—</p> <p>(3A) Each division of the National Financial Reporting Authority shall be presided over by the Chairperson or a full-time Member authorised by the Chairperson.</p> <p>(3B) There shall be an executive body of the National Financial Reporting Authority consisting of the Chairperson and full-time Members of such Authority for efficient discharge of its functions under sub-section (2) [other than clause (a)] and sub-section (4).</p> <p>For further details visit the link:</p> <p>http://www.mca.gov.in/Ministry/pdf/AMENDMENTACT_01082019.pdf</p> |
| <p>The Companies (Amendment) Act,2019</p> <p>(effective from 15th August 2019)</p> | <p>Section 132-Constitution of National Financial Reporting Authority. ,—</p> <p>in sub-section (4), in clause (c), for sub-clause (B), debarring the member or the firm from engaging himself or itself from practice as member of the Institute of Chartered Accountant of India referred to in clause (e) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 for a minimum period of six months or for such higher period not exceeding ten years as may be decided by the National</p> |

| | |
|--|---|
| | <p>Financial Reporting Authority.</p> <p><i>the following sub-clause shall be substituted, namely:</i></p> <p>(B) debarring the member or the firm from—</p> <p>I. being appointed as an auditor or internal auditor or undertaking any audit in respect of financial statements or internal audit of the functions and activities of any company or body corporate; or</p> <p>II. performing any valuation as provided under section 247, for a minimum period of six months or such higher period not exceeding ten years as may be determined by the National Financial Reporting Authority.</p> <p>Impact of Amendment</p> <ul style="list-style-type: none"> • <i>NFRA to perform its functions through such divisions as may be prescribed by the Central Government.</i> • <i>Executive body of NFRA shall consist of the Chairperson and full-time Members for efficient discharge of its certain functions</i> • <i>Debarring of the member or firm from being appointed as an auditor or internal auditor etc. or performing any valuation under section 247 by NFRA in case professional or other misconduct is proved.</i> <p>For Further details visit link http://www.mca.gov.in/Ministry/pdf/AMENDMENTACT_01082019.pdf</p> |
| <p>The Companies (cost records and audit) Amendment Rules, 2019</p> <p>(effective from 15th October, 2019)</p> | <p>The Central Government hereby further amends the Companies (cost records and audit) Rules, 2014, vide the Companies (cost records and audit) Amendment Rules, 2019.</p> <p>For further details kindly visit http://www.mca.gov.in/Ministry/pdf/Cost&AuditAmntRules_15102019.pdf</p> |
| <p>The Companies (Filing of Documents and Forms in Extensible Business Reporting Language), Amendment Rules, 2019</p> <p>(effective from 15th October, 2019)</p> | <p>In the Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Rules, 2015, for Annexure-III.</p> <p>Kindly visit the link http://www.mca.gov.in/Ministry/pdf/XBRLAmntRules_15102019.pdf</p> |
| <p align="center">Lesson 23: Board's Report and Disclosures</p> | |

| | |
|---|--|
| <p>The Companies (Amendment) Act, 2019</p> <p>(effective from 2nd November, 2019)</p> | <p>Section 137-Copy of Financial Statement to be Filed with Registrar,</p> <p>in sub-section(3)</p> <p>(a) for the words “punishable with fine”, the words “liable to a penalty” shall be substituted;</p> <p>(b) for the portion beginning with the words “punishable with imprisonment”, and ending with the words “five lakh rupees or with both”, the words “shall be liable to a penalty of one lakh rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees” shall be substituted.</p> <p>In section 137, in sub-section (3),for the words</p> <p>punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees or with both</p> <p><i>the following words shall be substituted, namely:-</i></p> <p>shall be liable to a penalty of one lakh rupees and in case of continuing failure, with further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees.</p> <p>Impact of Amendment</p> <p><i>Non-compliance with sub-section (1) or (2) of Section 137 shall result in:</i></p> <p><i>(i) the company being liable to a penalty, instead of being punishable with fine; and</i></p> <p><i>(ii) the managing director and the Chief Financial Officer of the company, if any, and, in the absence of the managing director and the Chief Financial Officer, any other director who is charged by the 5 board of directors with the responsibility of complying with the provisions of Section 137, and, in the absence of any such director, all the directors of the company, being liable to a penalty, instead of being punishable with fine or imprisonment or with both.</i></p> <p>For further details visit link</p> <p>https://www.mca.gov.in/Ministry/pdf/AMENDMENTACT_01082019.pdf</p> |
| <p>The Companies (Amendment) Act,2019</p> <p>(effective from 02nd November 2018)</p> | <p>Section 92-Annual Return</p> <p>For sub-section (5)-</p> <p>Pre-Amendment</p> <p>If a company fails to file its annual return under sub-section (4),</p> |

| | |
|---|---|
| | <p>before the expiry of the period specified therein, the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakhs rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.</p> <p>Post-Amendment</p> <p><i>The following sub-section shall be substituted, namely:-</i></p> <p>If any company fails to file its annual return under sub-section (4), before the expiry of the period specified therein, such company and its every officer who is in default shall be liable to a penalty of fifty thousand rupees and in case of continuing failure, with further penalty of one hundred rupees for each day during which such failure continues, subject to a maximum of five lakh rupees.</p> <p>Impact of Amendment</p> <p><i>Non-compliance with sub-section (4) of Section 92 shall result in:</i></p> <p>(i) <i>the company being liable to a penalty, instead of being punishable with fine; and</i></p> <p>(ii) <i>every officer in default being liable to a penalty, instead of being punishable with fine or imprisonment or with both.</i></p> <p>For further details visit link</p> <p>https://www.mca.gov.in/Ministry/pdf/AMENDMENTACT_01082019.pdf</p> |
| <p>The Companies(Incorporation) Eighth Amendment Rules , 2019</p> <p>(effective from 16th October,2019)</p> | <p>Rule 25A of The Companies(Incorporation) Rules , 2014</p> <p>Active Company Tagging Identities and Verification (ACTIVE)</p> <p>In rule 25A,- in sub-rule (1), in the fourth proviso, for the item (iii),</p> <p>in sub-rule (1), in the fourth proviso, for the item (iii),</p> <p>(iii) DIR-12 (Changes in Director except cessation)</p> <p><i>the following shall be substituted, namely.-</i></p> <p>(iii) DIR-12 (changes in Director except in case of):</p> <p>(a) cessation of any director or</p> <p>(b) appointment of directors in such company where the total number of directors are less than the minimum number provided in clause (a) of sub-section (1) of section 149 on account of</p> |

| | |
|--|---|
| | <p>disqualification of all or any of the director under section 164.</p> <p>(c) appointment of any director in such company where DINs of all or any its director(s) have been deactivated.</p> <p>(d) appointment of director(s) for implementation of the order passed by the Court or Tribunal or Appellate Tribunal under the provisions of this Act or under the Insolvency and Bankruptcy Code, 2016.</p> <p>Impact of Amendment</p> <p>There are certain other exceptions added to the item no. (iii) of the fourth proviso of Sub rule (1) of Rule 25 A. In Sub Rule (1) of Rule 25 A, an “ACTIVE-non-compliant” company is restricted to record the specified event based information or changes which includes filing of Form DIR-12. Post amendment, there are certain exceptions being provided to item (iii) filing of Form DIR-12 i.e. Form DIR-12 cannot be filed except in the following cases:</p> <p>(a) cessation of any director or</p> <p>(b) appointment of directors in such company where the total number of directors are less than the minimum number provided in clause (a) of sub-section (1) of section 149 on account of disqualification of all or any of the director under section 164.</p> <p>(c) appointment of any director in such company where DINs of all or any its director(s) have been deactivated.</p> <p>(d) appointment of director(s) for implementation of the order passed by the Court or Tribunal or Appellate Tribunal under the provisions of this Act or under the Insolvency and Bankruptcy Code, 2016.</p> <p>Impact of Amendment</p> <p><i>There are certain other exceptions added to the item no. (iii) of the fourth proviso of Sub rule (1) of Rule 25 A. In Sub Rule (1) of Rule 25 A, an “ACTIVE-non-compliant” company is restricted to record the specified event based information or changes which includes filing of Form DIR-12. Post amendment, there are certain exceptions being provided to item (iii) filing of Form DIR-12 i.e. Form DIR-12 cannot be filed except in the following cases:</i></p> <p><i>(a) cessation of any director or</i></p> <p><i>(b) appointment of directors in such company where the total number of directors are less than the minimum number provided in clause (a) of sub-section (1) of section 149 on account of disqualification of all or any of the director under section 164.</i></p> <p><i>(c) appointment of any director in such company where DINs of</i></p> |
|--|---|

| | |
|--|--|
| | <p><i>all or any its director(s) have been deactivated.</i></p> <p><i>(d) appointment of director(s) for implementation of the order passed by the Court or Tribunal or Appellate Tribunal under the provisions of this Act or under the Insolvency and Bankruptcy Code, 2016.</i></p> <p>For further details visit link</p> <p>https://www.mca.gov.in/Ministry/pdf/CompIncEighthAmndtRules_18102019.pdf</p> |
| <p>The Companies (Accounts) Amendment Rules, 2019</p> <p>(effective from 22nd October, 2019)</p> | <p>Rule 8 of the Companies (Accounts) Rules, 2014</p> <p>Matters to be included in the Board's Report</p> <p>in sub-rule (5), after clause (iii),</p> <p><i>the following clause shall be inserted namely</i></p> <p>(iiia) a statement regarding opinion of the Board with regard to integrity, expertise and experience (including the proficiency) of the independent directors appointed during the year”.</p> <p>Explanation.—For the purposes of this clause, the expression “proficiency” means the proficiency of the independent director as ascertained from the online proficiency self-assessment test conducted by the institute notified under sub-section (1) of section 150.</p> <p>Impact of Amendment</p> <p><i>Additional disclosure to be given in board report regarding opinion of the Board with regard to integrity, expertise and experience (including the proficiency) of the independent directors appointed during the year.</i></p> <p>For further details visit the link:</p> <p>http://www.mca.gov.in/Ministry/pdf/CmpAccAmndtRules_22102019.pdf</p> |
| Lesson 24: Registers, Forms and Returns | |
| | New Forms to be filed –PAS-6, DIR3 KYC, DIR-3 KYC WEB, ACTIVE, INC-20A, NDH-4 |
| Lesson 25: Inspection and Investigation | |
| <p>The Companies (Amendment) Act, 2019</p> <p>(effective from 15th)</p> | <p>Section 212-Investigation into Affairs of Company by Serious Fraud Investigation Office</p> <p>in sub-section (8), for the words</p> |

| | |
|---------------|---|
| August, 2019) | <p>If the Director, Additional Director or Assistant Director <i>the following shall be substituted namely,</i></p> <p>If any officer not below the rank of Assistant Director.</p> <p>in sub-section (9), for the words</p> <p>The Director, Additional Director or Assistant Director of Serious Fraud Investigation Office shall, immediately after arrest of such person under sub-section (8)</p> <p><i>the following shall be substituted namely,</i></p> <p>The officer authorised under sub-section (8) shall, immediately after arrest of such person under such sub-section.</p> <p>in sub-section (10), for the words</p> <p>Judicial Magistrate</p> <p><i>the following shall be substituted namely,</i></p> <p>Special Court or Judicial Magistrate.</p> <p>in the proviso, for the words</p> <p>Magistrate's court</p> <p><i>the following shall be substituted namely,</i></p> <p>Special Court or Magistrate's court.</p> <p>after sub-section (14), the following sub-section shall be inserted, namely:—</p> <p>Sub-section (14A)- Where the report under sub-section (11) or sub-section (12) states that fraud has taken place in a company and due to such fraud any director, key managerial personnel, other officer of the company or any other person or entity, has taken undue advantage or benefit, whether in the form of any asset, property or cash or in any other manner, the Central Government may file an application before the Tribunal for appropriate orders with regard to disgorgement of such asset, property or cash and also for holding such director, key managerial personnel, other officer or any other person liable personally without any limitation of liability.</p> <p>Impact of Amendment</p> <p><i>Any officer not below the rank of Assistant Director of Serious Fraud Investigation Office (SFIO), if so authorised, may arrest any person in accordance with the provisions of this section.</i></p> <ul style="list-style-type: none"> • <i>The person so arrested may be taken to a Special Court or Judicial Magistrate or Metropolitan Magistrate within 24 hours of his arrest.</i> • <i>Where an investigation report submitted by SFIO states that a fraud has taken place and any director, KMP or officer has taken undue advantage or benefit, then the Central Government</i> |
|---------------|---|

| | |
|--|--|
| | <p><i>may file an application before the Tribunal with regard to disgorgement and such director, KMP or officer may be held personally liable without any limitation of liability.</i></p> <p>For further details visit link</p> <p>https://www.mca.gov.in/Ministry/pdf/AMENDMENTACT_01082019.pdf</p> |
| Lesson 26: Majority Rule and Minority Rights | |
| <p>The Companies (Amendment) Act, 2019</p> <p>(effective from 15th August 2019)</p> | <p>Section 241- Application to Tribunal for Relief in Cases of Oppression, etc</p> <p><i>(a) in sub-section (2), the following proviso shall be inserted, namely:—</i></p> <p>“Provided that the applications under this sub-section, in respect of such company or class of companies, as may be prescribed, shall be made before the Principal Bench of the Tribunal which shall be dealt with by such Bench.”;</p> <p><i>(b) after sub-section (2), the following sub-sections shall be inserted, namely:—</i></p> <p>Section-3 Where in the opinion of the Central Government there exist circumstances suggesting that—</p> <p>(a) any person concerned in the conduct and management of the affairs of a company is or has been in connection therewith guilty of fraud, misfeasance, persistent negligence or default in carrying out his obligations and functions under the law or of breach of trust;</p> <p>(b) the business of a company is not or has not been conducted and managed by such person in accordance with sound business principles or prudent commercial practices;</p> <p>(c) a company is or has been conducted and managed by such person in a manner which is likely to cause, or has caused, serious injury or damage to the interest of the trade, industry or business to which such company pertains; or</p> <p>(d) the business of a company is or has been conducted and managed by such person with intent to defraud its creditors, members or any other person or otherwise for a fraudulent or unlawful purpose or in a manner prejudicial to public interest,</p> <p>the Central Government may initiate a case against such person and refer the same to the Tribunal with a request that the Tribunal may inquire into the case and record a decision as to whether or not such person is a fit and proper person to hold the office of director or any other office connected with the conduct and management of any company.</p> |

| | |
|---|---|
| | <p>Section-4 The person against whom a case is referred to the Tribunal under sub-section (3), shall be joined as a respondent to the application.</p> <p>Section-5 Every application under sub-section (3)—</p> <p>(a) shall contain a concise statement of such circumstances and materials as the Central Government may consider necessary for the purposes of the inquiry; and</p> <p>(b) shall be signed and verified in the manner laid down in the Code of Civil Procedure, 1908, for the signature and verification of a plaint in a suit by the Central Government.</p> <p>Impact of Amendment</p> <p><i>Central Government to prescribe such company or class of companies in respect of which, applications under such sub-section, shall be made before the Principal Bench of NCLT and shall be dealt with by such Bench.</i></p> <p><i>In certain circumstances, the Central Government may refer the matter and request to the Tribunal to inquire into the case and record a decision about whether the person is a fit and proper person to hold the office of director or any other office connected with the conduct and management of any company.</i></p> <p>For Further details visit link https://www.mca.gov.in/Ministry/pdf/AMENDMENTACT_01082019.pdf</p> |
| <p>The Companies (Amendment) Act, 2019 (effective from 15th August 2019)</p> | <p>Section 242-Powers of Tribunal</p> <p>after sub-section (4), the following sub-section shall be inserted, namely:--</p> <p>Section 4A- At the conclusion of the hearing of the case in respect of sub-section (3) of section 241, the Tribunal shall record its decision stating therein specifically as to whether or not the respondent is a fit and proper person to hold the office of director or any other office connected with the conduct and management of any company.</p> <p>Impact of Amendment</p> <p><i>In matters under section 241, the Tribunal shall record its decision stating specifically as to whether or not the respondent is a fit and proper person to hold the office of director or any other office connected with the conduct and management of any company.</i></p> <p>For Further details visit link https://www.mca.gov.in/Ministry/pdf/AMENDMENTACT_01082019.pdf</p> |

| | |
|--|--|
| <p>The Companies (Amendment) Act, 2019</p> <p>(effective from 15th August 2019)</p> | <p>Section 243- Consequence of Termination or Modification of CertainAgreements</p> <p>(a) after sub-section (1), the following sub-sections shall be inserted, namely:—</p> <p>(1A) The person who is not a fit and proper person pursuant to sub-section (4A) of section 242 shall not hold the office of a director or any other office connected with the conduct and management of the affairs of any company for a period of five years from the date of the said decision:</p> <p>Provided that the Central Government may, with the leave of the Tribunal, permit such person to hold any such office before the expiry of the said period of five years.</p> <p>(1B) Notwithstanding anything contained in any other provision of this Act, or any other law for the time being in force, or any contract, memorandum or articles, on the removal of a person from the office of a director or any other office connected with the conduct and management of the affairs of the company, that person shall not be entitled to, or be paid, any compensation for the loss or termination of office.</p> <p>(b) in sub-section (2), after the word, brackets and figure “sub-section (1)”, the words, brackets, figure and letter “or sub-section (1A)” shall be inserted.</p> <p>Impact of Amendment</p> <p><i>The person who is not a fit and proper person pursuant to sub-section (4A) of section 242 shall not hold the office of a director or any other office connected with the conduct and management of the affairs of any company for a period of five years</i></p> <p><i>The person who loose his office shall not be entitled for any compensation for loss of his office</i></p> <p>For Further details visit link https://www.mca.gov.in/Ministry/pdf/AMENDMENTACT_01082019.pdf</p> |
| <p align="center">Lesson 32: Winding up of Companies</p> | |
| <p>The Companies (Amendment) Act,2019</p> <p>(effective from 15th August 2019)</p> | <p>Section 272-Petition for Winding up in sub-section (3), for the words</p> <p>Pre-Amendment The Registrar shall be entitled to present a petition for winding up under section 271, except on the grounds specified in clause (a) or clause (e) of that sub-section:</p> <p><i>the following shall be substituted namely,</i></p> |

| | |
|--|---|
| | <p>The Registrar shall be entitled to present a petition for winding up under section 271, except on the grounds specified in clause (a) of that section.</p> <p>Impact of Amendment</p> <p><i>In section 272 (3), as provided under, the reference to clause (e) is omitted</i></p> <p><i>271(e) provides that a company may, on a petition under section 272, be wound up by the Tribunal, if the Tribunal is of the opinion that it is just and equitable that the company should be wound up.</i></p> <p>For Further details visit link https://www.mca.gov.in/Ministry/pdf/AMENDMENTACT_01082019.pdf</p> |
| Lesson 33:Striking off Names of Companies | |
| <p>The Companies (Amendment) Act, 2019</p> <p>(effective from 02nd November 2018)</p> | <p>Section 12-Registered office of Company</p> <p>after sub-section (8), the following sub-section shall be inserted, namely:—</p> <p>Sub-section 9- If the Registrar has reasonable cause to believe that the company is not carrying on any business or operations, he may cause a physical verification of the registered office of the company in such manner as may be prescribed and if any default is found to be made in complying with the requirements of sub-section (1), he may without prejudice to the provisions of sub-section (8), initiate action for the removal of the name of the company from the register of companies under Chapter XVIII.</p> <p>Impact of Amendment</p> <p><i>Insertion of sub-section (9) to section 12, giving power to Registrar for initiating action for the removal of the name of the company from the register of companies under Chapter XVIII if he has reasonable cause to believe that the company is not carrying on any business or operations by physical verification of registered office.</i></p> <p>For Further details visit link https://www.mca.gov.in/Ministry/pdf/AMENDMENTACT_01082019.pdf</p> |
| <p>The Companies (Amendment) Act, 2019</p> <p>(effective from 02nd November 2018)</p> | <p>Section 248- Power of Registrar to Remove Name of Company from Register of Companies</p> <p>(a) in clause (c), for the word and figures “section 455,” the</p> |

| | |
|---|---|
| November 2018) | <p>words and figures “section 455; or” shall be substituted;</p> <p>(b) after clause (c)</p> <p><i>the following clauses shall be inserted, namely:—</i></p> <p>“(d) the subscribers to the memorandum have not paid the subscription which they had undertaken to pay at the time of incorporation of a company and a declaration to this effect has not been filed within one hundred and eighty days of its incorporation under sub-section (1) of section 10A; or</p> <p>(e) the company is not carrying on any business or operations, as revealed after the physical verification carried out under sub-section (9) of section 12.”.</p> <p>Impact of Amendment</p> <p><i>New clause regarding</i></p> <p><i>(a) non-payment of subscription money which subscribers of memorandum has undertaken to pay at the time of incorporation of a company and a declaration to this effect has not been filed within one hundred and eighty days of its incorporation and</i></p> <p><i>(b) the company is not carrying on any business or operations, as revealed after the physical verification of registered office</i></p> <p><i>has been inserted post amendment along with other clauses in Section 248(1).</i></p> <p>For Further details visit link https://www.mca.gov.in/Ministry/pdf/AMENDMENTACT_01082019.pdf</p> |
| Miscellaneous | |
| <p>The Companies (Amendment) Act, 2019</p> <p>(effective from 02nd November 2018)</p> | <p>Section 238-Registration of Offer of Schemes Involving Transfer of Shares.</p> <p>In sub-section 3</p> <p>Pre-Amendment</p> <p>The director who issues a circular which has not been presented for registration and registered under clause (c) of sub-section (1), shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees.</p> <p><i>the following sub-section shall be inserted, namely</i></p> <p>Post- Amendment</p> |

| | |
|--|---|
| | <p>The director who issues a circular which has not been presented for registration and registered under clause (c) of sub-section (1), shall be liable to a penalty of one lakh rupees.</p> <p>Impact of Amendment</p> <p><i>Non-compliance with clause (c) of sub-section (1) of Section 238 shall result in the director being liable to a penalty, instead of being punishable with fine.</i></p> <p>For Further details visit link https://www.mca.gov.in/Ministry/pdf/AMENDMENTACT01082019.pdf</p> |
| <p>The Companies (Amendment) Act,2019 (effective from 15th August 2019)</p> | <p>Section 398-Provisions Relating to Filing of Applications, Documents, Inspection, etc., in Electronic Form</p> <p>in sub-section (1), in clause (f), the word “prospectus,” shall be omitted.</p> <p>Impact of Amendment</p> <p><i>Prospectus not required to be registered by the Registrar.</i></p> <p>For Further details visit link https://www.mca.gov.in/Ministry/pdf/AMENDMENTACT01082019.pdf</p> |
| <p>The Companies (Amendment) Act,2019 (effective from 02nd November 2018)</p> | <p>Section 441-Compounding of certain offences</p> <p>(a) in sub-section (1), in clause (b), for the words “does not exceed five lakh rupees”, the words “does not exceed twenty-five lakh rupees” shall be substituted;</p> <p>(b) for sub-section (6), Pre-Amendment Notwithstanding anything contained in the Code of Criminal Procedure,1973,— (a) any offence which is punishable under this Act, with imprisonment or fine, or with imprisonment or fine or with both, shall be compoundable with the permission of the Special Court, in accordance with the procedure laid down in that Act for compounding of offences;</p> <p>(b) any offence which is punishable under this Act with imprisonment only or with imprisonment and also with fine shall not be compoundable.</p> <p>Post Amendment <i>the following sub-section shall be substituted, namely:—</i></p> |

| | |
|--|--|
| | <p>Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence which is punishable under this Act with imprisonment only or with imprisonment and also with fine shall not be compoundable.</p> <p>Impact of Amendment</p> <p><i>a)Power of Regional Director to compound offence punishable increased upto Rs. 2,500,000/-</i></p> <p><i>Pre-Amendment, where the maximum amount of fine which may be imposed for such offence did not exceed five lakh rupees, such offence was compounded by the Regional Director or any officer authorised by the Central Government.</i></p> <p><i>Through the Amendment, where the maximum amount of fine which may be imposed for such offence does not exceed Twenty five lakh rupees, such offence shall be compounded by the Regional Director or any officer authorised by the Central Government.</i></p> <p><i>b)Section 441(6)(a), which requires the permission of the Special Court for compounding of offences, being redundant provision, is omitted.</i></p> <p>For Further details visit link https://www.mca.gov.in/Ministry/pdf/AMENDMENTACT01082019.pdf</p> |
| <p>The Companies (Amendment) Act,2019</p> <p>(effective from 02nd November 2018)</p> | <p>Section 446B-Lesser Penalties for One Person Companies or Small Companies</p> <p>for the portion beginning with the words “punishable with fine” and ending with the words “specified in such sections”, the words “liable to a penalty which shall not be more than one-half of the penalty specified in such sections” shall be substituted.</p> <p>For Further details visit link https://www.mca.gov.in/Ministry/pdf/AMENDMENTACT01082019.pdf</p> |
| <p>The Companies (Amendment) Act,2019</p> <p>(effective from 02nd November 2018)</p> | <p>Section 447-Punishment for Fraud</p> <p>in the second proviso, for the words “twenty lakh rupees”, the words “fifty lakh rupees” shall be substituted.</p> <p>Pre-Amendment</p> |

| | |
|--|---|
| | <p>Provided further that where the fraud involves an amount less than ten lakh rupees or one per cent. of the turnover of the company, whichever is lower, and does not involve public interest, any person guilty of such fraud shall be punishable with imprisonment for a term which may extend to five years or with fine which may extend to twenty lakh rupees or with both.</p> <p>Post Amendment</p> <p>Provided further that where the fraud involves an amount less than ten lakh rupees or one per cent. of the turnover of the company, whichever is lower, and does not involve public interest, any person guilty of such fraud shall be punishable with imprisonment for a term which may extend to five years or with fine which may extend to fifty lakh rupees or with both.</p> <p>Impact of Amendment</p> <p><i>The amount of fine has been increased from twenty lakh to fifty lakh rupees for the fraud involving an amount less than ten lakh rupees or one per cent. of the turnover of the company, whichever is lower, and does not involve public interest.</i></p> <p>For Further details visit link https://www.mca.gov.in/Ministry/pdf/AMENDMENTACT01082019.pdf</p> |
| <p>The Companies (Amendment) Act,2019</p> <p>(effective from 02nd November 2018)</p> | <p>Section 454-Adjudication of Penalties</p> <p>(i) for sub-section (3), the following sub-section shall be substituted, namely:—</p> <p>The adjudicating officer may, by an order—</p> <p>(a) impose the penalty on the company, the officer who is in default, or any other person, as the case may be, stating therein any non-compliance or default under the relevant provisions of this Act; and</p> <p>(b) direct such company, or officer who is in default, or any other person, as the case may be, to rectify the default, wherever he considers fit.”;</p> <p>(ii) in sub-section (4), for the words “such company and the officer who is in default”, the words “such company, the officer who is in default or any other person” shall be substituted;</p> <p>(iii) in sub-section (8),—</p> |

| | |
|--|---|
| | <p>(a) in clause (i), for the words “does not pay the penalty imposed by the adjudicating officer or the Regional Director”, the words, brackets and figures “fails to comply with the order made under sub-section (3) or sub-section (7), as the case may be,” shall be substituted;</p> <p>(b)(i) in clause (ii) sub-section (8) for the words “Where an officer of a company”, the words “Where an officer of a company or any other person” shall be substituted;</p> <p>(ii) in clause (ii) sub-section (8) for the words “does not pay the penalty”, the words, brackets and figures “fails to comply with the order made under sub-section (3) or sub-section (7), as the case may be,” shall be substituted.</p> <p>Impact of Amendment</p> <p><i>1) For 454(3)- Adjudication of Penalties-</i></p> <p><i>The adjudicating officer shall also give the direction of making good of the default at the time of levying penalty.</i></p> <p><i>2)For 454(8)-Adjudication of Penalties</i></p> <p><i>Default would occur when the company or the officer in default would fail to comply with the order of the adjudicating officer or RD as the case may be.</i></p> <p>For Further details visit link https://www.mca.gov.in/Ministry/pdf/AMENDMENTACT_01082019.pdf</p> |
| <p>The Companies (Amendment) Act,2019</p> <p>(effective from 02nd November 2018)</p> | <p>Section 454A -Penalty for Repeated Defaults</p> <p>Where a company or an officer of a company or any other person having already been subjected to penalty for default under any provisions of this Act, again commits such default within a period of three years from the date of order imposing such penalty passed by the adjudicating officer or the Regional Director, as the case may be, it or he shall be liable for the second or subsequent defaults for an amount equal to twice the amount of penalty provided for such default under the relevant provisions of this Act.</p> <p>Impact of Amendment</p> <p><i>A new section has been inserted to provide where a penalty in relation to a default has been imposed on a person under the provisions of CA 2013, and the person commits the same default within a period of three years from the date of</i></p> |

| | |
|--|---|
| | <p><i>order imposing such penalty, passed by the adjudicating officer or RD as the case may be, it or he shall be liable for the second and every subsequent defaults for an amount equal to twice the amount provided for such default under the relevant provision of CA 2013.</i></p> <p>For Further details visit link https://www.mca.gov.in/Ministry/pdf/AMENDMENTACT_01082019.pdf</p> |
| <p>Nidhi(Amendment)Rules,2019(notification date 1st July 2019) (effective from 15th August,2019)</p> | <p>Central Government amends the Nidhi Rules' 2014 by the Nidhi (Amendment) Rules' 2019</p> <p>For Further details Kindly visit the Link https://www.mca.gov.in/Ministry/pdf/NidhiRules_01072019.pdf</p> |