

WESTERN INDIA REGIONAL COUNCIL OF ICAI

RECENT CHANGES AND MODIFICATIONS FOR COMPLIANCE FILINGS NOTIFIED UNDER COMPANIES ACT, 2013

Compiled by : CA Avinash Rawani

Disclosures in Directors' Report

- Disclosure regarding implementation of SH Act made mandatory in the Director's report as per amended the Company (Account) Rules, 2014
[Notification dated 31st July, 2018 amended the Company (Account) Rules, 2014 making the disclosure regarding the implementation of the SH Act mandatory in the Directors' Report of every company]
- Section 22 of the SH Act mandates submission of the number of cases filed and their disposal under the SH Act within the organisation's Annual Report or where no such report is required to be prepared, intimate such number of cases to the District Officer.

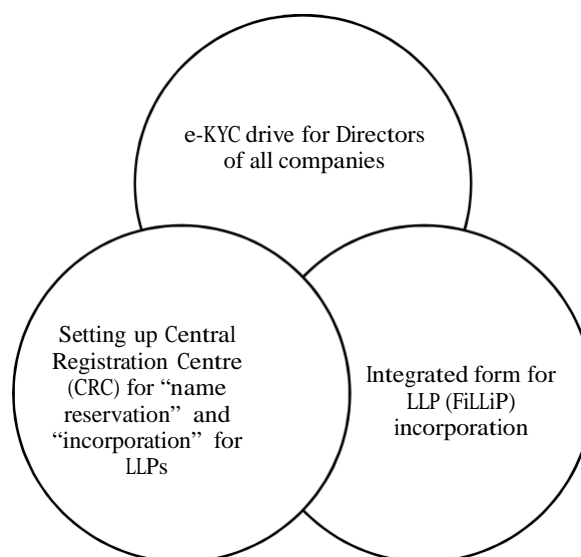
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E-Governance

- Introduction of "RUN – Reserve Unique Name" web service for name
- 15 days Re-submission time allowed in case of reservation of name through web services (effective 7.5.2018)
- Re-engineering the process of allotment of DIN
- Exemption of MCA fee for company incorporation (Rs. 15 Lakhs effective 18.3.2019);
- Deployment of e-forms due to IFSC & exemption notifications, amendment to Companies Act, CRL-1, implementation of Condonation of Delay Scheme (CODS)

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E-Governance



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Companies Amendment Act, 2018

- Holding, Subsidiary or Associate Company incorporated in foreign country, if required to follow different financial year in their country, and is required to prepare consolidated financial statements then such company can make the application;
- Physical Quorum required for meeting of Directors, if available, any other Director may participate through video conferencing or other audio visual means.

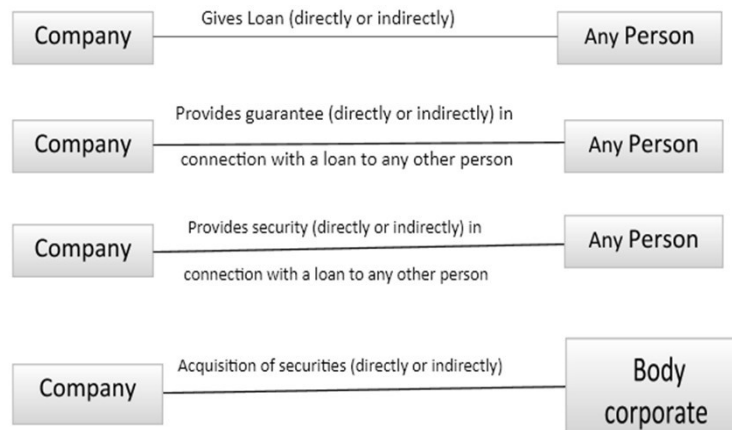
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Companies Amendment Act, 2018

- Audit Committee to be constituted by every public listed company;
- Special Resolution passed in a general meeting under Section 186(3) for giving loan or guarantee or investment or providing any security or acquisition under Section 186(2) needs to specify the total amount up to which it can be given, now needs to disclose to the members in the financial statement, full particulars in accordance with the provisions of Section 186(4)- purpose of utilisation now required to be disclosed.

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Utilisation of Funds Disclosure



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OTHER IMPORTANT CHANGES

- Independent Directors gets disqualified
 - Indebted to Company, Holding, Subsidiary or Associate Company, their Promoters, Directors; or
 - have given guarantee or provided any security of any third person, its Holding, Subsidiary or Associate Company, their Promoters, Directors of such holding company;
 - for an amount of Rs. 50 Lakhs at any time during the two immediately preceding financial years or during the current financial year

[Section 149(6)(d)(iii)(ii)] amended on 7.5.2018

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OTHER IMPORTANT CHANGES

- Companies Audit & Auditors Amendment Rules, 2018 [Notification dated 7.5.2018] Omitted the followings
 - if the appointment is not ratified by the members of the company, the Board of Directors shall appoint another individual or firm as its auditor or auditors after following the procedure laid down in this behalf under the Act;
 - Ratification of Auditors in every Annual General Meeting till the sixth Annual General Meeting.
 - In case of criminal liability of any audit firm, the liability other than fine, shall devolve only on the concerned partner or partners, who acted in a fraudulent manner or abetted or, as the case may be, colluded in any fraud.
 - Adequate financial controls system word replaced by internal financial controls with reference to financial statements;
 - For Cost Audit Committee constitution, the word “Cost Accountant in Practice” replaced by “Cost Accountant”

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OTHER IMPORTANT CHANGES

- Definition of Total Share Capital means the Aggregate of Paid Up Equity Share Capital and Convertible Preference Share Capital [Section 2(87)] effective 7.5.2018.
- The rules for issue of shares by unlisted public company in dematerialised form shall not apply to a Nidhi Company, A Government Company or wholly owned subsidiary company [GSR 43(E) dated 22.1.2019]

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OTHER IMPORTANT CHANGES

- “Net worth” means the aggregate value of the paid-up share capital and all reserves created out of the profits, securities premium account and debit or credit balance of profit and loss account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation.
- Minimum Capital requirements for public company removed;
- “Subsidiary company” or “subsidiary”, in relation to any other company (that is to say the holding company), means a company in which the holding company—
 - (i) controls the composition of the Board of Directors; or
 - (ii) exercises or controls more than one-half of the [total voting power] either at its own or together with one or more of its subsidiary companies:

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OTHER IMPORTANT CHANGES

- “Turnover” means the gross amount of revenue recognised in the profit and loss account from the sale, supply, or distribution of goods or on account of services rendered, or both, by a company during a financial year.]
- “Sweat Equity Shares” means such equity shares as are issued by a company to its directors or employees at a discount or for consideration, other than cash, for providing their know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called;
- “Total Voting Power”, in relation to any matter, means the total number of votes which may be cast in regard to that matter on a poll at a meeting of a company if all the members thereof or their proxies having a right to vote on that matter are present at the meeting and cast their votes;

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OTHER IMPORTANT CHANGES

- "Significant influence" means control of at least twenty per cent. of total voting power, or control of or participation in business decisions under an agreement;
- "Joint Venture" means a joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement;
- "key-managerial personnel" now stands considerably enhanced. In addition to the existing category of persons, persons holding an office that is one level below that of a whole-time director, and designated as a key-managerial personnel, by the board of directors of the company will also be considered as a key managerial personnel;
- "interested director" has been omitted. The concept of a director being interested is covered and dealt with under Section 184 of the Companies Act;

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OTHER IMPORTANT CHANGES

- "Related Party" has been expanded as a new sub-clause (viii) has been inserted in Section 2 (76) of the Companies Act. The new sub-clause states that a body corporate which is a holding, subsidiary, fellow subsidiary or an associate company of an Indian company will also be treated as a related party of the Indian company and vice versa. In addition, a body corporate which is an "investing company or the venturer of the company" will also be treated as a related party of the Indian company. Investing company or the venturer of a company" means a body corporate whose investment in the company would result in the company becoming an associate company of the body corporate. However, in view of the earlier exemption granted to private limited companies, such persons will be not treated as a related party of a private limited company.

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OTHER IMPORTANT CHANGES

- An unlisted company can now hold its annual general meeting ("AGM") anywhere in India.
- Such companies are no longer required to hold their AGM at the registered office of the company or at some other place/address within the city, town or village where the registered office of the company is situated.
- The other procedural change with respect to an AGM is that the matter of ratification of the appointment of a statutory auditor need not be placed before the shareholders in each and every AGM.
- Companies that are one hundred percent held by an overseas body corporate can now hold their extraordinary general meetings overseas. Therefore, the rule that all companies need to hold their extraordinary general meeting in India has been relaxed.

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OTHER IMPORTANT CHANGES

- Proceeds from a private placement of securities cannot be utilized till the return of allotment is filed with the MCA.
- Offer of shares cannot be renounced by the person to whom the offer is made.
- It has also been provided that a company can issue shares at a discount to its creditors when its debt is converted into equity pursuant to any statutory resolution plan or debt restructuring scheme in accordance with the Reserve Bank guidelines, etc.
- The restriction that companies cannot issue sweat equity shares until the completion of one year from the commencement of business has been removed. This is a useful change, and is expected to benefit start-ups.

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OTHER IMPORTANT CHANGES

- A company is allowed to provide a loan (or issue a guarantee or security in connection with such a loan) to a person in whom any of the directors of the company are interested, subject to satisfaction of two conditions
 - The first condition is that the shareholders of the lender company shall have accorded their consent to the transaction through a special resolution.
 - The second condition is that the borrower company should utilize the loan proceeds only for the purpose of its principal business activity (the expression "principal business activity" continues to remain undefined). This would not apply in respect of transactions involving a holding company and its wholly owned subsidiary.
- The Amendment Act continues to prohibit the providing of loans to a director of a company or that of its holding company

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OTHER IMPORTANT CHANGES

- In terms of Section 164(2) of the Companies Act, a person who is or has been a director of a company which has
 - (a) not filed its financial statements or annual returns for any continuous period of three financial years or
 - (b) has failed to repay the deposits accepted by it or pay interest thereon or to redeem any debentures on the due date or pay interest due thereon or pay any dividend declared and such failure continues for one year or more, is not eligible to be re-appointed as a director of that company or as a director of any other company.
- Section 167(1) states that if a director has incurred any of the disqualifications under Section 164, he / she shall automatically vacate office.
- It is clarified that the directors of such companies will vacate their office in all the companies except in the company which has committed the default under Section 164(2). Furthermore, persons who are appointed as a director of such a company will not incur the disqualification under Section 164(2) for a period of six months from the date of their appointment.

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OTHER IMPORTANT CHANGES

- The restrictions on payment of managerial remuneration have been rationalized.
- The approval of the Central Government is no longer required in respect of payment of managerial remuneration in excess of the limits prescribed under the Companies Act (that is 11% of the net profits).
- The matter of payment of managerial remuneration in excess of the limits is now allowed to be settled / decided at the shareholder level. If shareholders accord their approval, such proposals can be implemented without the approval of the Central Government.
- If a company that has defaulted on its payment obligations to a bank / financial institution, secured creditor or the holder of non-convertible debenture can implement such a proposal only after obtaining the consent of such persons.
- The Amendment Act also clarifies that the applications pending with the Central Government as on date shall abate.

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OTHER IMPORTANT CHANGES

- Consolidation of financial statements now extended to Associate Company in the same manner and form;
- The Reporting requirements of foreign companies with substantial Indian ownership now made applicable to all foreign companies;
- The contraventions that were punishable with (i) imprisonment or fine; or with (ii) imprisonment or fine or with both, can now be compounded. The earlier position was that unless a contravention was punishable with fine only, such contraventions could not be compounded.

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Name Availability Changes for Registration

- This amendment intends to bring more clarity to the rules related to name availability by:
 - (i) inclusion of illustrations in the rules;
 - (ii) providing a clear test to determine as to whether the applied name resembles too nearly with the name of an existing company; and
 - (iii) bringing more clarity in the rule related to “general names”/descriptive names and trademark applicability;

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Other Changes in Incorporation Requirements

- Introduction of AGILE Form (Form INC-35) for Registrations along with SPICE Forms
 - Application for Registration of
 - GSTIN (effective 31.3.2019)
 - pLus
 - Employee Provident Fund Organisation Registration (effective 8.4.2019) and ESIC (effective 15.4.2019)
- Notification dated 29.03.2019- Optional Registration under various Acts, as per the business requirements.
Need to give separate declarations as per the requirements of the various Acts

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Companies Incorporation Amendment Rules, 2019

- To be called as the Companies (Incorporation) Amendment Rules, 2019;
- in force with effect from 25th February, 2019;
- Active Company Tagging Identities and Verification (ACTIVE);
- Verification of Particulars of Company and Registered Office;
- Filing the Form on or before 25-4-2019 [extended to 15-06-2019];
- At present no fees, After Due Date Fees Rs. 10000/- for default
- Purpose is to eliminate SHELL Companies

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Requirements

Who to file

- Company incorporated on or before 31-12-2017;

Who cannot file

- If the no of directors is less than minimum prescribed under the Act
- If DIN Status of any director is not approved
- If the Company does not have any KMP (MD/WTD/CS/CEO/CFO)
- If the Company does not have cost Auditor if mandatory as per the Act
- If balance sheet and Annual Returns for FY 2017-2018 are not filed

Who are exempted

- The companies which have been struck off or
- are under process of striking off or
- under liquidation or
- amalgamated or
- Dissolved

All those Companies whose paid up Capital is Rs. 5 Crore or above will have to appoint a Whole time Company Secretaries within 2 months i.e 25 April 2019 to keep the status Active of the Company

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What Information Sought

- Two Photo of Registered office along with director, Longitude & Latitude of Registered office. Photographs of Outside building of the Registered Office and Inside of the premises in presence of at-least one (1) Director/KMP of the Company whose Digital Signatures has to be affixed in the form.
- Email id of the company for OTP,
- Number of directors with DIN (DIR-3 eKYC Filed & non disqualified under Section 164(2)),(PRE-FILLED as per Master Data)
- Details of Statutory Auditors, (PRE-FILLED as per Master Data)
- Details of Cost Auditors, (PRE-FILLED as per Master Data)
- Details of MD, CEO, Manager, WTD, Details of CFO, (PRE-FILLED as per Master Data)
- Details of Company Secretary, SRN of AOC-4 & MGT-7 filed for FY 2017-2018; (PRE-FILLED as per Master Data)
- The form is to be filed with DSC of Two directors and certification from professional is also required.

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Consequences of Non Filing

- The Company shall be marked as “ACTIVE-non-compliant”;
- No request for recording the following event based information for such companies
 - SH-07 (Change in Authorized Capital);
 - PAS-03 (Change in Paid-up Capital);
 - DIR- 12 (Changes in Director except cessation);
 - INC-22 (Change in Registered Office);
 - INC-28 (Amalgamation, de-merger)

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Powers to the Registrar

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. [Section 12(9)]

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Declaration for commencement of business- Companies (Amendment) Ordinance, 2019

- Applicable to Companies registered after the commencement of Companies (Amendment) Ordinance, 2019;
- Companies incorporated after 2.11.2018 and having share capital;
- File INC-20A-
 - Attachment- proof of value of shares subscription by subscribers (bank statement);
 - Registered Office Address mandatory.

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Declaration for commencement of business

Applicable to	Companies incorporated on or after 02/11/2018
Due date for filing	Within 180 days of Incorporation
Form to be filed	INC – 20A
Attachments Required	Subscribers proof of payment for value of shares (Bank statement of company having all credit entries for receipt of subscription money received from all subscribers to MOA may be deemed fit)
Non Compliance of filing	<ol style="list-style-type: none"> 1. If the register has a reasonable cause to believe the company is not carrying on any business or operation, Remove of name of the company from register of companies. 2. Cannot Start Business activity and Exercise any borrowing power (section 10A)
Any default	Penalty : Company : 50,000 Rs and Every officer who is default : 1,000 for per day upto 1,00,000 Rs.
Fees for filing INC – 20A	200 Rs/-
Additional Fees for delay in filing delay Upto 30 days > 30 < 60 days > 60 < 90 days > 90 < 180 days > 180 days	Fees to be payable 2*Normal fees 4*Normal fees 6*Normal fees 10*normal fees 12*normal fees

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Companies (Adjudication of Penalties) Amendment Rules, 2019.

- Dated : 19th February, 2019
- Central Government to appoint officers not below the rank of Registrars for such purpose;
- Before adjudging penalty, the adjudicating officer shall issue a written show cause notice;
- Notice to state the nature of non compliance;
- Reply through electronic mechanism;
- In person hearing can be demanded;

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Companies (Adjudication of Penalties) Amendment Rules, 2019

- Order to be passed by the officer;
- Time limits specified for each action;
- Copy of the Order to be sent to the Company and the effected persons;
- Failure to reply to any Notices also liable for penalties;
- Factors regards to the nature of offence and other facts to be kept in mind while deciding penalty;
- Penalties to be paid online on MCA Portal;
- In any case penalty shall not be less than the minimum amount specified for violation of particular default in section specified.

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Companies (Amendment) Ordinance, 2019

- In force effect from 2nd November, 2018;
- Summary of amendments (Existing provisions amended)
 - Application to be made for differential financial year to the Tribunal by both holding or subsidiary company for alignment (Section 2(41));
 - Conversion of public company to private company to be decided by Tribunal [Section 14];
 - Issue of shares at discount by company liable for fine and penalty for defaulting officer; [Section 53(3)];

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Companies (Amendment) Ordinance, 2019

- Summary of amendments
 - Notice to Registrar for alteration of share capital- Non compliance liable for fine and penalty on defaulting officers [Section 64(2)];
 - Duty of Registration of charges (Pre-Ordinance)
 - Company has to get its charge registered within a period of 30 days from its creation. The Registrar on an application by the company can allow the Registration to be made within a period of 300 days from creation on payment of additional fees.

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Companies (Amendment) Ordinance, 2019

- Section 86
 - Duty of Registration of charges (Post Ordinance)
 - Compulsorily within 60 days of such creation;
 - Additional 60 days of allowed with Additional Fees
- Punishment for contravention
 - If by company then company with fine and imprisonment based on the nature of offence;
 - Post Ordinance on the lines of Section 447

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Companies (Amendment) Ordinance, 2019

- Section 87
- Rectification by Central Government in Register of Charges, post ordinance the amendment has allowed rectification only in case of accident or due to inadvertence or some other sufficient cause or when it is not of a nature which prejudices the position of creditors or shareholders of the company.

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Companies (Amendment) Ordinance, 2019

- Summary of amendments (Existing provisions amended contd) Section 90(9) & Section 90(10)- Register of beneficial ownership- Failure to declare beneficial ownership now liable for penalty and imprisonment including transfer to such shares to IEPF
- Annual Return
- Fine was levied on company for failure/delay in filing of Annual Returns and every defaulting officer under 92(4) was punished with fine or imprisonment or both earlier. Penalty has been substituted for fine or imprisonment for both defaulting company and officers. Penalty for continuing default has also been provided.

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Companies (Amendment) Ordinance, 2019 (Contd)

- Statement to be annexed to Notice [Section 102(5)]
- Maximum penalty of Rs. 50000/- made to minimum for mis-representation of information in Notice which results to benefit of any other party;
- Proxies [Section 105(3)]
 - Maximum penalty of Rs. 5000/- made to minimum penalty in case of default for non compliance of the requirements.

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Companies (Amendment) Ordinance, 2019 (Contd)

- Filing of Resolutions and Agreements [Section 117(2)];
- Report on Annual General Meeting [Section 121(3)];
- Copy of financial statement to be filed with Registrar [Section 137(3)];
 - These amendment has resulted in substituting the fine with penalty. In case of continuing offence, per day penalty has also been inserted. Punishment for imprisonment has also been withdrawn. OPC liable for half penalty for Section 117(2) and Section 137(3) violations.

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Companies (Amendment) Ordinance, 2019 (Contd)

Removal, resignation of auditor and giving of special notice [Section 140(3)];

- If the auditor does not comply with the provisions of S. 140(2), then the auditor shall be penalized.

Company to inform Director Identification Number to Registrar [Section 157(2)];

Non-compliance with sub-section (1) of Section 157 shall result in the company and every officer in default being liable to a penalty. Removal, resignation of auditor and giving of special notice [Section 140(3)];

- If the auditor does not comply with the provisions of S. 140(2), then the auditor shall be penalized.

Company to inform Director Identification Number to Registrar [Section 157(2)];

- Non-compliance with sub-section (1) of Section 157 shall result in the company and every officer in default being liable to a penalty.

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Companies (Amendment) Ordinance, 2019 (Cont)

– Number of Directorships [Section 165(6)]

- The amendment has resulted in categorizing this default as a civil default with the defaulting company and officers liable to penalty only.

– Payment to director for loss of office, etc., in connection with transfer of under-taking, property or shares [Section 191(5)]

- If a director fails to comply with the provisions of this section, then such director shall be penalized and shall be treated as civil liability

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Companies (Amendment) Ordinance, 2019 (Contd)

– Overall maximum managerial remuneration and managerial remuneration in case of absence or inadequacy of profits.

- Sub-Section 7 of S. 197 has been omitted.
- With the omission of Sub-section 7, the directors are now entitled to stock options and are now liable to receive remuneration, reimbursement of expenses for participation in the Board and other meetings and profit related commissions without the approval of the members. The amendment has resulted in substituting the fine with penalty.

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Companies (Amendment) Ordinance, 2019 (Contd)

– Appointment of key managerial personnel [Section 203(5)]

- If any company, Director and Key managerial Personnel contravenes the provisions of S.203, then they shall be liable to penalty.

– Registration of the offer of scheme involving transfer of share [Section 238(3)]

- The Director who issues a circular which has not been presented for registration and registered under clause(c) of Sub-Section 1 of Section 238 shall be punishable with ~~fine~~ (Penalty)

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Companies (Amendment) Ordinance, 2019 (Cont)

- Compounding of certain offences [Section 441(1) & 441(6)]
 - Power of Regional Director to compound offences punishable has been increased to Rs.25 Lacs, which was earlier Rs. 5 Lacs
 - Ordinance has also stated that offences which are punishable with imprisonment only or with imprisonment and fine shall not be compoundable.
- Punishment for Fraud [Section 447(3)]
 - Earlier provided that where the fraud involves an amount less than Rs. 10 lakh or 1% of the turnover of the company and did not involve public interest the defaulter shall be punishable with imprisonment for a term which may extend to 5 years and the maximum fine under section 447. This has been increased from Rs.20 lakhs to Rs. 50 lakhs.

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Companies (Amendment) Ordinance, 2019 (Cont)

- Adjudication of Penalties [Section 454(3) (4) & (8)]
- The Adjudicating officer may by an order
 - impose penalty on the company, the officer in default or any other person stating any non-compliance or default under the relevant provisions of the Act. [454(3)]
 - 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. [454(3)]
 - The adjudicating officer before imposing any penalty should give a reasonable opportunity to company, the officer in default or any other person. [454(4)]
 - Where company fails to comply with the order made under sub-section (3) or sub-section (7), as the case may be, within a period of ninety days from the date of the receipt of the copy of the order, the company shall be punishable with fine which shall not be less than twenty five thousand rupees but which may extend to five lakh rupees [454(8)(i)].
 - Where an officer of a company or any other person who is in default fails to comply with the order made under sub-section (3) or sub-section (7), as the case may be, within a period of ninety days from the date of the receipt of the copy of the order, such officer shall be punishable with imprisonment which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both. [454(8)(ii)]

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Companies (Amendment) Ordinance, 2019 (Contd.)

–Penalty for Repeated Defaults [Section 454(A)]

– Conditions

- Company or Officer of the Company already defaulted the provisions earlier;
- Such default is repeated again within a period of 3 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.

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Beneficial Ownership Rules

- Dated 8th February, 2019;
- These rules may be called the Companies (Significant Beneficial Owners) Amendment Rules, 2019;
- “majority stake” means;-
 - (i) holding more than one-half of the equity share capital in the body corporate; or
 - (ii) holding more than one-half of the voting rights in the body corporate; or
 - (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.

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Beneficial Ownership Rules

“significant beneficial owner” in relation to a reporting company means an individual referred to in subsection (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:-

- (i) holds indirectly, or together with any direct holdings, not less than ten per cent of the shares;
- (ii) holds indirectly, or together with any direct holdings, not less than ten per cent. of the voting rights in the shares;
- (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;
- (iv) has right to exercise, or actually exercises, significant influence or control, in any manner other than through direct holdings alone.

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.

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Beneficial Ownership Rules

- Direct
 - Held In the Name of Individual;
 - holds or acquires a beneficial interest in the share of the reporting company under Section 89(2) and has made a declaration to the reporting company
- Indirect
 - Through Body Corporate (in India or Out of India) except LLP holds majority stake in Company or ultimate holding company;
 - Through Karta of the HUF

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Beneficial Ownership Rules (Indirectly)

(iii) where the member of the reporting company is a partnership entity (through itself or a partner), and the individual,-

- (a) is a partner; or
- (b) holds majority stake in the body corporate which is a partner of the partnership entity; or
- (c) holds majority stake in the ultimate holding company of the body corporate which is a partner of the partnership entity.

(iv) where the member of the reporting company is a trust (through trustee), and the individual,-

- (a) is a trustee in case of a discretionary trust or a charitable trust;
- (b) is a beneficiary in case of a specific trust;
- (c) is the author or settlor in case of a revocable trust.

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Exemptions/Non Applicability

- the authority constituted under sub-section (5) of section 125 of the Act;
- its holding reporting company- details to be reported in Form BEN-2;
- the Central Government, State Government or any local Authority;
- (i) a reporting company, or
- (ii) a body corporate, or
- (iii) an entity, 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;
- (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,
- (f) Investment Vehicles regulated by Reserve Bank of India, or Insurance Regulatory and Development Authority of India, or Pension Fund Regulatory and Development Authority.

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Beneficial Ownership Rules (Indirectly)

- (v) where the member of the reporting company is,-
- (a) a pooled investment vehicle; or
 - (b) an entity controlled by the pooled investment vehicle, 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,-
 - (A) is a general partner; or
 - (B) is an investment manager; or
 - (C) is a Chief Executive Officer where the investment manager of such pooled vehicle is a body corporate or a partnership entity

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'.

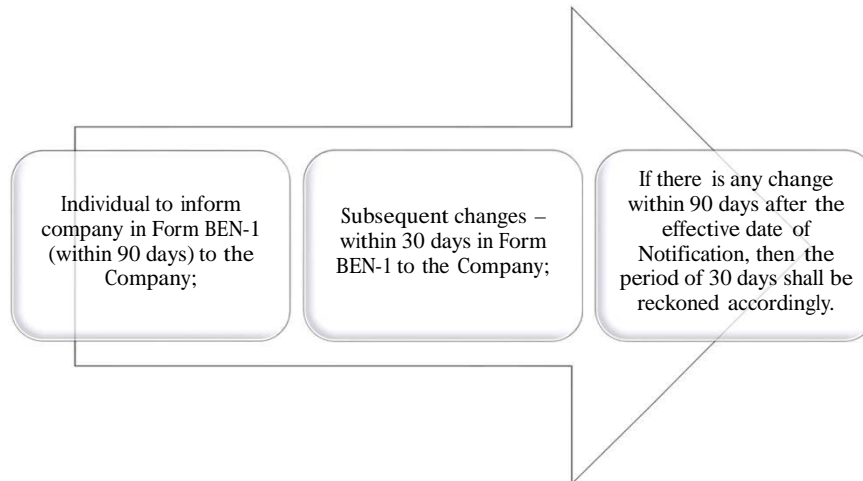
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Action to be taken

- Every reporting company shall take necessary steps to find out if there is any individual who is a significant beneficial owner;
- Identify him and cause such individual to make a declaration in Form No. BEN-1.
- shall in all cases where its member (other than an individual), holds not less than ten per cent. of its;-
 - (a) shares, or
 - (b) voting rights, or
 - (c) right to receive or participate in the dividend or any other distribution payable in a financial year, give notice to such member, seeking information in accordance with sub-section (5) of section 90, in Form No. BEN-4.

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Action to be taken



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Application to Tribunal

- Owner failing to Report to the Company;
- Information given by the Owner is not satisfactory;
- in accordance with sub-section (7) of section 90, for order directing that the shares in question be subject to restrictions, including –
 - (a) restrictions on the transfer of interest attached to the shares in question;
 - (b) suspension of the right to receive dividend or any other distribution in relation to the shares in question;
 - (c) suspension of voting rights in relation to the shares in question; (d) any other restriction on all or any of the rights attached with the shares in question.

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FORM MSME-I

- Form is for delay in payments to MSME (i.e. in excess of 45 days)
- Section 22 of the Act states that the buyer, who buys goods or avails services from the MSMEs, and is required to get his annual accounts audited, has to mandatorily disclose the following additional information in its annual statement of accounts with respect to the amount due to the MSMEs:
 - The principal amount and the interest due thereon remaining unpaid to the supplier till the appointed date;
 - The amount of interest paid by the buyer on account of delayed payments;
 - The principal amount and interest due beyond the appointed date for the period of delay;
 - The amount of interest accrued and remained unpaid at the end of each year;
 - The amount of further interests remaining due and payable even in succeeding years, until such date when the interest due is actually paid to the MSMEs.

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Reporting Requirements

- One Time Return (Due date to file-within 30 days of publication of these rules i.e. 20th February, 2019 from the notification date (i.e. 22nd January, 2019 + 29 days) but the form is notified on 30th April, 2019, the due date is 29th May, 2019)
- Half Yearly Return
 - Due date of filing of Half Yearly Return
 - For half year period October to March – 30th April
 - For Half year period ‘April to September’ – 31st October.

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Line of Action

- Entities to be identified as Micro or Small enterprises categories to be two : Manufacturing and Service industry

Sector	MICRO	SMALL
Manufacturing Sector	Investment in Plant and Machinery not exceeding INR 25 Lakhs.	Investment in Plant and Machinery exceeding INR 25 Lakhs but not exceeding INR 5 crores
Service Sector	Investment in equipment not exceeding INR 10 Lakhs.	Investment in equipment exceeding INR 10 Lakhs but not exceeding INR. 2 crores.

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FORM DPT-3

- To be filed in pursuant to Section 73 r.w.r. 16 of the Company (Acceptance of Deposits) Rules, 2014;
- Notification dated 22nd January, 2019;
- Mandatory information to be filed with MOCA;
- Forms notified to protect and safeguard the interest of deposit holders or creditors of the Company, the Central Government in consultation with the Reserve Bank of India (RBI);
- Amendment to Rule 16A(3)

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FORM DPT-3

- The period which is covered for filing this return is from 1st April, 2014 till 22nd January, 2019. [Vide Gen. Circular 5 dated 12/04/2019, the details are to be given as at 31/03/2019]
- Also be filed in case the loan/money outstanding is taken from its holding/subsidiary or associate company;
- Fees shall be payable as per the Companies (Registration Offices and Fees) Rules

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FORM DPT-3 (Contd)

- Every Company shall furnish onetime information about the outstanding receipt of money or loan by a Company but not considered as deposits;
- One-time return in E-Form DPT-3 is required to be filed on or before 29th June, 2019;
- NIL Return is also Compulsory
- All Companies (Private, Public, OPC, etc.) except Government Companies are required to file DPT-3;
- Filing is required to be done for both secured & unsecured outstanding money/loan not considered deposits are mentioned below which are not treated as deposits as per Rule 2(1)(c) of Companies (Acceptance of Deposits) Rules, 2014.

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What sums are not Deposit

DPT-3 needs to file in respect of these transactions.

- Amount received from central government, state government etc;
- Amount received from foreign governments/ banks etc;
- Amount received as loan from banks, banking companies etc;
- Amount received as loan from Private Finance institutions (PFIs), any regional Financial Institutions or insurance companies or scheduled banks;
- Amount raised through issuance of commercial paper;
- Inter- corporate deposits;
- Amount received as subscription money for securities pending allotment;
- Amount received from directors/ relative of directors in case of a private company;

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What sums are not Deposit

- Amount raised by issue of secured bonds/ debentures;
- Amount raised through issuance of unsecured listed NCDs;
- Non-interest bearing security deposit received from employees;
- Non-interest bearing amount held in trust;
- Advance from customers;
- Amount brought by the promoters;
- Any amount accepted by a Nidhi;
- Any amount received by way of subscription in respect of a chit;
- Any amount received by the company under any collective investment scheme;
- Amount received by start- up company by way of convertible note;
- Amount received from Alternate Investment Funds (AIFs), venture capital funds (VCFs) real estate investment trusts (REITs) etc.

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Whether these sums are Deposit

- Loans from LLP;
- Loans from the Relatives of Directors;
- Amount received from HUF;
- Trade Advances;
- Share Application Money;
- Loan from Financial Institutions;
- Business Loans

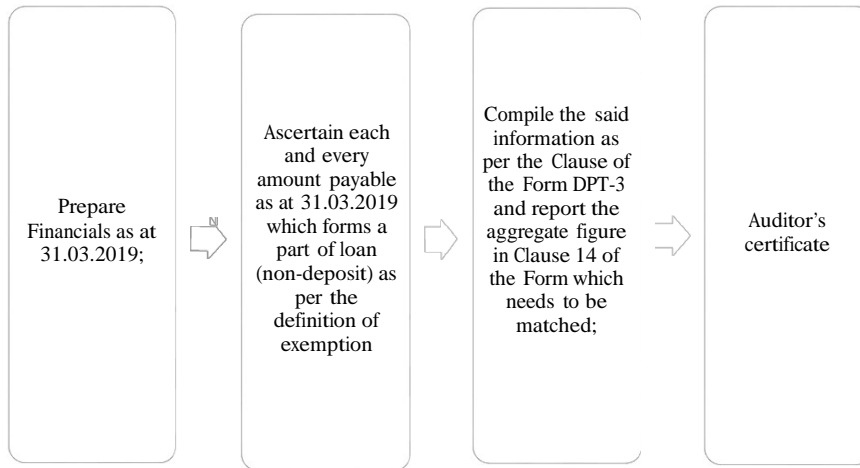
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DIFFERENCE IN ONE TIME RETURN & REGULAR RETURN

ONE TIME RETURN	REGULAR RETURN
Amount to be stated is the sum received after 1.4.2014 and is outstanding as on 31.3.2019	Date of Receipt of Amount is irrelevant, amount outstanding as on 31.03.2019 needs to be mentioned
Bifurcation of sums of Deposit not required	Bifurcation of sums of Deposit mandatory
To be filed on or before 29 th June, 2019	To be filed on or before 30 th June, 2019 and for subsequent years before 30 th June
Auditors Certificate is not compulsory	Auditors Certificate is compulsory

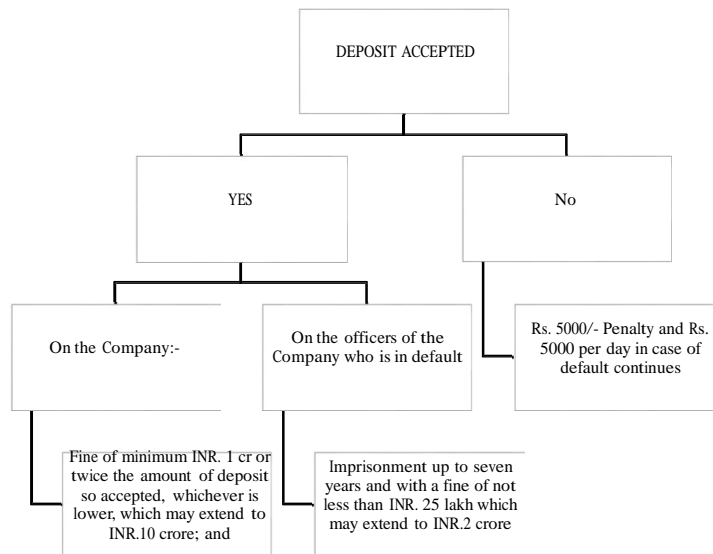
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Line of Action



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Consequences of Violation of Deposit



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SUMMARY OF FILINGS

No.	Name of Form	Due Date	Requirements	Applicability
1	DPT - 3 (1st Time)	29.06.2019	Details of outstanding receipt of money or loan by a company but not considered as deposits from 1st April 2014 upto 22nd January 2019.	All company other than Govt. Company
2	MSME 1	80 days from availability of form For 'April to September', 31st October For 'October to March', 30th April	1. Total outstanding amount due on 22nd January 2019 2. Name of Supplier 3. PAN of Supplier 4. Date from which such amount is due 5. Reasons for delay in payment	All the companies who get their supplies of goods or services from micro and small enterprises and whose payments to micro and small enterprises exceeded 45 days from the date of acceptance of the goods or services shall submit a half yearly return to the MCA
3	Form BEN-1	90 days from the date of notification in official gazette viz. on or before May 8, 2019		Ever Individual who is a significant beneficial owner needs to inform the Company in form BEN -1.
4	eForm BEN-2	30 days from receipt of BEN-1 by the Company		Company is required to file form BEN-1, in eForm BEN-2 with ROC.
5	AOC 4	80days from AGM	Annual Accounts duly signed	Every Company
6	MGT 7	60 days from AGM	Copy of Annual Return duly Signed	Every Company

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SUMMARY OF FILINGS

No.	Name of Form	Due Date	Requirements	Applicability
7	EForm Active (INC-22A)	15.06.2019	1. Photograph of registered Office showing external building and inside office. Also showing therein at least one director KMP who has affixed his/her DSC to this form. 2. Email ID and OTP generated on EMAIL ID 3. List of all Directors of the Company with Active status of DIN. If any Director on Board of the Company who does not have the Active DIN status, Company will not be able to file eForm INC 22A. 4. Details of Auditor/s 5. Details of Cost Auditor/s, if any. 6. Details of CEO, CFO and CS, if any 7. SRN of AOC4/ AOC4 XBRL and MGT-7.	Every Company incorporated on or before 31.12.2017

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SUMMARY OF FILINGS

No.™	Name of Form	Due Date	Requirements	Applicability
8	DIR 3 KYC	30.06.2019	1. DIN & Name 2. Educational Qualification 3. Father's Name (applicable also in Case of married women) 4. Mobile No & email id 5. PAN (along with a self attested copy) 6. Voter's ID card no. 7. Passport Number 8. Aadhar No. (along with a self attested copy) 9. Driving License No., if any 10. Photograph	All Directors

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SUMMARY OF FILINGS

No.™	Name of Form	Due Date	Requirements	Applicability
9	DPT-3 (Regular)	30.06.2019	1. Auditor's certificate 2. Deposit Insurance contract - Mandatory if company has deposits and details of same are mentioned in the form 3. Copy of trust deed - Mandatory if company has trust deed and details of same are mentioned in the form 4. Copy of instrument creating charge - Mandatory if company has trust deed and details of same are mentioned in the form 5. List of depositors - List of deposits matured, cheques issued but not yet cleared to be shown separately - Mandatory if company has balance of deposits outstanding at the end of the year. 6. Details of liquid assets	All company other than Government Company - shall file Return of depositors particulars of the transactions not considered as a deposit or both

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THANK YOU

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3-C'S OF LIFE- CHOICES, CHANCES AND CHANGES.
THERE IS NO CHOICE BUT TO TAKE A CHANCE TO CHALLENGE THE CHANGE

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