



## Inside this edition

- Parliament passed the Companies Amendment Bill & introduced The Companies Amendment Act, 2019.
- Companies (Appointment and Qualification of Directors) Third Amendment Rules, 2019 have been notified w.e.f 25th July 2019.
- Extension of last date for filing Form BEN-2 (Significant Beneficial Owner) till 30th September 2019

## Parliament Passed the Amendment Bill & introduced The Companies Amendment Act, 2019.



Companies Amendment Ordinance 2019 and companies second amendment ordinance, 2019 effective from 2<sup>nd</sup> November 2018 are now part of Companies Amendment Act, 2019.

The Act was passed on 31st July 2019 and it has introduced additional amendments in 12 different sections of Companies Act, 2013.

As mentioned in the Act, 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 the other sections shall be deemed to have come into force on the 2<sup>nd</sup> day of November, 2018 which shall come into force on such date as the Central Government may notify in the Official Gazette.

The 12 new inserted sections in the Act which are in addition to the sections brought in the Companies Amendment Ordinance 2019 are as under: *[For the other sections part of the Ordinance was included in our communique sent in the month of December 2018]*

Sections added in the Companies Amendment Act in addition to the Companies Ordinance 2019 are-

- Now the requirement of “Registration of Prospectus” as prescribed in **Section 26** of Companies Act, 2013 (“CA2013”) replaced with “Filing of prospectus” with the Registrar.

- For the purpose of in **sub-section (1) Section 29** the word “public” shall be omitted and after sub-section (1), the following sub-section shall be inserted, namely.  
“(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 mad thereunder”.
- For mis-statement in prospectus, an expert will not be liable for any misleading statement if he withdraw such consent under **Section 26(5) of Companies Act 2013** before filing of a copy of the prospectus with the Registrar. Earlier such consent withdrawal is before delivery of a copy of the prospectus for registration.
- **Sub-rule 4A inserted in Section 90** of Companies Act 2013 whereby every company has to take necessary steps to identify an individual who is a significant beneficial owner in relation to the company and requires him to comply with the provisions of Section 90.
- **In section 212** deals with Investigation into Affairs of Company by Serious Fraud Investigation Office.
  - (i) in sub-section (8), for the words “If the Director, Additional Director or Assistant Director”, the words “If any officer not below the rank of Assistant Director” shall be substituted;
  - (ii) For section 9, The highlighted portion amended-

**The officer authorised under sub-section (8) shall, immediately after arrest of such person under such sub-section,** forward a copy of the order, along with the material in his possession, referred to in that sub-section, to the Serious Fraud Investigation Office in a sealed envelope, in such manner as may be prescribed and the Serious Fraud Investigation Office shall keep such order and material for such period as may be prescribed.

(iii) In sub-section (10), for the words “**Judicial Magistrate**”, the words “**Special Court or Judicial Magistrate**” shall be substituted

(iv) after **sub-section (14), the following sub-section shall be inserted**, namely-

“(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.”

- Under **Section 135 of CA2013 regarding Corporate Social Responsibility** any unspent amount under sub-section (5) of 135 shall be transferred by the company within a period of

thirty days from the end of the financial year to a special account to be opened by the company in that behalf for that financial year in any scheduled bank to be called the Unspent Corporate Social Responsibility Account. Such transferred amount shall be spent by the company in pursuance of its obligation towards the Corporate Social Responsibility Policy within a period of three financial years from the date of such transfer, failing which, the company shall transfer the same to a Fund specified in Schedule VII within a period of thirty days from the date of completion of the third financial year. Further, penal provisions for contravention of sub-section (5) or sub-section (6) of Section 135 be introduced whereby the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to twenty-five lakh rupees and every officer of such company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.

- Now the Central Government can initiate a case of oppression and mismanagement 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.

- **In section 241** of the principal Act-
  - (i) in sub-section (2), the following proviso shall be inserted-  
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.”;
  - (ii) after sub-section (2), the section (3) Where in the opinion of the Central Government there exist circumstances suggesting that shall be inserted-
    - (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;
    - (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.
    - (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.
    - (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,

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.

(iii) The person against whom a case is referred to the Tribunal under sub-section (3), shall be joined as a respondent to the application.

(iv) Every application under sub-section (3)-

(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

(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.

- **In section 242** after sub-section (4), the following sub-section shall be inserted-

“(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”.

- **In section 243** after sub-section (1), the following sub-sections shall be inserted-

(i) “(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”.

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.

(ii) (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.”

- **In section 272** of the principal Act, in sub-section (3), for the words, brackets and letter “or clause (e) of that sub-section”, the words “of that section” shall be substituted.
- **In section 398** of the principal Act, in sub-section (1), in clause (f), the word “prospectus,” shall be omitted.

[Detailed notification can be found at the following link](#)

### Companies (Appointment and Qualification of Directors) Third Amendment Rules, 2019 have been notified w.e.f 25th July 2019.



The Ministry of Corporate Affairs (MCA) has published a General Circular No. 07/2019 on 27-July-2019 and has illustrated the following:

Every individual who has previously filed DIR-3 KYC will be required to complete his/her's KYC via web-based verification service, with the exact pre-filled data present on the records in the registry for ease of verification by the person concerned.

If any individual who wishes to update his/her mobile number or email address then he would have to file E-Form DIR-3 KYC, as this

facility will not be available in the web-based service. In case of updation of personal details E-Form DIR-6 may be filed before completion of KYC via web-based service.

- It is mandatory to file DIR-3 e-KYC for the Financial Year 2018-19, even for an individual who has pre-filed DIR-3 KYC for the year 2017-18
- DIR-3 e-KYC for Financial Year 2018-19 is a web-based verification process where there is no change in mobile number or email address.
- In case there is a change in mobile number or email address, the DIN holder has to file DIR-3 KYC, DIR-6 for updating of change in details.
- The due date of filing of both DIR-3 KYC this year is the 30th September.

### **Last date for filing Form BEN-2 (Significant Beneficial Owner) extended till 30<sup>th</sup> September 2019.**



As per notification from MCA, dated 29<sup>th</sup> July, 2019. Relaxation in fee and extension of filing BEN-2 is announced. After a lot of representation on Significant Beneficial Owners – Second

Amendment Rules, 2019, it is examined and the time limit for filing Form BEN-2 is extended upto 30-09-2019 (30th September 2019) without any additional fee.

Form BEN-2 is the form where the beneficial owner who is required to declare a disclosure to the Registrar his interest in the shares of the company within thirty days of acquiring such beneficial interest in such a company. Section 90(4) of the Companies Act, 2013 mandates every company to file a declaration in form BEN-2 with the Registrar disclosing his beneficial interest in the company.

This declaration is with respect to the Significant Beneficial owners of the company disclosing their interest in the company by way of shareholding or voting rights. Beneficial Owners are the shareholders holding Significant Beneficial Ownership (SBO) of not less than 10% of the shareholdings or voting rights of the company either directly or indirectly.

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