

In brief

Dated 12th January 2019

The Bill amends several provision of the Companies Act, 2013 and it is considered to give a continued effect to the Companies (Amendment) Ordinance, 2018.



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The Companies (Amendment) Ordinance, 2019

On 2nd November 2018, the Hon'ble President of India promulgated the Companies (Amendment) Ordinance, 2018, an ordinance to amend the Companies Act, 2013. The twin objectives of the ordinance are promotion of ease of doing business and better corporate compliance. It came on force on 2nd November 2018.

The changes brought about by the ordinance have been introduced in the Lok Sabha as the Companies (Amendment) Bill, 2018 on 20th December 2018 and passed by the Lok Sabha on 4th January 2019 as the Companies (Amendment) Bill, 2019. Since the Bill is pending in the Rajya Sabha, to give a continued effect to the Companies (Amendment) Ordinance, 2018, the ordinance has been re-promulgated on 12th January 2019.

For details refer: <http://egazette.nic.in/WriteReadData/2019/195181.pdf>

In brief

- Companies (Acceptance of Deposits) Amendment Rules, 2019- amendment of Rule 2 and Rule 16, insertion of new Rule 16A etc.

(Notification dated 22nd January 2019)

- Companies (Prospectus and Allotment of Securities) Amendment Rules, 2019.- amendment of Rule 9A

(Notification dated 22nd January 2019)

Companies Act, 2013 – Rules and Amendment Rules

Companies (Acceptance of Deposits) Amendment Rules, 2019.

The MCA has amended Companies (Acceptance of Deposits) Rules, 2014. Among other matter, the amendments are –

- ♦ **Rule 2- Definitions**

Any amount received by a company from 'Real Estate Investment Trusts' (REITs) will not be treated as Deposits.

- ♦ **Rule 16- Return of deposits to be filed with the Registrar.**

It has clarified that, every Company other than Government company must report 'Deposit or particulars of Transaction not considered as deposit or both' in e-form DPT-3.

- ♦ **Rule 16A- Disclosures in the Financial Statement (FS)**

Every Company other than Government Company, is required to file a **“onetime return”** of outstanding receipt of money or loan by a Company which are not considered as Deposits, from 1st April 2014 till the date of publication of Amendment Rules in the Official Gazette (i.e. 22nd January 2019). The reporting should be done within 90 days from 22nd January 2019 in e-form DPT-3 i.e. by 21st April 2019.

For details refer:

http://www.mca.gov.in/Ministry/pdf/AcceptanceDepositsAmendmentRule_22012019.pdf

Companies (Prospectus and Allotment of Securities) Amendment Rules, 2019.

Companies (Prospectus and Allotment of Securities) Rules, 2014, has been amended which states that Rule 9A pertaining to Issue of securities in dematerialised form by unlisted public companies will not apply to an unlisted public company which is-

- ♦ a Nidhi;
- ♦ a Government company or
- ♦ a wholly owned subsidiary.

For details refer:

http://www.mca.gov.in/Ministry/pdf/CompaniesProspectusAllotmentRule_23012019.pdf

In brief

- Companies (Significant Beneficial Owners) Amendment Rules, 2019- amendment of Rule 2,3,4,7 and 8

(Notification dated 8th February 2019)

- Companies (Adjudication of Penalties) Amendment Rules, 2019- amendment of Rule 3

(Notification dated 19th February 2019)

Companies (Significant Beneficial Owners) Amendment Rules, 2019

Companies (Significant Beneficial Owners) Rules, 2018 has been amended to bring in more clarity, and is in alignment with the government's initiative to instill transparency and accountability in the corporate set up. Among other matters, amendment pertains to –

- ♦ Definition of 'significant beneficial owner' (**SBO**) has been revised . The determination of individual as SBO is now based on direct and indirect holding of right or entitlement in the reporting entity. The Rules lays down the explanations where an individual can be said to have direct or indirect holding of any right or entitlement in the reporting company. Definitions such as reporting company, control, majority stake have been inserted.
- ♦ Every reporting company has to necessary steps to find out if there is any individual who is a SBO and identify him and cause him to make a declaration in Form BEN-1 within 90 days from the date of commencement of the Amendment Rules and within 30 days in case of fresh acquisition or change in SBO.
- ♦ The reporting company should report the disclosure of SBO received from SBO to Registrar in Form BEN-2, within 30 days of receipt of the said declaration

For details refer-

http://www.mca.gov.in/Ministry/pdf/CompaniesOwnersAmendmentRules_08020219.pdf and

https://www.cnkindia.com/uploads/attachments/Companies_Act/CNKNewsFlashCosSBO&IncorpRules2019.pdf

Companies (Adjudication of Penalties) Amendment Rules, 2019

The MCA has amended the Companies (Adjudication of Penalties) Rules, 2014. Rule 3 - **Adjudication of Penalties** has been amended to lay down the process to be followed while adjudication of penalties by the adjudicating officer.

For details refer:

http://www.mca.gov.in/Ministry/pdf/AdjudicationPenalties2019_20022019.pdf

In brief

- Companies (Incorporation) Amendment Rules, 2019.- insertion of new Rule 25A

(Notification dated 21st February 2019)

- Companies (Incorporation) Second Amendment Rules, 2019- amendment of Rule 30 and Rule 38

(Notification dated 6th March 2019)

Companies (Incorporation) Amendment Rules, 2019.

Companies (Incorporation) Rules, 2014 has been amended. New Rule 25A- **Active Company Tagging Identities and Verification (ACTIVE)** has been inserted. This Rule requires **every company incorporated on or before the 31st December 2017** to file the particulars of the company and its registered office in e-Form ACTIVE **on or before 25th April 2019**.

The Rules have come into **force with effect from 25th February 2019**

For details refer:

http://www.mca.gov.in/Ministry/pdf/CompaniesIncorporationAmendmentRules_21022019.pdf

and

https://www.cnkindia.com/uploads/attachments/Companies_Act/CNKNewsFlashCosSB O&IncorpRules2019.pdf

Companies (Incorporation) Second Amendment Rules, 2019

The MCA has amended Companies (Incorporation) Rules, 2014. The amendment pertains to –

- ♦ **Rule 30- Shifting of Registered Office from one State or Union Territory to another State**

In case of shifting of Registered Office from one State or Union territory to another State, an advertisement is required to be given in Form INC-26 in the English language in an English newspaper with the wide circulation (*earlier widest circulation*) in the State in which the registered office of the company is situated. This amendment is **effective from 6th March 2019**.

- ♦ **Rule 38-Simplified Proforma for Incorporating Company Electronically (SPICe)**

No fees will be charged in case of companies incorporated with a nominal capital of less than or equal to Rs. 15 lakhs (*earlier Rs. Rs. 10 lakhs*). This amendment is **effective from 18th March 2019**.

For details refer:

http://www.mca.gov.in/Ministry/pdf/CompaniesIncorporationIIAmendmentRules_07032019.pdf

In brief

- **Companies (Incorporation) Third Amendment Rules, 2019- insertion of new Rule 38A**

(Notification dated 29th March 2019)

- **Companies (Registration Offices and Fees) Amendment Rules, 2019.- amendment in the Annexure**

(Notification dated 21st February 2019)

- **Companies (Ind AS) Amendment Rules, 2019 - relate to amendments of various Ind AS and insertion of Ind AS 116 - Leases**

(Notification dated 30th March 2019)

Companies (Incorporation) Third Amendment Rules, 2019

MCA has amended the Companies (Incorporation) Rules, 2014. A new Rule 38A has been inserted which will aid entrepreneurs who are considering to register a company to obtain various business specific registrations along with the registration of the company itself. MCA has introduced a new e-form AGILE (INC 35) which contains application for the following registrations-

- ♦ GST identification number (GSTIN) w.e.f. 31st March, 2019
- ♦ Employees Provident Fund Organisation (EPFO) registration w.e.f. 8th April 2019
- ♦ Employees State Insurance Corporation (ESIC) registration w.e.f. 15th April 2019.

For details refer:

http://www.mca.gov.in/Ministry/pdf/companiesINC3rdAmendmentRules_30032019.pdf

Companies (Registration Offices and Fees) Amendment Rules, 2019

The MCA has amended Companies (Registration Offices and Fees) Rules, 2014. No fees will be charged for filing e-Form ACTIVE under Rule 25A of the Companies (Incorporation) Rules, 2014 till 25th April 2019. However, fees of Rs. 10,000 will be charged in case of delay

For details refer:

<http://www.mca.gov.in/Ministry/pdf/CompaniesRegnOfficesFeesRules21022019.pdf>

Companies (Ind AS) Amendment Rules, 2019

The MCA has amended Companies (Ind AS) Rules, 2015. Following Ind AS have been amended-

Ind AS 101	<i>First time adoption of Ind AS</i>
Ind AS 103	<i>Business Combinations</i>
Ind AS 104	<i>Insurance Contracts</i>
Ind AS 107	<i>Financial Instruments: Disclosures</i>
Ind AS 109	<i>Financial Instruments</i>
Ind AS 113	<i>Fair Value Measurement</i>
Ind AS 115	<i>Revenue from Contracts with Customers</i>

Ind AS 116 *Leases* has been inserted.

The amendment relates to pronouncement of Ind AS 116 *Leases* to replace Ind AS 17.

For details refer: http://www.mca.gov.in/Ministry/pdf/RuleIndAsEng_30032019.pdf

In brief

- Companies (Ind AS) Second Amendment Rules, 2019- relate to amendments of various Ind AS and insertion of Ind AS 116 - *Leases*

(Notification dated 30th March 2019)

- Extension for last date of filing initial return in MSME Form I

(General Circular No. 01/ 2019 dated 21st February 2019)

Companies (Ind AS) Second Amendment Rules, 2019

These rules among other amendments relate to amendment of;

Ind AS 12	<i>Income taxes to insert of Appendix C Uncertainty over income tax treatments</i>
Ind AS 19	<i>Employee Benefits</i>
Ind AS 23	<i>Borrowing Costs</i>
Ind AS 28	<i>Investments in Associates and Joint Ventures</i>
Ind AS 109	<i>Financial Instruments</i>
Ind AS 111	<i>Investments in Associates and Joint Ventures</i>

Both rules also include consequential amendments to other Ind AS and will **come into force on 1st April 2019**.

For details refer:

http://www.mca.gov.in/Ministry/pdf/RuleIndAsSecondEng_30032019.pdf

Circulars/Order from the Ministry of Corporate Affairs (MCA)

Circulars

Extension for last date of filing initial return in MSME Form I

Since the deployment of MSME Form I as specified in Specified Companies (Furnishing of information about payment to micro and small enterprise suppliers) Order, 2019 dated is pending, timeline for filing the Form should be reckoned from the date the said e-form is deployed

For details refer:

http://www.mca.gov.in/Ministry/pdf/InitialReturnInMSMEForm_21022019.pdf

In brief

- Specified Companies (Furnishing of information about payment to micro and small enterprise suppliers) Order, 2019.

(Order dated 22nd January 2019)

Order

Specified Companies (Furnishing of information about payment to micro and small enterprise suppliers) Order, 2019.

As per notification dated 2nd November 2018, the Central Government had directed all companies, who get supplies of goods or services from micro and small enterprises and whose payments to micro and small enterprise suppliers exceed 45 days from the date of acceptance or the date of deemed acceptance of the goods or services as per the Section 9 of the Micro, Small and Medium Enterprises Development Act, 2006 should submit a half yearly return to the MCA.

As per the above Order,

- ♦ Every specified company should file in MSME Form I details of all outstanding dues to Micro or small enterprises suppliers existing on the date of notification of this order within 30 days from the date of publication of this notification. *.(As per circular General Circular No. 01/ 2019 dated 21st February 2019, the above 30 days are to be reckoned from the date the said e-form is deployed on MCA 21 portal)*
- ♦ Every specified company should file a return as per MSME Form I, by 31st October for the period from April to September and by 30th April for the period from October to March.

For details refer:

http://www.mca.gov.in/Ministry/pdf/MSMESpecifiedCompanies_22012019.pdf

Return

In brief

- Format for annual secretarial audit report and annual secretarial compliance report for listed entities and their material subsidiaries

(Circular No. CIR/CFD/CMD1/27/2019 dated 8th February 2019)

Securities and Exchange Board of India (SEBI)

Circulars

Format for annual secretarial audit report and annual secretarial compliance report for listed entities and their material subsidiaries.

The Committee on Corporate Governance, constituted under the Chairmanship of Shri Uday Kotak, in its report dated 5th October 2017, recommended the following in view of the criticality of secretarial functions to efficient board functioning:

- ♦ Secretarial audit to be made compulsory for all listed entities under the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (**Listing Regulations**) in line with the provisions of the Companies Act, 2013.
- ♦ Secretarial audit to be extended to all material unlisted Indian subsidiaries in line with the recommendations of the Committee on strengthening group oversight and improving compliance at a group level for listed entities.

The aforesaid recommendations were accepted and in order to implement the same, the Listing Regulations have been amended.

This circular will come into force as under:

- ♦ With respect to the annual secretarial audit report, in the annual reports of the listed entities and the material unlisted subsidiaries from the financial year (**FY**) ended 31st March 2019 onwards
- ♦ With respect to the annual secretarial compliance report, applicable to listed entities, with effect from the FY ended 31st March 2019 onwards.

For details refer: https://www.sebi.gov.in/legal/circulars/feb-2019/format-for-annual-secretarial-audit-report-and-annual-secretarial-compliance-report-for-listed-entities-and-their-material-subsiidiaries_42015.html

In brief

- Procedure and formats for limited review / audit report of the listed entity and those entities whose accounts are to be consolidated with the listed entity

(Circular No.:
CIR/CFD/CMD1/44/2019
dated 29th March 2019)

- Disclosure of significant beneficial ownership in the shareholding pattern

(Circular No.:
SEBI/HO/CFD/CMD1/C
IR/P/2019/36 dated 12th
March 2019)

Procedure and formats for limited review / audit report of the listed entity and those entities whose accounts are to be consolidated with the listed entity

The Kotak Committee Report on Corporate Governance, inter-alia, suggested certain changes in the regulatory framework for Group Audit. While considering the recommendation of the Kotak Committee, the SEBI has decided to amend Regulation 33 of the Listing Regulations to include new sub-regulation 8 which will **come into effect from 1st April 2019**.

“(8) The Statutory auditor of a listed entity shall undertake a limited review of the audit of all the entities/companies whose accounts are to be consolidated with the listed entity as per AS 21 in accordance with guidelines issued by the Board on this matter”.

SEBI has also prescribed procedures and format for limited review / audit report of the listed entity and those entities whose accounts are to be consolidated with the listed entity.

For details refer: https://www.sebi.gov.in/legal/circulars/mar-2019/procedure-and-formats-for-limited-review-audit-report-of-the-listed-entity-and-those-entities-whose-accounts-are-to-be-consolidated-with-the-listed-entity_42537.html

Disclosure of significant beneficial ownership in the shareholding pattern

Earlier, the SEBI had specified certain requirements with respect to disclosure of significant beneficial ownership in the shareholding pattern of listed entities which were based on Companies (SBO) Rules, 2018. The MCA has now amended the said Rules, hence SEBI has modified its circular to bring it in line with the MCA rules.

This circular will be applicable to those listed entities that are reporting companies as per Companies (SBO) Rules, 2018, as amended from time to time.

Listed companies are required to disclose details pertaining to SBO in the revised format prescribed in the circular.

The circular will **come into force with effect from the quarter ended 30th June 2019**.

For details refer: https://www.sebi.gov.in/legal/circulars/mar-2019/modification-of-circular-dated-december-7-2018-on-disclosure-of-significant-beneficial-ownership-in-the-shareholding-pattern_42324.html

Return

In brief

- Obligatory cession for FY 2018-19

(Notification No. IRDAI/RI/1/152/2019 dated 21st January 2019)

Insurance Regulatory and Development Authority of India (IRDAI)

Notification

Obligatory Cession for FY 2018-19

This notification will be applicable to Indian Re-insurers and other applicable insurers as per the provision of Section 101A of the Insurance Act, 1938. Among other matters, as per the notification, the percentage cession of the sum insured on each General Insurance Policy to be reinsured with the Indian Re-insurer(s) will be 5% in respect of insurance attaching during the FY beginning from 1st April 2018 to 31st March 2019. Apportionment of obligatory cession for the FY 2018-19 will be at 5% and 0% between General Insurance Corporation of India and ITI Reinsurance Ltd. respectively.

https://www.irdai.gov.in/ADMINCMS/cms/frmGeneral_Layout.aspx?page=PageNo3716&flag=1

Return

In brief

- The Banning of Unregulated Deposit Schemes Ordinance, 2019 was promulgated on 21st February 2019 which will help put a check on illicit deposit taking activities.
- The Supreme Court has ruled that employers must take special allowances into account while calculating their contribution to an employee's PF

Others

The Banning of Unregulated Deposit Schemes Ordinance, 2019

The Banning of Unregulated Deposit Schemes Ordinance, 2019 was **promulgated on 21st February 2019**.

The Ordinance will restrict illicit deposit-taking activities and will protect the interests of deposit holders by providing a framework for redressal mechanism. Amounts received in the form of loans from relatives and contributions towards capital by partners in any partnership firm will not be included in the definition of deposits. This ordinance is applicable only to those who are in the business of accepting deposits.

For details refer:

https://www.prsindia.org/sites/default/files/bill_files/Banning%20of%20Unregulated%20Deposit%20Schemes%20Ordinance%2C%202019.pdf

Supreme Court judgement on Provident Fund contribution

On **28th February 2019**, the Supreme Court has ruled that employers cannot segregate 'special allowance' from basic wage and must include it for calculation of Provident Fund (PF) deductions from employees and their matching contribution.

As of now, the provident fund contribution, as per the Employees' PF (Amendment) Scheme, 2014, is paid equally by the employer and the employee at 12% of the 'monthly pay' which constitutes—basic wages, dearness allowance, cash value of food concession and retaining allowance.

For details refer:

https://www.sci.gov.in/supremecourt/2008/2232/2232_2008_Judgement_28-Feb-2019.pdf

Return

In brief

- Guidance Note on Reports in Company Prospectuses (Revised 2019)

It provides guidance to the practitioners in reporting requirements in relation to financial information to be included in the prospectus in case of initial public offering (IPO) in accordance with the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018, as amended.

- Guidance Note on Audit of Banks (2019 Edition)

This covers in detail various aspects like knowledge of the banking industry, risk assessment and internal control, various items of banks' financial statements and their peculiarities, manner of disclosure in financial statements, the RBI prudential guidelines thereon, audit procedures, reporting on Long Form Audit Reports both at central and branch level, Ghosh and Jilani Committee recommendations, special purpose reports and certificates, etc

Accountancy and Audit

Guidance Notes

- ♦ **Guidance Note (GN) on Reports in Company Prospectuses (Revised 2019)**

This GN Note provides guidance to the practitioners in reporting requirements in relation to financial information to be included in the prospectus in case of initial public offering (IPO) in accordance with the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018, as amended .

This GN, apart from the IPO, is also applicable to other types of filings for the issue of securities (equity shares, debentures and notes etc.) such as letter of offer (in case of right issue), placement document (in case of Qualified Institutional Buyers) etc. and filings for the issue of units under SEBI (Infrastructure Investment Trusts) Regulations, 2014, as amended and SEBI (Real Estate Investment Trusts) Regulations, 2014, as amended to the extent applicable.

This GN will be **applicable** in relation to initial offer document such as DRHP/ DLoF/ PPD/ others and related subsequent filings which are filed **on or after 21st January 2019**. Earlier application is voluntary.

This GN **supersedes** the GN on Reports in Company Prospectuses (Revised 2016)

For details refer: <https://resource.cdn.icai.org/53704aasb43145a.pdf>

- ♦ **Guidance Note on Audit of Banks (2019 Edition)**

The objective of this GN is to provide detailed and updated guidance to the members on various aspects of bank audits. This edition of the GN has been divided in 3 separate sections as follows-

- ▲ **Section A - Statutory Central Audit**
<https://resource.cdn.icai.org/53700icai-aasb-ssgna.pdf>
- ▲ **Section B - Foreign Exchange Transactions and Integrated Treasury**
<https://resource.cdn.icai.org/53710icai-aasb-ssgna-b.pdf>
- ▲ **Section C - Bank Branch Audit other than Foreign Exchange Transactions**
<https://resource.cdn.icai.org/53711icai-aasb-ssgna-c.pdf>

In brief

- UDIN mandatory w.e.f 1st February 2019 for all Certificates and UDIN is being made mandatory in 2nd Phase for GST & Tax Audit Report w.e.f. 1st April 2019.

This is done to curb malpractices.

UDIN mandatory w.e.f 1st February 2019 for all Certificates

To curb the malpractices, the ICAI vide its earlier announcements has introduced the concept of UDIN i.e., Unique Document Identification Number to secure certificates/documents attested/certified by practicing Chartered Accountants. The Professional Development Committee of ICAI has implemented the concept of UDIN in a phased manner. **All certificates are being made mandatory with effect from 1st February 2019.**

For details refer: https://www.icai.org/new_post.html?post_id=15371&c_id=240

UDIN is being made mandatory in 2nd Phase for GST & Tax Audit Report

In the 2nd phase, w.e.f 1st April, 2019, UDIN has also been made mandatory for GST & Tax Audit Reports.

For details refer: https://www.icai.org/new_post.html?post_id=15505

Ind AS

For developments in Ind AS refer *CNK IFRS/ Ind AS Updates, April 2019*

For details refer:

<https://www.cnkindia.com/uploads/attachments/IFRS/IFRSIndASUpdateApril2019.pdf>

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Key Take Away

- MCA requires companies to report 'what is not deposit'. This will help track sources of money.
- With the amendment of the SBO Rules, corporates will be required to take necessary steps to identify SBO owners and obtain declaration from them. SBO corporates might face strict action for inadequate or wrong disclosures of their ownership, and companies too can seek action against entities in case they fail to provide satisfactory responses
- ACTIVE e-form will strengthen Corporate Governance and enhance transparency among the companies
- MCA has cleared the practical difficulty on newspaper advertisement faced at the time of shifting registered office from one State or Union Territory to another State
- MCA has notified certain key Forms – DPT-3, BEN-1, MSME-1, NFRA-1, ACTIVE under the Companies Act, 2013.
- No fee will be charged for incorporation of all companies with authorized capital up to Rs. 15 Lakhs.
- Now companies can get GST, ESIC and EPFO registration at the time of incorporation.
- Every company will be required to ascertain whether it is availing supplies of goods or services from micro and small enterprises. Once this have been established then it will have to determine whether the dues are outstanding for more than 45 days. This will help to identify whether the company falls under the category of "Specified Companies". This procedure is will help to protect the MSMEs and strengthen the governance framework
- Ind AS 116 on Leases came into force from 1st April 2019. This standard will improve the quality of financial information of about companies
- The salary structure will have to be diligently looked into after a very important ruling by the Supreme Court on PF

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