



COMPANIES AMENDMENT ACT 2017 & SBO RULES 2018

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WHO AM I

- Board Training – Basic & Advanced courses
- Senior Management Training on Compliance Matters - POSH, Liabilities
- Corporate Law Consulting & Advisors
- Corporate Governance Evaluation, Board Evaluation & Diversity Analysis
- Author of Book "BOARD ANATOMY"

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MY PROGRAMS FOR CORPORATE BOARD

- Chakravyuh – The Maze Runner - **Basic**
- Vipasana – Clear Seeing - **Advanced**
- Nirvana – The Naked Truth – **Professional**
- Lakshman Rekha – The Line of Control – **Senior Management**

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TRANSFORMATIVE VALUE EDUCATION

- Education is not Information; but Formation.
- Real Education is that which brings Transformation through Formation.
- *The Transformative Value of Education is in making people aware of their obligation towards stakeholders.*

- Prof Dr. R Venkata Rao (VC NLS)

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MY MISSION STATEMENT

- I am here to articulate ideas, share experience and try to address issues in a clear, crisp and concise manner so that there is two way communication for a better understanding.



COMPANY LAW

A Dynamic Subject

2013 → 2014 → 2015 → 2016 → 2017 → 2018

WHATSAPP ... 2018

- April – Disqualification of Directors
- May – Strike Off
- June – FDI Reporting
- July – ARLFA
- August – DIR KYC
- September - e-biz
- October – BEN – 3
- November – MGT 7
- December – Corporate KYC

DISQUALIFICATION OF DIRECTORS

- As part of clamping down on illicit fund flows, the corporate affairs ministry has disqualified more than 3.09 lakh directors of companies which failed to submit annual filings.
- Further, a scheme of Condonation of Delay came into force from January 1 to March 31, 2018 . The DIN of the Director's was temporarily activated during the scheme period.

Insertion of Proviso to Section 164 (2):**Disqualifications for appointment of director**

No person who is or has been a director of a company which:

(a) has not filed 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 to pay or redeem continues for one year or more, shall be eligible to be re-appointed as a director of that company or appointed in other company for a period of five years from the date on which the said company fails to do so.

Provided that where a person is appointed as a director of a company which is in default of clause (a) or clause (b), he shall not incur the disqualification for a period of six months from the date of his appointment

➤ Explanation II of Section 165: Disqualifications for appointment of director: **For reckoning the limit of directorships of twenty companies, the directorship in a dormant company shall not be included**

Change in the Proviso to Section 164 (3):**Disqualifications for appointment of director**

A private company may by its articles provide for any disqualifications for appointment as a director in addition to those specified in sub-sections (1) and (2)

Provided that the disqualifications referred to in clauses (d), (e) and (g) of sub-section (1) shall continue to apply even if the appeal or petition has been filed against the order of conviction or disqualification

Explanation II of Section 165: Disqualifications for appointment of director

Explanation II:- For reckoning the limit of directorships of twenty companies, the directorship in a dormant company shall not be included

Section 167: Vacation of office of Directors

The office of a director shall become vacant in case:

(a) he incurs any of the disqualifications specified in section 164;

Provided that where he incurs disqualification under sub section (2) of section 164, the office of the director shall become vacant in all the companies, other than the company which is in default under that sub-section

STRIKE OFF

- The Ministry of Corporate Affairs (MCA) has already struck off over 2.26 lakh companies for non-filing of financial statements or annual returns

CODS-2018

General Circular
No.16/2017 dt.
29.12.2017

- The scheme came in force from 01.01.2018 to 31.03.2018
- This scheme is applicable to all defaulting companies (other than the stuck off Companies)
- The de-activated DIN of disqualified directors, shall be temporarily activated during the scheme period to enable them to file the overdue documents
- The defaulting company shall file the overdue documents

CODS-2018

General Circular
No.16/2017 dt.
29.12.2017

- The defaulting company after filing documents, shall seek condonation of delay by filing form e-CODS
- The fee for filing application e-form CODS is Rs.30,000/-
- The Registrar concerned shall withdraw the pending prosecution(s)
- The e-Form CODS 2018 would be available from 20.02.2018 or an alternate date, which will be intimated by the ministry on www.mca.gov.in.

CODS-2018

General Circular
No.16/2017 dt.
29.12.2017

- The DINs of the Directors associated with the defaulting companies that have not filed their overdue documents and the eform CODS, shall be liable to be deactivated on expiry of the scheme period.
- For Struck off companies which filed applications for revival under section 252 of the Act, the Director's DIN shall be re-activated only on NCLT order of revival subject to the company having filing of all overdue documents.
- Only for filing B/S, A/R, F.66, 23B/ADT.1



NOTIFICATION DATE: JUNE 7, 2018

Persons who had to report: **Indian Entity in receipt of Foreign Investment at any time till date**

Reporting dates: **June 28, 2018 to July 20, 2018**

Interface for Reporting: <https://firms.rbi.org.in>

Particulars reported: **The data on total foreign investment in a specified format**

Penalty: **Indian entities not complying with this pre-requisite will not be able to receive foreign investment (including indirect foreign investment) and will be non-compliant with Foreign Exchange Management Act, 1999 and regulations made thereunder.**

**MY LINKEDIN POSTS**

- ONCE A DIRECTOR; ALWAYS A DIRECTOR
- ACHHE DIN YA BHURE DIN - GOOD DIN OR BAD DIN
- IS IT A SIN TO HOLD A DIN?
- AADHAR HAS AN IDENTITY CRISIS FOR A DIRECTOR - WHO AM I?
- MERA BHARAT MAHAN - MAYBE, BUT BUY A HOME IMMEDIATELY IN A FOREIGN LAND to file DIR KYC
- DIN IS A SIN FOR THE CIN

Rule 11(2), 11(3) and 12A of Companies (Appointment and Qualification) of Directors Rule, 2014:**Rule 11: Cancellation or Surrender of DIN:**

(2) 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), of an individual who does not intimate his particulars in e-form DIR-3-KYC within stipulated time in accordance with rule 12A.

(3) The de-activated DIN shall be re-activated only after e-form DIR-3-KYC is filed along with fee as prescribed under Companies (Registration Offices and Fees) Rules, 2014.

12A Directors KYC

Every individual who has been allotted a Director Identification Number (DIN) as on 31st March of a financial year as per these rules shall, submit e-form DIR-3-KYC to the Central Government on or before 30th April of immediate next financial year.

Provided that every individual who has already been allotted a Director Identification Number (DIN) as at 31st March, 2018, shall submit e-form [DIR-3 KYC on or before 15th September, 2018]

DECRIMINALISATION OF OFFENCES

Crime & Punishment

Govt starts review of company law to decriminalise certain offences

WHAT'S BEING REVIEWED	HOW DOES IT HELP
<p>If some compoundable offences can be considered civil wrongs or defaults</p> <p>Non-compoundable offences can be made compoundable</p>	<p>Simple violations will not attract disproportionate punishment</p> <p>There will only be fine levied in such cases</p> <p>Courts will be free to take up more important cases</p>

WHAT DOES THIS MEAN

- "The Company or Director who is in default being liable to a **PENALTY**, instead of being punishable with fine."
- Penalty means a punishment imposed for breaking a law, rule, or contract.
- A **fine** is money that a court of **law** or other authority decides has to be paid as punishment for a crime or other offence. The amount of a **fine** can be determined case by case, but it is often announced in advance.

Companies (Significant Beneficial Owners) Rules, 2018

How to identify UBOs:
Ultimate Beneficial Owners

REGISTERED OWNER – WHY THIS DEFINITION?

Rule 2(c): "registered owner" means a person whose name is entered in the register of members of a company as the holder of shares in that company but who does not hold beneficial interest in such shares

If there is an individual / company / firm / trust that holds shares – will this provisions apply?

The Task of task force is to identify a Registered Owner.

BENEFICIAL OWNER – OLD MEANING

Implied meaning of Beneficial Owner:

Considering Section 89(2) and 89(3), it can be concluded that beneficial owner means "Every person who holds or acquires a beneficial interest in share of the company not registered in his name."

NEW MEANING OF BENEFICIAL OWNER

Rule 9 of Companies (Management and Administration) Rules, 2014:

- (2) Every person holding and exempted from furnishing declaration or acquiring a beneficial interest in shares of a company not registered in his name (hereinafter referred to as "the beneficial owner") shall file with the company, a declaration disclosing such interest in Form No. MGT- 5 within thirty days after acquiring such beneficial interest in the shares of the company
- DOES THIS MEAN THE RULE IS APPLICABLE ONLY FOR COMPANIES THAT HAVE FILED MGT 5.

BENEFICIAL INTEREST

Pursuant to Section 89(10) of Companies Act, 2013, "For the purposes of this section and section 90, beneficial interest in a share includes, directly or indirectly, through any contract, arrangement or otherwise, the right or entitlement of a person alone or together with any other person to:

- (i) exercise or cause to be exercised any or all of the rights attached to such share; or
- (ii) receive or participate in any dividend or other distribution in respect of such share.



WHAT TO LOOK FOR

SHAREHOLDING TEST

- Form II – Companies Act 1956
- MGT 5 – Companies Act 2013
- BEN 2 – under Companies Significant Beneficial Owners Rules 2018
- Form II & MGT 5 were members
- Who is BEN 2

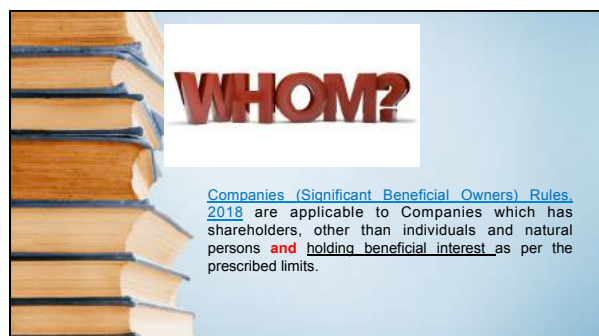
HEADS UP

NOMINEE TO FILE WITH COMPANY

- Form I – Companies Act 1956
- MGT 4 – Companies Act 2013
- BEN ??? – under Companies Significant Beneficial owners Rules 2018

COMPANY TO FILE

- Form III in Form 22 under general rules – Companies Act 1956
- MGT 6 – Companies Act 2013
- BEN 2 – under Companies Significant Beneficial owners Rules 2018



Definitions:

(e) "significant beneficial owner" means an individual referred to in sub-section (1) of section 90 (holding ultimate beneficial interest of not less than ten per cent.) read with sub-section (10) of section 89, but whose name is not entered in the register of members of a company as the holder of such shares, and the term 'significant beneficial ownership' shall be construed accordingly;

Explanation I. - For the purpose of this clause, the significant beneficial ownership, in case of persons other than individuals or natural persons, shall be determined as under-

(i) where the member is a company, the significant beneficial owner is the natural person, who, whether acting alone or together with other natural persons, or through one or more other persons or trusts, holds not less than ten per cent. share capital of the company or who exercises significant influence or control in the company through other means;

(ii) where the member is a partnership firm, the significant beneficial owner is the natural person, who, whether acting alone or together with other natural persons, or through one or more other persons or trusts, holds not less than ten per cent. of capital or has entitlement of not less than ten per cent. of profits of the partnership;

(iii) where no natural person is identified under (i) or (ii), the significant beneficial owner is the relevant natural person who holds the position of senior managing official;

(iv) where the member is a trust (through trustee), the identification of beneficial owner(s) shall include identification of the author of the trust, the trustee, the beneficiaries with not less than ten per cent. interest in the trust and any other natural person exercising ultimate effective control over the trust through a chain of control or ownership;

Which form of business is missing?

SECTION 90(1)

- (1) Every individual, who acting alone or together, or through one or more persons or trust, including a trust and persons resident outside India, holds beneficial interests, of not less than twenty-five per cent. or such other percentage as may be prescribed, in shares of a company or the right to exercise, or the actual exercising of significant influence or control as defined in clause (27) of section 2, over the company (herein referred to as "significant beneficial owner"), shall make a declaration to the company, specifying the nature of his interest and other particulars, in such manner and within such period of acquisition of the beneficial interest or rights and any change thereof, as may be prescribed;
- Provided that the Central Government may prescribe a class or classes of persons who shall not be required to make declaration under this sub-section.

SECTION 89(10)

- (10) For the purposes of this section and section 90, beneficial interest in a share includes, directly or indirectly, through any contract, arrangement or otherwise, the right or entitlement of a person alone or together with any other person to—
- (i) exercise or cause to be exercised any or all of the rights attached to such share; or
- (ii) receive or participate in any dividend or other distribution in respect of such share.



Where the Member of a Company is	The significant beneficial owner is the natural person, who, whether acting alone or together with other natural persons, or through one or more other persons or trusts;
Company	^{i.} holds not less than ten per centage of the share capital of the company; or ^{ii.} who exercises significant influence or control in the company through other means
Partnership firm	^{i.} holds not less than ten per cent. of capital; or ^{ii.} has entitlement of not less than ten per cent. of profits of the partnership
No natural person is identified under the above two cases	^{i.} significant beneficial owner is the relevant natural person who holds the position of senior managing official
Trust (through Trustee)	^{i.} identification of the author of the trust; or ^{ii.} the trustee; or ^{iii.} the beneficiaries with not less than ten per centage of the interest in the trust; or ^{iv.} any other natural person exercising ultimate effective control over the trust through a chain of control or ownership

APPLICATION OF THE RULE – LOOK FOR

- Form II or MGT 5
- Individuals who have filed the return with Company
- Company/ Firm/ Body Corporate/ Trust
- Holding is 10% or more

WHAT FORMS TO LOOK FOR

BEN 1 - Every significant beneficial owner shall file a declaration in Form No. BEN-1 to the company in which he holds the significant beneficial ownership

BEN 2 - Where any declaration under rule 3 is received by the company, it shall file a return

BEN 3 - The company shall maintain a register of significant beneficial owners

BEN 4 - A company shall give notice seeking information in accordance with under sub-section (5) of section 90

Rule 3: Declaration of significant beneficial ownership in shares under section 90:-

(1) Every significant beneficial owner shall file a declaration in Form No. BEN-1 to the company in which he holds the significant beneficial ownership on the date of commencement of these rules within ninety days from such commencement and within thirty days in case of any change in his significant beneficial ownership.

(2) Every individual, who, after the commencement of these rules, acquires significant beneficial ownership in a company, shall file a declaration in Form No. BEN-1 to the company, within thirty days of acquiring such significant beneficial ownership or in case of any change in such ownership.

Rule 4: Return of significant beneficial owners in shares:-

Where any declaration under rule 3 is received by the company, it 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 declaration by it, along with the fees as prescribed in Companies (Registration offices and fees) Rules, 2014.

Rule 5: Register of significant beneficial owners:-

(1) The company shall maintain a register of significant beneficial owners in Form No. BEN-3.

(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.

Rule 6: Notice seeking information about significant beneficial owners:-

A company shall give notice seeking information in accordance with under sub-section (5) of section 90, in Form No. BEN-4.

Rule 7: Application to the Tribunal:-

The company may apply to the Tribunal 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 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.

Rule 8: Non-Applicability:-

These rules are not made applicable to the holding of shares of companies/body corporates, in case of pooled investment vehicles/investment funds such as Mutual Funds, Alternative Investment Funds (AIFs), Real Estate Investment Trusts(REITs) and Infrastructure Investment Trusts (InvITs) regulated under SEBI Act.

**WHAT TO LOOK FOR****SHAREHOLDING TEST**

- Form II
- MGT 5
- Any person holding 10% or more

CONTROL TEST

- Significant Influence – under AS 28 or CA 2013
- Control – Board or Decision making or Returns

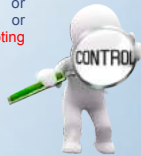
BEN 1 and BEN 2

SECTION 90(1)

- (1) Every individual, who acting alone or together, or through one or more persons or trust, including a trust and persons resident outside India, **holds beneficial interests, of not less than twenty-five per cent. or such other percentage as may be prescribed, in shares of a company or the right to exercise, or the actual exercising of significant influence or control as defined in clause (27) of section 2, over the company** (herein referred to as "significant beneficial owner"), shall make a declaration to the company, specifying the nature of his interest and other particulars, in such manner and within such period of acquisition of the beneficial interest or rights and any change thereof, as may be prescribed:
- Provided that the Central Government may prescribe a class or classes of persons who shall not be required to make declaration under this sub-section.

WHAT IS CONTROL

- As per Companies Act, 2013 : Pursuant to section 2(27) of the Companies Act, 2013, "control" shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner;

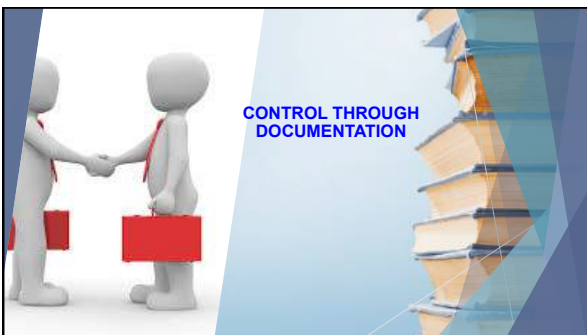


As per SEBI (Substantial Acquisition of Shares and Takeover Regulations, 2011) : As per section 2(e) control includes the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner:

Provided that a director or officer of a target company shall not be considered to be in control over such target company, merely by virtue of holding such position



CONTROL THROUGH DOCUMENTATION



CONTROL THROUGH DOCUMENTATION

- Virtue of shareholding
- Management Rights
- Articles of Association – stand alone
- Share Holders Agreement clause in the Articles of Association
- Voting Agreements - VETO rights / RESERVED MATTERS

VETO RIGHTS / RESERVED MATTER

- In Latin "Veto" means "I forbid".
- The term, according to New Webster's Dictionary, means "power or right of forbidding; to withhold assent to; to reject".
- Thus, veto rights mean the right to forbid or withhold assent or to reject. In other words, it is a special right given to a person to reject a proposal. As anybody can agree to or reject any proposal, one may ask, what is special in veto. The importance or specialty of veto is that when exercised it rejects the proposal in spite of the proposal having majority assent.



SIGNIFICANT INFLUENCE

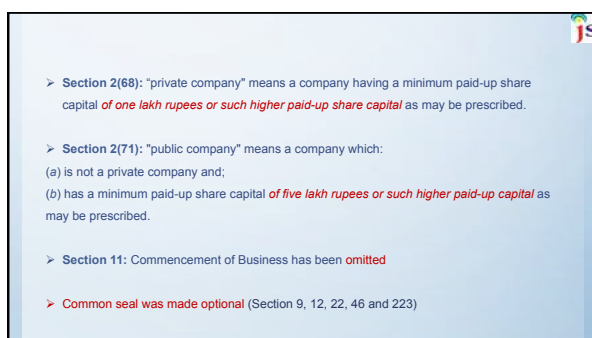
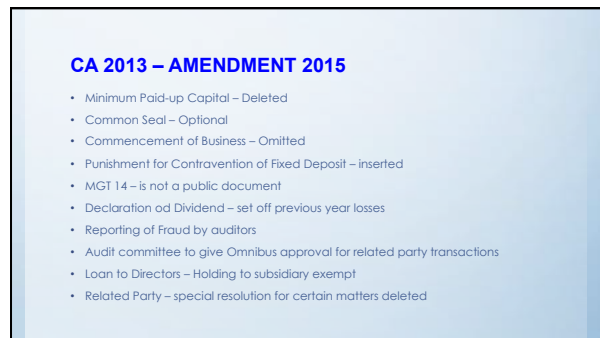
- Significant influence is the power to participate in the financial and operating policy decisions of the investee but is not control or joint control of those policies.
- Para 5 - Where an entity holds 20% or more of the voting power (directly or through subsidiaries) on an investee, it will be presumed the investor has significant influence unless it can be clearly demonstrated that this is not the case. If the holding is less than 20%, the entity will be presumed not to have significant influence unless such influence can be clearly demonstrated. A substantial or majority ownership by another investor does not necessarily preclude an entity from having significant influence.


SIGNIFICANT INFLUENCE

- Section 2(6): "Associate Company", in relation to another company, means a company in which that other company has a **significant influence**, but which is not a subsidiary company of the company having such influence and includes a joint venture company.
-
- Explanation:- For the purposes of this clause, "**Significant influence means control of at least twenty per cent. of total share capital, or of business decisions under an agreement.**"


WHO IS THE ULTIMATE BENEFICIAL OWNER (UBO)

A SBO who is an individual holding ultimate beneficial interest of not less than 10 % and whose name is not entered in the register of members






- Section 160: Right of persons other than retiring directors to stand for directorship
- Section 162: Appointment of directors to be voted individually
- Section 180: Restriction on powers of Board
- Section 184(2) shall apply to private companies with exemption that the interested director may participate in such meeting after disclosure of his interest
- Section 185: Loan to Directors
- Proviso to Section 188(1) with regard to restriction of voting rights of member who is a related party in any contract or arrangement



Companies (Amendment) Bill, 2016

February 1, 2016



THE NOTIFICATIONS

- 3 January 2018 – CA 2013 Amend Act 2017
- 9 February 2018
- 7 May 2018
- 13 June 2018
- 5 July 2018
- 31 July 2018



Companies (Amendment) Act, 2017

Effect of number of members falling below the minimum requirement

Section 3A

- Insertion:
- If at any time the number of members of a company is reduced below the minimum prescribed and the company carries on business more than six months members shall be severally liable for the payment of debts of the company

Section 153 read with Rule 9 of Companies (Appointment and Qualification of Directors) Amendment Rules, 2018


- Rule 1: Every applicant, who intends to be appointed as director of an existing company shall make an application electronically in Form DIR-3, to the central Government for allotment of a Director Identification Number (DIN) along with such fees as provided under the companies (Registration offices and Fees) Rules, 2014.
- Provided that in case of proposed directors not having approved DIN, the particulars of maximum three directors shall be mentioned in Form No.INC-32 (spice) and DIN may be allotted to maximum three proposed directors through Form INC-32 (SPICE)

- Rule 3(A): The applicant shall download Form DIR-3 from the portal, fill in the required particulars sought therein, verify and sign the form and after attaching copies of the following documents, scan and file the entire set of documents electronically-
 - (i) photograph;
 - (ii) proof of identity;
 - (iii) proof of residence;
 - (iii a) board resolution proposing his appointment as director in an existing company
 - (iv) Specimen signature duly verified.
 - (v) Form DIR-3 shall be signed and submitted electronically by the applicant using his or her own Digital signature certificate and shall be verified digitally by a company secretary in full time employment of the company or by the managing director or director or CEO or CFO of the company in which the applicant is intended to be appointed as director in an existing company

Section 153: Application for allotment of Director Identification Number

Every individual intending to be appointed as director of a company shall make an application for allotment of Director Identification Number to the Central Government in such form and manner and along with such fees as may be prescribed.

Provided that the Central Government may prescribe any identification number which shall be treated as Director Identification Number for the purposes of this Act and in case any individual holds or acquires such identification number, the requirement of this section shall not apply or apply in such manner as may be prescribed.



What Might be any other Number??

Disclosures under Board's Report

Section 92(3)

- The requirement to file extract of Annual Return as part of the Board's report is omitted.
- But every company shall place a copy of AR on the website, if any, and give web link in Board's Report.

WEBSITE

- If you do not have a website – SHOULD YOU DISCLOSE Annual Return in MGT 7 or Extracts in MGT 9?

Section 134(3) v/s 92(3)

Section 134 (3) There shall be attached to statements laid before a company in general meeting, a report by its Board of Directors, which shall include:

(a) the web address, if any, where annual return referred to in sub-section (3) of section 92 has been placed

Section 92 (3): An extract of the annual return in such form as may be prescribed shall form part of the Board's report

Financial Statement and Board's Report (Sec. 134 of the Act)

Major amendments

- Board's Report to contain web link to enable to view Annual Return
- Extract of Annual Return need not be attached to the Board's Report
- Annual Evaluation of performance of Board/Committee/Directors may be by third party instead of by the Board.
- Instead of reproducing policy in the Board's Report, web address may be mentioned.
- CG may prescribe abridged Board's Report for OPC & Small Co.

General Meetings

Section 92(3)

- Being a substantive provision, the explanation to Rule 18(3) be deleted and an explanation be incorporated at the end of Section 100 mandating that EGM shall be held only in India, as well as provide for exemptions to wholly owned subsidiaries of companies incorporated outside India.

Section 96(2): Annual General Meeting

Every annual general meeting shall be called during business hours, that is, between 9 a.m. and 6 p.m. on any day that is not a National Holiday and shall be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situate.

Provided that annual general meeting of an unlisted company may be held at any place in India if consent is given in writing or by electronic mode by all the members in advance.

Section 100: Extra-ordinary General Meeting

The Board may, whenever it deems fit, call an extraordinary general meeting of the company.

Provided that an extraordinary general meeting of the company, other than of the wholly owned subsidiary of a company incorporated outside India, shall be held at a place within India.

Participation through video-conferencing

Section 173(2)-

- The directors are allowed to participate on certain items which were restricted at Board meetings through video conferencing or other audio visual means if there is quorum through physical presence of directors.

Inclusion of second proviso to Section 173 (2): Meetings of Board through Video Conference

The participation of directors in a meeting of the Board may be either in person or through video conferencing or other audio visual means, as may be prescribed, which are capable of recording and recognising the participation of the directors and of recording and storing the proceedings of such meetings along with date and time.

Provided that the Central Government may, by notification, specify such matters which shall not be dealt with in a meeting through video conferencing or other audio visual means.

Provided further that where there is quorum in a meeting through physical presence of directors, any other director may participate through video conferencing or other audio visual means in such meeting on any matter specified under the first proviso.

Right of Member to Copies of Audited Financial Statement

Section 136(1)

- Amendment to sub-section (1) of section 136 to provide that copies of audited financial statements and other documents may be sent at shorter notice if ninety five percent of members entitled to vote at the meeting agree for the same.

Filing Fees

Section 403

- 270 days shelter removed;
- Additional filing fees structure brought in line with the LLP
- FS & Annual Return can be filed with delayed filing fees of Rs. 100/- per day (after prescribed 30/60 days).
- For other forms – additional fees will be prescribed, different amount may be specified for different classes of companies
- In case of subsequent 2 or more defaults in submission of forms, higher fees may be prescribed
- 117, 92, 89, 121, 137

Section 403 read with Rule 12 of (Register office and fees) Rules, 2014

Rs. 100 Per Day Penalty For Late Filing Of Annual Returns & Financial Statements:

Due Date of Filing	Forms	Additional Fee
Expire after 30th June 2018	MGT-7, AoC-4, AoC-4 XBRL and AoC-4 CFS	Rs. 100 per day after expiry of due date
Expired on 30th June 2018	MGT-7, AoC-4, AoC-4 XBRL and AoC-4 CFS	Rs. 100 per day from 01st July 2018
Already Expired before 30th June 2018	23AC, 23ACA, 23AC XBRL, 23ACA XBRL, 208, 21A under Companies Act, 1956 and MGT-7, AoC-4, AoC-4 XBRL and AoC-4 CFS under Companies Act, 2013	1. As per the applicable slab for the period of delay up to 30th June 2018 and 2. Rs. 100 per day from 01st July 2018

'Self Declaration' to replace 'Affidavit'

Section 7(1)(c)-

- With reference to incorporation of a company, 'affidavit' has been replaced by "self declaration" from the first subscribers to memorandum and first directors.
- This will ease the additional documentary burden and avoid delay in the incorporation process

OTHER IMPORTANT PROVISIONS

Section 185-

- Granting of loan, guarantee or security (referred as assistance) is categorized as prohibited, conditional and exempted.
- The prohibition is proposed to be made applicable for assistance to director or his partner or relative or a firm in which such director or relative is a partner or to holding company of the company
- The conditional assistance is possible to any person in whom the director is interested
- The exempted categories are loan to MD/ WTD as a part of service condition or scheme and loans by companies in their ordinary course of business

Intimation of Satisfaction of charge

Section 82

- Intimation of satisfaction of charge can be filed with ROC within 300 days
- Rules made similar to creation of charge.

Managerial Remuneration

First Proviso to Section 197(1)-

- The requirement of approval of the Central Government for Managerial Remuneration, above the prescribed limits are replaced by approval through special resolution by shareholders in general meeting.
- No CG approval for public companies for payment of remuneration to managing director even exceeding 11% of net profits
- Approval of the central government would be needed only for variance to the conditions specified in part I of Schedule V for the appointment of MD/ WTD;

I The Companies (Amendment) Act, 2017 ('the CAA, 2017') Punishment in contravention of acceptance of deposits (Sec. 76A)(wef 9-2-2018)

Particulars	Earlier	Now
Fine reduced to not less than	Rs. 1 Crore	Rs. 1 Crore or twice the amount of deposit accepted whichever is lower
Compounding not possible	seven years or with fine	seven years and fine

PRIVATE PLACEMENT

Section 42

- The Private Placement process is simplified by doing away with separate offer letter details to be kept by company and reducing number of filings to Registrar.
- the disclosures made under Explanatory Statement referred to in Rule 13(2)(d) of Companies (Share Capital and Debenture) Rules, 2014, embodied in the Private Placement Application Form.
- The Companies would be allowed to make offer of multiple security instruments simultaneously.
- Restriction on utilization of subscription money before making actual allotment and additionally before filing the allotment return to the registrar.

Section 42 read with Rule 14 of Companies (Prospectus and Allotment of Securities) Rules, 2014

- Deletion of requirement with respect to value of offer or invitation per person: The requirement of value of offer or invitation per person of Rs. 20,000/- of face value of the securities has been removed.
- Usage of Share application money: Now a company is not permitted to utilise the Share Application Money received by it, unless:
 - i. Allotment is made
 - ii. The return of Allotment in e-form PAS-3 is filed with Registrar
- Reduction of time period for filing e-form PAS-3: Now Company is required to file the return of allotment within 15 days of allotment instead of 30 days of allotment

- Separate penal provisions for non-filing of e-form PAS-3: Where a Company defaults in filing e-form PAS-3 within 15 days of allotment, the Company, its promoters and its directors shall be liable with a penalty of Rs. 1000 per day but not exceeding Rs. 25,00,000
- Common private placement offer cum application forms: The form PAS-4 has been revised and has a small section of application letter that needs to be filed in by the applicant.
- Fresh offer prior to allotment: Earlier there was a restriction that no fresh offer or invitation can be made unless the allotment w.r.t. any earlier offer has been completed or the offer has been withdrawn or abandoned. Now a carve out has been provided that where the number of persons to whom the offer is made does not exceed 200, the Company may, at any time, make more than one issue of securities to such class of identified persons.

Name Reservation / Approval

Section 4(5)

- The period for reservation of name is substituted from 'sixty days from the date of the application' to 'twenty days from the date of approval or such other period as may be prescribed'.

Section 4(5)(i): Reservation of Name by Registrar:

Prior to the Amendment the name was reserved for sixty days from the date of approval of the Name for a proposed Company (Incorporation). However Post Amendment, the name is reserved only for twenty days from the date of reservation of the Name.

However, in case of change in the Name of the existing company, 60 days of reservation of name allowed persists.

Highlights of Companies (Amendment) Act, 2017 Intimation of Registered Office to ROC

Section 12(1) & (4)

- A company shall, within thirty days of its incorporation, have a registered office."
- The time period for giving notice of change of situation of registered office is increased from 15 days to 30 days

Financial Statement, Board's Report Etc.

Section 134(1), (3)

- The amendment provides that the Chief Executive Officer shall sign the financial statements irrespective of the fact whether he is a director or not.
- The Requirement of having extract of Annual return (Form MGT-9) has been done away with.

Financial Statements

Section 129(3)-

- While preparing the consolidated financial statements, the main concern was whether to include associate companies or not. After the amendment the concern gets addressed as the term "associate companies" (20 % Voting power) is inserted in addition to the subsidiaries.

Corporate Social Responsibility

Section 135(1)

- Section 135 is applicable to companies which falls within the threshold of the specified net worth or turnover or net profit and are required to constitute the CSR Committee in any financial year. The words "any financial year" are replaced by the words 'immediately preceding financial year'.

General Meetings

Section 110(1)

- The items required to be passed mandatorily by postal ballot may now be transacted at a general meeting where the facility of electronic voting is provided by the company.

General Meetings

Section 160(1)-

- The requirement of deposit of rupees one lakh with respect to nomination of directors shall not be applicable in case of appointment of independent directors or directors nominated by nomination and remuneration committee.
- The exemptions/modifications have already been notified for wholly owned Government companies, Section 8 companies and Nidhis.

Deposit in respect of appointment of director (Sec. 160 of the Act) (**wef 9-2-2018**)

- A person (other than retiring director)
 - contesting for appointment as a Director at a general meeting or member
 - was required to pay deposit of Rs. 1 lakh
- Now this requirement not to apply in case of
 - independent director
 - a director recommended by Nomination & Remuneration Committee (NRC) whenever required to constitute
 - director recommended by the Board of the Company whenever not required to have NRC

Rationalizing Penal Provisions

76A, 132, 140, 147 and 180

- The Act seeks to amend section 76A, 132, 140, 147 and 180 etc. to reduce the quantum of fine in a move towards rationalizing the severe penalties provided under the Act.
- Two new sections with respect to factors for determining the level of punishment and for lesser penalties for one person companies and small companies are inserted.
- Penal provisions for small companies and one person companies are reduced.
- Section 76A provides for penal provisions with regard to defaulting company with respect to repayment of the amount of deposit and the interest due.

Restriction on political contribution (section 182 of the Act)

i. Backdoor Amendment by the Finance Act, 2017 (w.e.f. 31.03.2017)
Limit of political contribution upto 7.5% of the average profits of preceding 3 years **deleted**.

ii. Amendment under the CAA, 2017 (**yet to be effective**)
 - **Total amount of political contributions** to be reflected in P&L account **instead of showing the contribution to respective political party.**

Related party transactions (section 188 of the Act)

i. Related party can also vote if 90% or more of the no. of members

- are relatives of promoters or
- are related parties

ii. If contract/arrangement not ratified by the Board/shareholders within 3 months,

- Voidable at the option of Board / shareholders

Appointment of Director (section 161 of the Act) (w.e.f. 09.02.2018)

- Existing director cannot be appointed as an alternate director
- Appointment of director to fill up casual vacancy by the Board be approved at the next general meeting.

Explanation to Section 2(6): Associate Company

For the purposes of this clause, "significant influence" means control of at least twenty per cent of total share capital, or of business decisions under an agreement

For the purpose of this clause:-

(a) the expression "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;

(b) the expression "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

Section 2(51): Definition of Key Managerial Personnel

Key managerial personnel in relation to a company, means—

- (i) the Chief Executive Officer or the managing director or the manager;
- (ii) the company secretary;
- (iii) the whole-time director;
- (iv) the Chief Financial Officer
- (v) such other officer, *not more than one level below the directors who is in whole-time employment, designated as key managerial personnel by the Board;* and
- (vi) such other officer as may be prescribed.

Punishment for contravention from Sections 139 to 146 (Sec. 147 of the Act) **(wef 9-2-2018)**

- i. Penalty now linked to remuneration of auditors
- ii. Liability of payment of **damages** in case of misleading statement in the report of **restricted to Statutory Authorities, members or creditors** of the Company instead of 'to any person'.

Relaxation in punishment for fraud (Section 447 of the Act) **w.e.f. 09-02-2018)**

- i. If fraud involves at least Rs. 10 lakhs or 1% of turnover whichever is lower
 - Imprisonment from 6 months – 10 years
 - AND
 - Fine from 1-3 times of fraud
- ii. If fraud involves lesser than Rs. 10 lakhs or 1% of turnover whichever is lower + does not involve public interest
 - Imprisonment upto 5 years
 - OR
 - Fine upto Rs. 20 lakhs
 - OR
 - Both

Section 123: Declaration of Dividend

No dividend shall be declared or paid by a company for any financial year except:

(a) out of the profits of the company for that year arrived at after providing for depreciation in accordance with the provisions of sub-section (2), or out of the profits of the company for any previous financial year or years arrived at after providing for depreciation in accordance with the provisions of that sub-section and remaining undistributed, or out of both

Provided that in computing profits any amount representing unrealised gains, national gains or revaluation of assets and any changes in carrying amount of an asset or of a liability on measurement of the asset or the liability at fair values shall be excluded

Proviso to Section 135(1): Corporate Social Responsibility

Provided that where a company is not required to appoint an independent director under sub-section (4) of section 149, it shall have in its Corporate Social Responsibility Committee two or more directors.

Definition of 'holding company' [Sec. 2(46) of the Act] (**wef 9-2-2018**)

- having subsidiary companies
- **includes body corporate**

WHAT IS THE IMPACT ON MNC's ... WILL THEY BECOME PUBLIC COMPANIES

Ratification of Auditors

First Proviso to Section 139(1)

- The first proviso to section 139(1) requires that the matter relating to appointment of auditor be placed for ratification by the members in each AGM.
- The requirement related to annual ratification of appointment of auditors by members is omitted.

Ratification of Auditors

First Proviso to Section 139(1)-

- The requirement related to annual ratification of appointment of auditors by members is omitted

Disclosures under Board's Report

Section 92(1)

- With a view to facilitate ease of doing business and for reducing the burden of One Person Company and Small Company, the Central Government is empowered to prescribe an abridged form of Annual Return.
- Indebtedness omitted.

Disclosures to Registrar

First Proviso to Section 94(1)-

- The requirement of filing with Register a copy of special resolution in advance in respect of members approval for keeping register/returns at any other place in India then registered office under section 94 has been omitted.

Disclosures in the Prospectus

Section 26(1)-

- Disclosures in the prospectus required under the Companies Act, 2013 and the Securities and Exchange Board of India Act, 1992 and the Regulations made thereunder are aligned by omitting the information, reports and declarations required in the Companies Act, 2013.
- After the amendment, the information and reports required may be specified by the Securities and Exchange Board of India in consultation with the Central Government.

SEBI Regulations

Section 194 & 195

- Section 194 and 195 of the principal Act shall be omitted.
- Since SEBI Regulations are comprehensive and cover the provisions, sections relating to prohibition on forward dealings in securities of company and insider trading of securities by director or key managerial personnel are deleted.

Omissions

- Section 2(49): Definition of Interested Director: **The Definition has been omitted**
- Section 54(1)(c): Issue of sweat Equity Shares: The omission of (c) stating **"not less than one year has, at the date of such issue, elapsed since the date on which the company had commenced business"**
- Section 194: Prohibition on forward dealings in securities of company by director or key managerial personnel.
- Section 195: Prohibition on insider trading of securities

Definition of 'interested director' [Sec. 2(49) of the Act]
(wef 9-2-2018)

- **Definition omitted**

- Probably, it was too broad and conditions already specified in Sec. 184 of the Act.

Deposit Insurance

**Section 73(2)
(d)-**

- The requirement to have deposit insurance is omitted

YET TO BE NOTIFIED ...

- 92(1) – Annual Return – web disclosure
- 2(87) – Subsidiary Company – total voting power

MY INSPIRATION – WHY I AM HERE

You can have everything in life, if you help enough other people get what they want.

– Zig Zigler, American Author

To share my knowledge and experience to as many knowledge seekers and to spread the awareness on Governance & Compliance.

– my vision statement

THANK YOU

For having me & for a patient listening

SUNDHARESAN JAYAMOORTHY,

The only ECG Specialist

Ethics. Compliance. Governance.

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