COMPANY LAW AMENDMENTS FOR CS EXECUTIVE STUDENTS (RELEVANT FOR JUNE 2020 ATTEMPT)

CHAPTER –MOA/AOA AND ITS ALTERATIONS

AMENDMENT 1:- SITUATION CLAUSE

The name of the **State** in which the registered office of the company is to be situated must be given in the memorandum. But the exact address of the registered office is not required to be stated therein.

According to section 12(1) of the Act **within thirty (30) days of company's incorporation**, and at all times thereafter, the company must have a registered office to which all communications and notices may be sent.

According to section 12(2) The company must also furnish to the Registrar verification of its registered office within a period of thirty days of its incorporation in such manner as may be prescribed**. (e-form INC-22)**

Publication of Name and Address of the Company:- According **to Section 12(3) of the Act**, every company is required to display its name and address in legible letters in conspicuous position and in all its business letters, bill heads, letter papers. **Accordingly, the company shall—**

i. paint or affix its name, and the address of its registered office, and keep the same painted or affixed, on the outside of every office or place in which its business is carried on, in a conspicuous position, in legible letters, and if the characters employed therefore are not those of the language or of one of the languages in general use in that locality, also in the characters of that language or of one of those languages;
ii. have its name engraved in legible characters on its seal, if any;
iii. get its name, address of its registered office and the Corporate Identity Number along with telephone number, fax number, if any, e-mail and website addresses, if any, printed in all its business letters, billheads, letter papers and in all its notices and other official publications; and
iv. have its name printed on negotiable instruments such as hundies, promissory notes, bills of exchange and such other document as may be prescribed.

However, where a company has changed its name or names during the last two years, it shall paint or affix or print, as the case may be, along with its name, the former name or names so changed during the last two years.

Further, in case of One Person Company, the words ''One Person Company'' shall be mentioned in brackets below the name of such company, wherever its name is printed, affixed or engraved.

Department, presently known as Ministry of Corporate Affairs (MCA) has clarified that display of its name in English in addition to the display in the local language will be a sufficient compliance with the requirements of the section.

The MCA has also clarified that a share certificate is not an official publication of a company within the meaning of Section 147(1)(c) of the Companies Act, 1956 [This corresponds to Section 12 of the Companies Act, 2013] [Circular No. 3/73/8/10(147)/ 72-CC-V dated 3.2.1973].

The words 'outside of every office' do not mean outside the premises in which the office is situated **[*Dr. H.L. Batliwalla Sons & Company Ltd.* v. *Emperor* (1941) 11 Com Cases 154 : AIR 1941 (Bom.) 97].** Where office is situated within a compound, the display outside the office room, though inside the building, is sufficient.

According to section 12(8) If any default is made in complying with the requirements of this section, the company and every officer who is in default shall be liable to a penalty of one thousand rupees for every day during which the default continues but not exceeding one lakh rupees.

According to section 12(9) If the Registrar has reasonable cause to believe that the company is not carrying on any business or operations, he may cause a physical verification of the registered office of the company in such manner as may be prescribed and **if any default is found to be made in complying with the requirements of sub-section (1),** he may **without prejudice to the provisions of sub-section (8),** initiate action for the removal of the name of the company from the register of companies **under Chapter XVIII."[Inserted by Companies(Amendment) Act, 2019]**

AMENDMENT 2:- Change within the same state from the jurisdiction of one Registrar to another Registrar

No company shall change the place of its registered office from the jurisdiction of one Registrar to the jurisdiction of another Registrar within the same State **unless** such change is confirmed by the Regional Director. **Proviso to Section 12(5) provides that** confirmation by the **Regional Director** will be necessary for changing registered office of a company from one place to another if the change of registered office is from the jurisdiction of one Registrar to the jurisdiction of another within the same State.

Section 12(6) states that the Regional Director, after hearing the parties shall pass necessary orders **within a period of 15 days(earlier it was 30 days)** from the date of the receipt of the application. Thereafter, the company concerned shall file a copy of the said order with the Registrar of Companies (ROC) in **Form INC -28 within a period of 30 days (earlier it was 60 days**)from the date of the confirmation order by Regional Director and the registrar shall certify the registration **within a period of 30 days from the date of filing of such confirmation**.. The said ROC shall record the ordered changes in its records The ROC of the state where the registered office of the company was previously situated, shall transfer all the documents and papers to the new ROC. **Also within 30 days of such change of the registered office, a notice to the registrar shall be given in Form INC-22. [So now total days are 15 + 30 + 30 days]**

As per Revised Rule 28 [Dated 20.07.2017] - (1) An application seeking confirmation from the Regional Director for shifting the registered office within the same State from the jurisdiction of one Registrar of Companies to the jurisdiction of another Registrar of Companies, shall be filed by the company with the Regional Director in **Form No.INC.23 along with the fee and following documents, —**

a) Board Resolution for shifting of registered office;
b) Special Resolution of the members of the company approving the shifting of registered office;
c) a declaration given by the Key Managerial Personnel or any two directors authorised by the Board, that the company has not defaulted in payment of dues to its workmen and has either the consent of its creditors for the proposed shifting or has made necessary provision for the payment thereof;
d) a declaration not to seek change in the jurisdiction of the Court where cases for prosecution are pending;
e) acknowledged copy of intimation to the Chief Secretary of the State as to the proposed shifting and that the employees interest is not adversely affected consequent to proposed shifting.

(2) The Regional Director shall examine the application referred to in sub-rule (l) and the application may be put up for orders without hearing and the order either approving or rejecting the application shall be passed within fifteen days of the receipt of application complete in all respects. **[Inserted w.e.f 16.10.2019]**

(3) The certified copy of order of the Regional Director, approving the alternation of memorandum for transfer of registered office company within the same State, shall be filed in **Form No.INC-28** along with fee with the Registrar of State within thirty days from the date of receipt of certified copy of the order. **[Inserted w.e.f 16.10.2019]**

Additionally, Form no MGT.14 is to be filed with the Registrar towards special resolution.

AMENDMENT 3:-ALTERATION OF CAPITAL CLAUSE[SECTION 61]

A limited company having a share capital may make the following types of alterations in its memorandum by an **ordinary resolution**, **if so authorised by its articles,** at its general meeting to (Section 61)—

- **increase** its **authorised share capital** by such amount as it thinks expedient;
- A company may at any time increase its authorised share capital by the alteration of its memorandum. Although, section 61(1) (a) of the Companies Act, 2013 refers to the issue of new shares, it really deals with a case of increase in the authorised share capital, and not increase of the issued share capital. The case of increase of the issued or subscribed capital is dealt with separately by section 62 of the Act.
- **consolidate** all or any of its share capital into shares of a larger amount **than its existing shares:**
- **convert** all or any of its fully paid-up shares into stock, and reconvert that stock into fully paid-up shares of any denomination;
- **sub-divide** its shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so, however, that the proportion between the amount paid and unpaid shall remain the same.
- **cancel shares** which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and **diminish the amount of its share capital by the amount of the shares so cancelled. This is also known as Diminution of Share Capital.**

All the above alterations **do not require the confirmation by the Tribunal except that** alteration relating to consolidation and division **which results in changes in the voting percentage of shareholders** shall not take effect **unless it is approved by the Tribunal on an application made in the prescribed manner.**

These alterations are, however, required to be notified and a copy of the resolution in **Form SH-7** should be filed with the Registrar **within 30 days** of the passing of the resolution along with an altered memorandum. **[Section 64(1)]**

Where any company fails to comply with the provisions of sub- section (1) of Section 64, such company and every officer who is in default shall be liable to a penalty of one thousand rupees for each day during which such default continues, or five lakh rupees, whichever is less.". **[Section 64(2)] (Amended as per Companies(Amendment) Act, 2019).**

Amendment-4 :-Alteration of Articles [Section 14]

A company has a **statutory right** to alter its articles of association. But the power to alter is subject to the provisions of the Act and to the conditions contained in the memorandum. Section 14(1) provides that subject to the provisions of this Act and the conditions contained in its memorandum, if any, a company **may,** by a **special resolution,** alter its articles including alterations having the effect of conversion of—

a) **a** private company into a public company; **or**
b) a public company into a private company.

First proviso to section 14(1) lays down that where a company being a private company alters its articles in such a manner that they no longer include the restrictions and limitations which are required to be included in the articles of a private company under this Act, the company shall, as from the date of such alteration, cease to be a private company.

Second proviso to section 14(1) lays down that any alteration having the effect of conversion of a public company into a private company shall not be valid **unless it is approved by an order of the Central Government (earlier it was tribunal)** on an application made in such form and manner as may be prescribed**.[Amended as per Companies (Amendment) Act, 2019].**

Note :- Application shall be made to CG in Form No. RD-1

Third proviso to section 14(1) lays down that any application pending before the Tribunal, as on the date of commencement of the Companies (Amendment) Act, 2019, shall be disposed of by the Tribunal in accordance with the provisions applicable to it before such commencement."; **.[Inserted by Companies (Amendment) Act, 2019].**

CHAPTER – INCORPORATION OF COMPANY AND MATTERS INCIDENTAL THERTO

AMENDMENT 1 :- COMMENCEMENT OF BUSINESS ETC. [SECTION 10 A] (INSERTED BY COMPANIES (AMENDMENT) ACT 2019)

1. A company incorporated after the commencement of the Companies (Amendment) Act, 2019 and having a share capital shall not commence any business or exercise any borrowing powers **unless—**

a) a declaration is filed by a director **within a period of 180 days of the date of incorporation of the company** in **Form INC-20 A** and verified by a Company Secretary or Chartered Accountant or Cost Accountant in Practice, with the Registrar that every subscriber to the memorandum has paid the value of the shares agreed to be taken by him on the date of making of such declaration. **It may be noted that in the case of a company pursuing objects requiring registration or approval from any specific regulators such as RBI, SEBI etc., the registration or approval, as the case may be, from such regulator shall also be obtained and attached with the declaration** and

b) the company has filed with the Registrar a verification of its registered office **in Form INC-22** as provided in sub-section (2) of section 12.

2. If any default is made in complying with the requirements of this section, the company shall be liable to a penalty of fifty thousand rupees and every officer who is in default shall be liable to a penalty of one thousand rupees for each day during which such default continues but not exceeding an amount of one lakh rupees.

3. Where no declaration has been filed with the Registrar under clause (a) of sub-section (1) **within a period of 180 days of the date of incorporation** of the company and the Registrar has reasonable cause to believe that the company is not carrying on any business or operations, he may, without prejudice to the provisions of sub-section (2), initiate action for the removal of the name of the company from the register of companies **under Chapter XVIII.**

AMENDMENT 2 :- LICENSE FOR NEW COMPANIES(RULE 19)

Rule 19. License under section 8 for new companies with charitable objects etc.-

(a) A person or an association of persons (hereinafter referred to in this rule as "the proposed company"), desirous of incorporating a company with limited liability under sub-section (1) of section 8 without the addition to its name of the word "Limited", or as the case may be, the words "Private Limited", shall make an application in **Form No.INC-32 (earlier it was Form INC-12)** along with the fee as provided in the Companies (Registration offices and fees) Rules, 2014 to the Registrar for a license under sub-section (1) of section 8.

(b) The memorandum of association of the proposed company shall be in **Form No.INC-13 and Articles of Association in INC-31 as attachments.**

(c) The application under sub-rule (1) shall be accompanied by the following documents, **namely:—**

- the draft memorandum and articles of association of the proposed company;
- the declaration in **Form No.INC-14** by an Advocate, a Chartered Accountant, Cost Accountant or Company Secretary in practice, that the draft memorandum and articles of association have been drawn up in conformity

with the provisions of section 8 and rules made thereunder and that all the requirements of the Act and the rules made thereunder relating to registration of the company under section 8 and matters incidental or supplemental thereto have been complied with;

- an estimate of the future annual income and expenditure of the company for next three years, specifying the sources of the income and the objects of the expenditure;

- the declaration by each of the persons making the application in **Form No. INC-15.**

AMENDMENT 3 :-RULE 25A OF COMPANIES INCORPORATION RULES - ACTIVE COMPANY TAGGING IDENTITIES AND VERIFICATION (ACTIVE) [DATED:- 25.02.2019]

1. Every company incorporated **on or before** the 31st December, 2017 shall file the particulars of the company and its registered office, in e-Form ACTIVE (Active Company Tagging Identities and Verification) **on or before 15.06.2019.**

   Provided that any company which has not filed its due financial statements under section 137 or due annual returns under section 92 or both with the Registrar shall be restricted from filing e-Form-ACTIVE, unless such company is under management dispute and the Registrar has recorded the same on the register:

   Provided further that companies which have been struck off or are under process of striking off or under liquidation or amalgamated or dissolved, as recorded in the register, shall not be required to file e-Form ACTIVE:

   Provided also that in case a company does not intimate the said particulars, the Company shall be marked as "**ACTIVE-non-compliant**" **on or after 16th June, 2019** and **shall be liable for action under sub- section (9) of section 12 of the Act:**

   Provided also that no request for recording the following event based information or changes shall be accepted by the Registrar from such companies marked as "ACTIVE-non-compliant", **unless** " e-Form ACTIVE" is filed -

i. **SH-07 (Change in Authorized Capital);**
ii. **PAS-03 (Change in Paid-up Capital);**
iii. **DIR-12 (Changes in Director except**
   a) **Cessation of any director or**
   b) **Appointment of directors in such company where the total number of directors are less than the minimum number provided in clause (a) of Sub Section(1) of Section 149 on account of disqualification of all or any of the director under section 164.**
   c) **Appointment of any director in such company where DINs of all or any of its director(s) have been deactivated.**
   d) **Appointment of director(s) for implementation of the order passed by the Court or Tribunal or Appellate Tribunal under the provisions of this Act or under the Insolvency and Bankruptcy Code,2016); [Amended w.e.f 16.10.2019]**
iv. **INC-22 (Change in Registered Office);**
v. **INC-28 (Amalgamation, de-merger)**

2. Where a company files "e-Form ACTIVE", on or after 16th June, 2019, the company shall be marked as "ACTIVE Compliant", **on payment of fee of ten thousand rupees.**

Note:- The main reason for introducing this form was to identify Shell Companies.

AMENDMENT 4 :- RULE 38A OF COMPANIES INCORPORATION RULES APPLICATION FOR REGISTRATION OF GOODS AND SERVICE TAX IDENTIFICATION NUMBER (GSTIN), EMPLOYEE STATE INSURANCE CORPORATION (ESIC) REGISTRATION AND EMPLOYEES' PROVIDENT FUND ORGANISATION (EPFO) REGISTRATION [DATED:- 29.03.2019]

The application for incorporation of a company under rule 38 shall be accompanied by e-form **AGILE (INC-35)** containing an application for registration of the following numbers, namely:-

a) GSTIN with effect from 31st March, 2019
b) EPFO with effect from 8th April, 2019
c) ESIC with effect from 15th April, 2019

CHAPTER - SHARE CAPITAL

AMENDMENT 1 :- CONCEPT OF EQUITY SHARES WITH DIFFERENTIAL RIGHTS:- Two examples of Equity Shares with Differential Voting Rights are as under-

1. **Equity shares with higher voting rights but lesser dividend(or no dividend)**
   - These are issued by the company to its promoters.
   - Because promoters wants to increase their control over their own company, so that any outsider is not able to make hostile takeover of their company.
2. **Equity shares with lesser voting rights /no voting rights but higher dividend.**
   - These are issued by the company to general public.
   - General public happily acquires because investors are more interested in HIGHER dividend, and small investors are not bothered about lesser voting rights.

Company may issue equity share capital with differential voting rights as to dividend, voting or otherwise in accordance with Rule 4 of companies (share capital and debentures) Rules,2014. **As per Rule 4, a company limited by shares may issue equity shares with differential rights as to voting, dividend or otherwise, subject to the following conditions:-**

1. There must be an authority in Articles of Association of the company;
2. The company is having **consistent** track record of distributable **profits for the last 3 years.[This point is omitted w.e.f 16.08.2019]**
3. The issue of shares is authorized by an ordinary resolution passed at a general meeting of the shareholders.
   Provided that where **the equity shares of a company are listed on a stock exchange,** the issue of such shares shall be approved by the shareholders through postal ballot (i.e. OR through postal ballot).
4. The voting power in respect of shares with differential rights of the company **shall not exceed 74% of total voting power including voting power in respect of equity shares with differential rights issued at any point of time. (Earlier it was 26% of the total post issue paid-up equity share capital) .[Amended w.e.f 16.08.2019]**
5. The company has **not defaulted** in filing of Annual Accounts u/s 137 and Annual Returns u/s 92 **for 3 Financial years immediately preceding the financial year in which it is decided to issue such shares;**
6. The company has **not defaulted** in payment of the dividend on preference shares **or** repayment of any term loan from a public financial institution **or** state level financial institution **or** scheduled bank that has become repayable **or** interest payable thereon **or** Dues with respect to statutory payments relating to its employees to any authority **or** default in crediting the amount in Investor Education and Protection fund to the CG;
7. The company has **no subsisting default** in the payment of **declared dividend** to its shareholders or repayments of its matured deposits **or** redemption of its preference shares or debentures that have become due for redemption or payment of interest on such deposits or debentures or payment of dividend.
8. The company has not **penalized by court** or Tribunal during the last 3 years of any offence under the RBI Act, 1934, SCRA Act, 1956, SEBI Act, 1992, FEMA 1999 or any other Special Act, under which such companies being regulated by sectoral regulators.

AMENDMENT 2 :- CONDITIONS FOR ISSUE OF SWEAT EQUITY SHARES

Section 54(1) provides that notwithstanding anything contained in Section 53, a company can issue sweat equity shares, of a class of shares already issued, if the following conditions are satisfied:

a) the issue has been authorized by a **special resolution** passed by the company in the general meeting.

b) the following are clearly specified in the resolution:

- number of shares;
- current market price;
- consideration, if any; and
- class or classes of directors or employees to whom such equity shares are to be issued.

c) as on the date of issue, at least one year should have elapsed from the date on which the company had commenced business. However, this point is omitted by Companies Amendment Act, 2017.

d) The company shall not issue sweat equity shares for more than 15 % of the existing paid up equity share capital in a year or shares of the issue value of Rs. 5 crores (whichever is higher), subject to a maximum of 25% of the paid up equity share capital at any point of time. However, a startup company may issue sweat equity shares not exceeding 50% of the paid up share capital upto 5 years from the date of its incorporation or registration.

e) The sweat equity shares shall be locked-in for a period of 3 years from the date of allotment.

f) a company whose shares are listed on a recognized stock exchange issuing sweat equity shares should comply with the regulations made in this behalf by SEBI.

g) a company whose shares are not so listed should issue sweat equity shares in compliance with the rules made in this behalf by the Central Government **(*i.e., Rule 8 of Companies (Share Capital and Debentures) Rules, 2014)***

CHAPTER - DEBENTURES

AMENDMENT :- CREATION OF DEBENTURE REDEMPTION RESERVE(DRR)

Section 71(4) states that when debentures are issued by a company under this section, the company **shall create a debenture redemption reserve account** out of the profits of the company available for payment of dividend and the amount credited to such account shall not be utilised by the company **except for the redemption of debentures**.

Amended Rule 18(7) of Companies (Share Capital and Debentures) Rules, 2014 **prescribes the following conditions:[Amended w.e.f 16.08.2019]**

The company shall comply with the requirements with regard to Debenture Redemption Reserve (DRR) and investment or deposit of sum in respect of debentures **maturing during the year ending on the 31st day of March of next year**, **in accordance with the conditions given below:-**

(a) Debenture Redemption Reserve shall be created **out of profits of the company available for payment of dividend;**

(b) the limits with respect to adequacy of **Debenture Redemption Reserve and investment or deposits**, as the case may be, **shall be as under;-**

(i) Debenture Redemption Reserve is **not require**d for debentures issued by **All India Financial Institutions** regulated by Reserve Bank of India **and Banking Companies** for both **public as well as privately placed debentures;**

(ii) For **other Financial Institutions within the meaning of clause (72) of section 2 of the Companies Act, 2013,** Debenture Redemption Reserve shall be as applicable to **Non -Banking Finance Companies registered with Reserve Bank of India.**

(iii) **For listed companies** (other than All India Financial Institutions and Banking Companies as specified in sub-clause (i)), **Debenture Redemption Reserve is not required in the following cases** -

(A) **in case of public issue of debentures** -

A. for NBFCs registered with Reserve Bank of India **under section 45- IA of the RBI Act, 1934 and for Housing Finance Companies registered with National Housing Bank;**

B. **for other listed companies;**

(B) in case of privately placed debentures, for companies specified in sub items A and B.

(iv) for unlisted companies, (other than All India Financial lnstitutions and Banking Companies as specified in sub-clause (i)) -

(A) for NBFCs registered with RBI under section 45-IA of the Reserve Bank of India Act, 1934 and for Housing Finance Companies registered with National Housing Bank, **Debenture Redemption Reserve is not required in case of privately placed debentures.**

(B) for other unlisted companies, the adequacy of Debenture Redemption Reserve **shall be 10 percent. of the value of the outstanding debentures;**

(v) In case a company is covered in item (A) or item (B) of sub-clause (iii) of clause (b) or item (B) of sub-clause (iv) of clause (b), it shall **on or before the 30th day of April in each year**, in respect of debentures issued by a company covered in item (A) or item (B) of sub-clause (iii) of clause (b) or item (B) of sub-clause (iv) of clause (b), **invest or deposit**, as the case may be, a sum **which shall not be less than 15 per cent**., of the amount of its debentures maturing during the year, **ending on the 31st day of March of the next year in any one or more methods of investments or deposits as provided in sub-clause (vi):**

Provided that the amount remaining invested or deposited, as the case may be, **shall not at any time fall below 15 percent. of the amount of the debentures** maturing during the year **ending on 31st day of March of that year.**

(vi) for the purpose of sub-clause (v), **the investments, as the case may be, are as follows: -**

(A) in deposits with any scheduled bank, free

(B) in unencumbered securities of the Central methods of deposits or from any charge or lien; Government or any State Government;

(C) in unencumbered securities mentioned in sub-clause (a) to (d) and (ee) of section 20 of the Indian Trusts Act, 1882;

(D) in unencumbered bonds issued by any other company which is notified under sub-clause (f) of section 20 of the Indian Trusts Act, 1882 :

Provided that the amount invested or deposited as above **shall not be used for any purpose other than for redemption of debentures maturing during the year referred above**.

(c**) in case of partly convertible debentures**, Debenture Redemption Reserve shall be created **in respect of non-convertible portion of debenture issue in accordance with this sub-rule.**

(d) the amount credited to Debenture Redemption Reserve **shall not be utilized by the company except for the purpose of redemption of debentures.**

CHAPTER - REGISTRATION OF CHARGES

AMENDMENT 1 - CREATION OF CHARGE [SECTION 77]

Section 77(1) states that it shall be the duty of **every company** creating a charge **within or outside India, o**n its property **or** assets **or** any of its undertakings, **whether tangible or otherwise**, and situated in or outside India, to register the particulars of the **charge signed by the company and the charge-holder together with the instruments, if any,** creating such charge in such form, on payment of such fees and in such manner as may be prescribed, with the Registrar **within 30 days of its creation.**

Any charge created within or outside India, on its property or assets or any of its undertakings, whether tangible or otherwise, and situated in or outside India Shall be registered.

According to Rule 3(1) of Companies (Registration of Charges) Rules, 2014 e-forms prescribed for the purpose of creating or modifying the charge in sub-section (1) of section 77, section 78 and section 79 is Form No.CHG-1 (for other than Debentures) or Form No.CHG-9 (for debentures including rectification) as the case may be, duly signed by the company and the charge holder **shall** be filed (Shall Word is inserted) with the Registrar within a period of thirty days of the date of creation or modification of charge along with the fee.

Proviso to Section 77(1) states that the Registrar may, on an application by the company, allow such registration to be made—

- **a)** in case of charges created before the commencement of the Companies (Amendment) Act, 2019, **within a period of 300 days** of such **creation**; **or**
- **b)** in case of charges created on or after the commencement of the Companies (Amendment) Act, 2019, **within a period of 60 days** of such **creation,**
  on payment of such additional fees as may be prescribed:

Proviso to Section 77(2) states that if the registration is not made within the period specified—

a) in clause (a) to the first proviso, the registration of the charge shall be made **within 6 months from the date of commencement of the Companies (Amendment) Act, 2019,** on payment of such additional fees as may be prescribed and different fees may be prescribed for different classes of companies;
b) in clause (b) to the first proviso, the Registrar **may,** on an application, allow such registration to be made **within a further period of 60 days after payment** of such ***advalorem*** fees as may be prescribed.".

The application for delay shall be made and supported by a declaration from the company signed by its secretary or director that such belated filing shall not adversely affect rights of any other intervening creditors of the company.

Third Proviso to Section 77(1) states that that any subsequent registration of a charge shall not prejudice any right acquired in respect of any property before the charge is actually registered.

Fourth Proviso to Section 77(1) states that the section **w.r.t. registration of charges**, **shall not apply to** such charges as may be prescribed in consultation with the Reserve Bank of India.

According to Rule 3(2) of Companies (Registration of Charges) Rules, 2014 If the particulars of a charge are not filed in accordance with sub-rule (1), such creation or modification shall be filed in **Form No. CHG-l or Form No. CHG- 9** within the period as specified in section 77 on payment of additional fee or advalorem fee as prescribed in the Companies (Registration Offices and Fees) Rules, 2014.**[Amended on 30.04.2019]**

According to Rule 3(3) of Companies (Registration of Charges) Rules, 2014 Where the company fails to register the charge in accordance with sub-rule . (1) and the registration is effected on the application of the charge-holder, such charge-holder shall be entitled to recover from the company the amount of any fees or additional fees or advalorem fees paid by him 'to the Registrar for the purpose of registration of charge. [**Amended on 30.04.2019]**

AMENDMENT 2 :- PUNISHMENT FOR CONTRAVENTION[SECTION 86]

As per Section 86(1) if any company contravenes **any provisions** of this chapter **(i.e. Chapter VI),** the **company shall be punishable with fine which shall not be less than one lakh but which may extend to ten lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to 6 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.**

As per Section 86(2) If any person wilfully furnishes any false or incorrect information or knowingly suppresses any material information, required to be registered in accordance **with the provisions of section 77**, he shall be liable for action **under section 447." [Inserted by Companies (Amendment) Act, 2019]**

AMENDMENT 3:- RECTIFICATION BY CENTRAL GOVERNMENT IN REGISTER OF CHARGES [SECTION 87]

The Central Government on being satisfied that —

- **a)** the omission to give intimation to the Registrar of **the payment or satisfaction of a charge**, within the time required under this Chapter; **or**
- b) the omission or misstatement of any particulars with respect to any such charge **or** modification or with respect to any memorandum of satisfaction or other entry made in pursuance of section 82 or section 83,

was accidental or due to inadvertence or some other sufficient cause or it is not of a nature to prejudice the position of creditors or shareholders of the company, it may, on the application of the company or any person interested and on such terms and conditions as the Central Government deems just and expedient, direct that the time for the giving of intimation of payment or satisfaction **shall be extended** or, as the case may require, that the **omission or misstatement shall be rectified.".[Amended as per Companies (Amendment) Act, 2019].**

Rectification in register of charges on account of omission or misstatement of particulars in charge previously recorded and extension of time in filing of satisfaction of charge.-

The Central Government may on an application filed in **Form No. CHG-8** in accordance with section 87-

- a) direct rectification of the omission or misstatement of any particulars, in any filing, previously recorded with the Registrar with respect to any charge or modification thereof, or with respect to any memorandum of satisfaction or other entry made in pursuance of section 82 or section 83,
- b) direct extension of time for satisfaction of charge, if such filing is not made within a period of three hundred days from the date of such payment or satisfaction. **[Amended on 30.04.2019]**

CHAPTER - DIVIDEND

Shares in respect of unpaid dividend also to be transferred to IEPF:

Section 124(6) provides that all shares in respect of which dividend has not been paid or claimed **for 7 consecutive years or more shall be transferred by the company in the name of IEPF along with a statement containing such details as may be prescribed. Rule 6(5) prescribes Form IEPF-4 for this purpose.**

Provided that any claimant of shares transferred above shall be entitled to claim the transfer of shares from Investor Education and Protection Fund in accordance with such procedure and on submission of such documents as may be prescribed.

INVESTOR EDUCATION AND PROTECTION FUND AUTHORITY (ACCOUNTING, AUDIT, TRANSFER AND REFUND) SECOND AMENDMENT RULES, 2017 DATED 28.10.2017

In the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016, in rule 6 (**Manner of transfer of shares under sub-section (6) of section 124 to the Fund**)& Rule 7 (**Refund to claimants from Fund**) has been amended.

The Revised rule 6 may be read as under:

AMENDMENT 1:- MANNER OF TRANSFER OF SHARES UNDER SUB-SECTION (6) OF SECTION 124 TO THE FUND [RULE 6]

(1) The shares shall be credited to DEMAT Account of the Authority to be opened by the Authority for the said purpose, within a period of thirty days of such shares becoming due to be transferred to the Fund:

Provided that, in case the beneficial owner has encashed any dividend warrant **or any dividend amount has been credited to bank account of the owner** of such shares during the last seven years, such shares shall not be required to be transferred to the Fund even though some dividend warrants may not have been encashed: **.[Amended w.e.f 14.08.2019]**

Provided further that in cases where the period of seven years provided under sub-section (5) of section 124 has been completed or being completed during the period from 7th September, 2016 to 31st October, 2017, the due date of transfer of such shares shall be deemed to be 31st October, 2017.

Provided further that transfer of shares by the companies to the fund shall be deemed to be transmission of shares and the procedure to be followed for transmission of shares shall be followed by the companies while transferring the shares to the fund.

Explanation.- For removal of all doubts, it is hereby clarified that all shares in respect of which dividend has been transferred to Investor Education and Protection Fund **on or before the 7th September 2016**, shall also be transferred by the company in the name of Investor Education and Protection Fund. **.[Inserted w.e.f 14.08.2019]**

(2) For the purposes of effecting transfer of such shares, the Board shall authorise the Company Secretary or any other person to sign the necessary documents.

(3) The company shall follow the following procedure while transferring the shares, **namely:-**

(a) The company shall inform, at the latest available address, the shareholder concerned regarding transfer of shares three months before the due date of transfer of shares and also simultaneously publish a notice in the leading newspaper in English and regional language having wide circulation informing the concerned that the names of such shareholders and their folio number or DP ID - Client ID are available on their website duly mentioning the website address.

(b) In case, where there is a specific order of Court or Tribunal or statutory Authority restraining any transfer of such shares and payment of dividend or where such shares are pledged or hypothecated under the provisions of the Depositories Act, 1996 or shares already been transferred under sub-rule (1) above, the company shall not transfer such shares to the Fund:

Provided that the company shall furnish details of such shares and unpaid dividend to the Authority in Form No. IEPF 3 within thirty days from the end of financial year.

(c) For the purposes of effecting the transfer, where the shares are dealt with in a depository-

(i) the Company shall inform the depository by way of corporate action, where the shareholders have their accounts for transfer in favour of the Authority.

(ii) on receipt of such intimation, the depository shall effect the transfer of shares in favour of DEMAT account of the Authority.

(d) For the purposes of effecting the transfer shares held in physical form-

(*i) the Company Secretary or the person authorised by the Board shall make an application, on behalf of the concerned shareholder, to the company, for issue of a new share certificate;*

(ii) on receipt of the application under clause (a), a new share certificate for each such shareholder shall be issued and it shall be stated on the face of the certificate that

"Issued in lieu of share certificate No..... for the purpose of transfer to IEPF" and the same be recorded in the register maintained for the purpose;

(iii) particulars of every share certificate shall be **in Form No. SH-1** *as specified in the Companies(Share Capital and Debentures) Rules, 2014;*

(iv) after issue of a new share certificate, the company shall inform the depository by way of corporate action to convert the share certificates into DEMAT form and transfer in favour of the Authority."

(4) The company shall make such transfers through corporate action and shall preserve copies for its records.

(5) While effecting such transfer, the company shall send a statement to the Authority in **Form No. IEPF4** within 30 days of the corporate action taken under clause (c) of sub-rule (3) of rule 6 containing details of such transfer and the company shall also attach a copy of the public notice published under clause (a) of sub-rule (3) of rule 6 in **Form No IEPF-4. .[Amended w.e.f 14.08.2019]**

(6) The voting rights on shares transferred to the Fund shall remain frozen until the rightful owner claims the shares:

Provided that for the purpose of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, the shares which have been transferred to the Authority shall not be excluded while calculating the total voting rights.

(7) The company shall maintain all such statements filed under sub – rule (5) in the same format along with all supporting documents and the Authority shall have the powers to inspect such records. **.[Amended w.e.f 14.08.2019]**

(8) All benefits accruing on such shares like bonus shares, split, consolidation, fraction shares and the like except right issue shall also be credited to such DEMAT account [by the company which shall send a statement to the Authority in **Form No. IEPF-4** within 30 days of the corporate action containing details of such transfer**.[Amended w.e.f 14.08.2019]**

(9) The shares held in such DEMAT account shall not be transferred or dealt with in any manner whatsoever except for the purposes of transferring the shares back to the claimant as and when he approaches the Authority or in accordance with sub-rule (10) and (11).

(10) If the company is getting delisted, the Authority shall surrender shares on behalf of the shareholders in accordance with the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009 and the proceeds realised shall be credited to the Fund and a separate ledger account shall be maintained for such proceeds.

(11) In case the company whose shares or securities are held by the Authority is being wound up, the Authority may surrender the securities to receive the amount entitled on behalf of the security holder and credit the amount to the Fund and a separate ledger account shall be maintained for such proceeds.

(12) Any further dividend received on such shares shall be credited to the Fund and a separate ledger account shall be maintained for such proceeds".

(13) Any amount required to be credited by the companies to the Fund as provided under sub-rules (10), (11) and sub-rule (12) shall be remitted into the specified account of the IEPF Authority maintained in the Punjab National Bank.

(14) Authority shall furnish its report to the Central Government as and when noncompliance of the rules by companies came to its knowledge.

AMENDMENT 2 :- RULE 7 OF THE INVESTOR EDUCATION AND PROTECTION FUND AUTHORITY (ACCOUNTING, AUDIT, TRANSFER AND REFUND) RULES, 2016 DETAILS THE PROCEDURE WHICH MAY BE ADOPTED BY ANY CLAIMANT. THE PROCEDURE IS EXPLAINED AS UNDER: [AMENDED W.E.F 14.08.2019]

(1) Any person whose shares, unclaimed dividend, matured deposits, matured debentures, application money due for refund, or interest thereon, sale proceeds of fractional shares, redemption proceeds of preference shares etc., has been transferred to the Fund, may claim the shares under proviso to sub-section (6) of section 124 or apply for refund under clause (a) of sub-section (3) of section 125 or under proviso to sub-section (3) of section 125, as the case may be, to the Authority by submitting an online application in **Form IEPF-5** available on the website www.iepf.gov.in along with fee specified by the Authority from time to time in consultation with the Central Government.

(2) Upon submission, **FormNo. IEPF-5** shall be transmitted online to the Nodal Officer of the company for verification of claim:

Provided that the claimant after making an application in Form No. IEPF-5 under sub rule 1, shall send original physical share certificate, original bond, deposit certificate, debenture certificate, as the case may be, along with Indemnity Bond, Advance Receipts, any other document as enumerated in Form No. IEPF-5, duly signed by him, to the Nodal Officer of the concerned company at its registered office for verification of the claim.]

(2A) Every company which is required to credit amounts or shares to the fund or has deposited the amount or transferred the shares to the Fund shall nominate a Nodal Officer, who shall either be a Director or Chief financial Officer or Company Secretary of the company, for the purposes of verification of claims and coordination with Investor Education and Protection Fund Authority:

Provided that a company may appoint one or more Officer as Deputy Nodal Officer to assist the Nodal Officer for the purposes of verification of claim and for coordination with Investor Education and Protection Fund Authority:

Provided further that the Nodal Officer shall be solely liable for all actions of any officer appointed as Deputy Nodal Officer:

Provided also that in case a company fails to appoint Nodal Officer, every director of the company shall be deemed to be nodal officer and be liable for any failure to comply with requirement of these rules.

(2B) The details of the Nodal Officerand Deputy Nodal Officerduly indicating his or her designation, postal address, telephone and mobile number and company authorized e-mail ID shall be communicated to the Investor Education and Protection Fund Authority in **Form No. IEPF – 2 within 15 days** from the date of publication of these rules and the company shall display the name of Nodal Officer and his e-mail ID on its website:

Provided that any change in the Nodal Officer or his details shall be communicated to the Authority through **Form No. IEPF-2 within 7 days** of such change along with board resolution thereof.

(3) The company shall, within thirty days from the date of receipt of claim, send an online verification report to the Authority after verification of details in **Form No. IEPF-5** in the format specified by the Authority along with all the documents submitted by the claimant and shall attach the scanned copy of all the original documents submitted by the claimant in physical form duly certified by its Nodal Officer alongwith the e-verification report along with a scanned copy of both sides of original physical share certificate or original bond or deposit or debenture certificate/s duly cancelled and certified:

Provided that if the online verification report is not sent by the company **within 30 days** of filing of claim, the company may do so by paying additional fee of fifty rupees for every day subject to maximum of two thousand and five hundred rupees:

Provided further that the company shall be liable to maintain the original documents submitted to it by the claimant and shall produce such documents whenever required:

Provided also that in case of non-receipt of verification report along with documents by the Authority after the **expiry of 60 days** from the date of filing of **Form No. IEPF-5**, the Authority may reject **Form No. IEPF-5**, after sending a communication to the claimant and the concerned company, on the e-mail address of the claimant and the company, to furnish response within a period of fifteen days:

Provided also that for failure to submit verification report of the claim in accordance with these rules, the company and its Nodal Officer shall be punishable as per the provisions of the Act.

Explanation.-In case (i) loss of original physical share certificate or original bond or deposit or debenture certificate or proof of entitlement, the company and the claimant shall follow the procedure as laid down in the Companies (Share Capital and Debenture) Rules, 2014 , the Securities and Exchange Board of India (Listing Obligation and Disclosure Requirements) Regulation, guidelines, procedures and circulars issued from time to time and Schedule IIIof these rules and attach certified copies of all documents as may be required under the said rules or guidelines with the e-verification report; (ii) In addition, the company shall attach a scanned copy of both sides of share certificate generated under clause (d) of sub-rule (3) of rule 6 of these rules along with the e-verification report;(iii) The Company shall be solely responsible for collecting original physical share certificate or original bond or deposit or debenture certificate or proof of entitlement from the claimant and shall be liable for any misuse thereof.

(4) After verification of the entitlement of the claimant-

(a) to the amount claimed, the Authority and then Drawing and Disbursement Officer of the Authority shall present a bill to the Pay and Accounts Office for e- payment as per the guidelines,

(b) to the shares claimed, the Authority shall issue a refund sanction order with the approval of the Competent Authority and shall credit the shares to the DEMAT account of the claimant to the extent of the claimant's entitlement.

(5) The Authority shall, in its records, cause a note to be made of all the payments made under sub-rule (4).

(6) An application received for refund of any claim under this rule duly verified by the concerned company shall be disposed off by the Authority within sixty days from the date of receipt of the verification report from the company, complete in all respects and any delay beyond sixty days shall be recorded in writing specifying the reasons for the delay and the same shall be communicated to the claimant in writing or by electronic means.

(7) Where the Authority, on examining any application for claim, finds it necessary to call for further information or finds such application or e-form or document to be defective or incomplete in any respect, the Authority shall give intimation of such information called for or defects or incompleteness, by e-mail on the email address of the claimant and the company, which has filed such application or e-form or document, directing him or it to furnish such information or to rectify such defects or incompleteness or to re-submit such application or e-Form or document within fifteen days from the date of receipt of such communication, failing which the **Authority may reject the claim or e-form No. IEPF-5:**

Provided that if such information or incompleteness is called from the claimant, he shall file the e-form and shall send such documents as called for within fifteen days, duly signed by him, to the Nodal Officer of the concerned company at its registered office for verification of the claim and company shall send a revised verification report:

Provided further that if any such information or incompleteness is called from the company, the company shall file the revised verification report and shall send such documents as called for within thirty days:

Provided also that the provisions of sub-rule (3) of rule 7 shall apply mutatis mutandis to this sub-Rule.

(8) In case, claimant is a legal heir or successor or administrator or nominee of the registered share holder, the claimant shall ensure to submission of self-attested scanned copy of all documents detailed in **Schedule II** of these rules online along with the **Form No. IEPF-5:**

Provided that in case of loss of securities held in physical form, he has to ensure to submission of self-attested scanned copy of additional documents detailed in **Schedule III** of these rules online along with the **Form No. IEPF-5:**

Provided further that the claimant shall submit in original all these documents duly signed by him, to the Nodal Officer of the concerned company at its registered office for verification of the claim.

(9) In case, claimant is a legal heir or successor or administrator or nominee of any other registered security or in cases where request of transfer or transmission of shares is received after the transfer of shares by company to the Authority, the company shall verify all requisite documents required for registering transfer or transmission and shall issue letter to the claimant indicating his entitlement to the said security and furnish a copy of the same to the Authority while verifying the claim of such claimant 9[through its e-verification report:

Provided that the authority shall dispose such request of transfer or transmission based on the e-verification report of the company subject to verification of such request.

(10) The claimant shall file only one consolidated claim in respect of a company in a financial year**.[But now this is omitted]**

(11) (a) The company shall be liable under all circumstances whatsoever to indemnify the Authority in case of any dispute or lawsuit that may be initiated due to any incongruity or inconsistency or disparity in the verification report or otherwise and the Authority shall not be liable to indemnify the security holder or Company for any liability arising out of any discrepancy in verification report submitted etc., leading to any litigation or complaint arising thereof.

(b)Any fraudulent claim by the claimant shall be deemed to be fraud within the meaning of section 447 of the Act and the claimant shall be liable accordingly.

(c) If any person deceitfully personates an owner of any security or of any share warrant or coupon issued in pursuance of this Act and thereby files any claim to obtain or attempts to obtain any such security or interest or any such warrant or coupon due to the lawful owner, he shall be punishable under sections 57, 447 and 448 of the Act.

Note:-In case any dividend is paid or claimed for any year during the said period of seven consecutive years, the share shall not be transferred to Investor Education and Protection Fund.

CHAPTER - PROSPECTUS AND ALLOTMENT OF SECURITIES

AMENDMENT 1 :- MATTERS TO BE STATED IN THE PROSPECTUS [SECTION 26]

Section 26(1) states that every prospectus issued by or on behalf of a public company either with reference to its formation or subsequently, or by or on behalf of any person who is or has been engaged or interested in the formation of a public company, **shall be dated and signed and shall state such information and set out such reports on financial information as may be specified by the SEBI in consultation with Central Government.**

Provided that until the SEBI specifies the information and reports on financial information under this sub-section, the regulations made by the SEBI under SEBI Act, 1992, in respect of such financial information or reports on financial information shall apply.

Company has to make a declaration about the compliance of provisions of this Act and a statement to the effect that nothing in the prospectus is contrary to the provisions of this Act, the Securities Contracts (Regulation) Act, 1956 and the SEBI Act, 1992 and the rules and regulations made thereunder.

When Section 26(1) is not applicable?

Section 26(2) states that section 26(1) does not apply to

- issue to the existing members or debenture-holders of a company, of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant has a right to renounce the shares or not under sub-clause (ii) of clause (a) of sub-section (1) of section 62 in favour of any other person; **or**
- to the issue of a prospectus or form of application relating to shares or debentures which are, or are to be, in all respects uniform with shares or debentures previously issued and for the time being dealt in or quoted on a recognised stock exchange.

Section 26(3) states that Subject to sub section (2), the provisions of sub section (1) shall apply to a prospectus or a form of application, whether issued on or with reference to the formation of a company or subsequently.

Explanation:- The date indicated in the prospectus shall be deemed to be the date of its publication.

Section 26(4) states that no prospectus shall be issued by or on behalf of a company or in relation to an intended company unless on or before the date of its publication, there has been delivered to the registrar for **filing (earlier it was Registration),** a copy thereof signed by every person who is named therein as a director or proposed director of the company or by his duly authorized attorney**.(Amended as per Companies Amendment Act,2019)**

Section 26(5) states that a prospectus issued under sub section (1) **shall not include** a statement purporting to be made by an expert **unless** the expert is a person who is not, and has not been, engaged or interested in the formation or promotion or management, of the company and has given his written consent to the issue of the prospectus and **has not withdrawn such consent before the delivery of a copy of the prospectus to the Registrar for filing (earlier it was Registration) and a statement** to that effect shall be included in the prospectus. **.(Amended as per Companies Amendment Act,2019)**

Section 26(6) states that every prospectus issued under sub section (1) shall, on the face of it,-

a) State that a copy has been delivered for **filing (earlier it was Registration)** to the registrar as required under sub section (4); **and**

b) Specify any documents required by this section to be attached to the copy so delivered or refer to statements included in the prospectus which specify these documents. **.(Amended as per Companies Amendment Act,2019)**

Section 26(7) states that the registrar shall not register a prospectus unless the requirements of this section with respect to its registration are complied with and **the prospectus is accompanied by the consent in writing of all the persons named therein. (But now this sub section is omitted by Companies Amendment Act,2019)**

Section 26(8) states that no prospectus shall be **valid if it is issued more than 90 days after a date on which a copy thereof is delivered to the registrar under sub section (4).**

Section 26(9) states that if a prospectus is issued in contravention of provisions of this section, the company shall be punishable with fine which shall not be less than 50,000 rupees and which may extend to 3,00,000 rupees and every person who is knowingly a party to the issue of such prospectus shall be punishable with imprisonment for a term which may extend to 3 years or with fine which shall not be less than 50,000 rupees but which may extend to 3,00,000 rupees or both.

Offer of sale by members [Section 28]:- Section 28(1) states that where certain members of a company propose, in consultation with the Board of Directors to offer, in accordance with the provisions of any law for the time being in force, **whole or part of their holding of shares to the public**, they may do so in accordance with such procedure as may be prescribed.

Section 28(2) further states that **any document by which the offer of sale to the public is made shall, for all purposes, be deemed to be a prospectus issued by the company** and all laws and rules made thereunder as to the contents of the prospectus and as to liability in respect of mis-statements in and omission from prospectus or otherwise relating to prospectus shall apply as if this is a prospectus issued by the company.

Section 28 (3) states that the members, **whether individuals or bodies corporate or both,** whose shares are proposed to be offered to the public, shall collectively authorise the company, whose shares are offered for sale to the public, to take all actions in respect of offer of sale for and on their behalf and they shall reimburse the company all expenses incurred by it on this matter.

AMENDMENT 2 :-DEMATERIALIZATION OF SECURITIES MANDATORY [SECTION 29]

Section 29(1) states that notwithstanding anything contained in any other provisions of this Act,—

a) every company making public offer; and
b) such other class or classes of **companies(earlier it was public companies**) as may be prescribed,

shall issue the securities **only in dematerialised form** by complying with the provisions of the Depositories Act, 1996 and the regulations made thereunder. **.(Amended as per Companies Amendment Act,2019)**

Section 29 (1A) states that in case of such class or classes of unlisted companies as may be prescribed, the securities shall be held or transferred only in dematerialised form in the manner laid down in the Depositories Act, 1996 and the regulations made thereunder. **(Inserted by Companies Amendment Act,2019)**

Section 29(2) further states that any company, other than a company mentioned in sub-section (1), **may** convert its securities into dematerialised form or issue its securities in physical form in accordance with the provisions of this Act **or** in dematerialised form in accordance with the provisions of the Depositories Act, 1996 and the regulations made thereunder.

Rule 9 of Companies (Prospectus and Allotment of Securities) Rules, 2014, states that the promoters of every public company making a public offer of any convertible securities may hold such securities only in dematerialised form.

The entire holding of convertible securities of the company by the promoters held in physical form up to the date of the initial public offer shall be converted into dematerialised form before such offer is made and thereafter such promoter shareholding shall be held in dematerialized form only.

AMENDMENT 3 :- CRIMINAL LIABILITY FOR MIS-STATEMENTS IN PROSPECTUS [SECTION 34]

According to Section 34 of the Companies Act, 2013, where a prospectus, issued, circulated or distributed includes any statement which is untrue or misleading in form or context in which it is included or where any inclusion or omission of any matter is likely to mislead, every person who authorizes the issue of such prospectus shall be liable under section 447.

Section 447 provides that without prejudice to any liability including repayment of any debt under this Act or under any other law for the time being in force, **any person** who is found to be guilty of fraud, **involving an amount of at least ten lakh rupees or one per cent. of the turnover of the company, [whichever is lower]** , **shall** be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years **and** shall also be liable to fine which **shall not be less than the amount involved in the fraud**, **but which may extend to 3 times the amount involved in the fraud.**

Provided that where the fraud in question involves public interest, the term of imprisonment shall not be less than three years.[First proviso to section 447]

Provided further that where the fraud involves an amount of less than Rs.10 Lakhs or 1% of turnover of the company (Whichever is Lower) and if fraud does not involve public interest, the term of imprisonment may not be more than 5 years or 50 Lakhs Rupees (earlier it was Rs.25 Lakhs] or Both [Second Proviso to Section 447amended as per Companies Amendment Act,2019]

However, where a person who has authorised the issue of prospectus proves, either that such statement or omission was immaterial or that he had reasonable grounds to believe, and did up to the **time of issue** of the prospectus believe, that the statement was true or the inclusion or omission was necessary may be relieved from the criminal liability.

AMENDMENT 4 :- CIVIL LIABILITY FOR MIS-STATEMENT IN PROSPECTUS [SECTION 35]

Section 35(1) provides that where a person has subscribed for securities of a company based on the mis-statement in the prospectus and he has sustained any loss or damage as a consequence thereof, the company and every person who-

a) is a director of the company at the time of the issue of the prospectus;
b) has authorized himself to be named and is named in the prospectus as a director of the company, or has agreed to become to become such director, either immediately or after an interval of time;
c) is a promoter of the company;
d) has authorized the issue of the prospectus; **and**
e) is an expert referred to in sub section(5) of section 26,

shall be liable to pay compensation to every person who has sustained such loss or damage. This liability is without prejudice to any punishment to which any person may be liable under Section 36.

Section 35(2) provides that no person shall be liable **if he proves-**

a) that, having consented to become a **director** of the company, he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; **or**

b) that the prospectus was issued without his knowledge or consent and that on becoming aware of this issue, he **forthwith** gave a reasonable public notice that it was issued without his knowledge or consent.

c) That, as regards every misleading statement purported to be made by an expert or contained in what purports to be a copy of or an extract from a report or valuation of an expert, it was a correct and fair representation of the statement, or a correct copy of, or a correct and fair extract from, the report or valuation; and he had reasonable ground to believe and did up to the time of the issue of prospectus believe, that the persons making the statement was competent to make it and that the said person had given the consent required by Section 26(5) to the issue of the prospectus and had not withdrawn that consent before **filing of a copy of the prospectus with the Registrar (earlier it was delivery of a copy of the prospectus for registration)** or, to the defendant's knowledge, before allotment thereunder. **(Amended as per Companies Amendment Act,2019)**

Section 35(3) provide that it if it is proved that a prospectus has been issued with intent to defraud the applicant for the securities of a company or any other person or any fraudulent purpose, every person shall be personally responsible without any limitation of liability, for all or any of the losses or damages that may have been incurred by any person who subscribed to the securities on the basis of such prospectus.

CHAPTER – ACCOUNTS

AMENDMENT 1 :- FINANCIAL YEAR [SECTION 2(41)]

According to 2(*41*) "financial year", in relation to any company or body corporate, **means** the period ending on the 31st day of March every year, and where it has been incorporated on or after the 1st day of January of a year, the period ending on the 31st day of March of the **following year,** in respect whereof financial statement of the company or body corporate is made up:

Provided that an application may be made by a company or body corporate, which is a holding company **or** a subsidiary **or** associate company of **a company incorporated outside India** and is required to follow a different financial year **for consolidation of its accounts outside India**, the **Central Government (Power delegated to RD) [earlier it was tribunal] may, on an application made by that company or body corporate in Form No. RD-1** allow any period as its financial year, whether or not that period is a year. The Order of the Regional Director approving the change in the Financial Year shall be filed by the company with the ROC in **Form No. INC-28 along with the prescribed fees, within 30 days from the date of receipt of order of RD. [Amended as per Companies (Amendment) Act, 2019].**

Provided further that any application pending before the Tribunal as on the date of Commencement of the Companies (Amendment) Act, 2019 , shall be disposed of by the Tribunal in accordance with the provisions applicable to it before such commencement.

Provided also that that a company or body corporate, existing on the commencement of this Act, shall, within a period of two years from such commencement, align its financial year as per the provisions of this clause;

AMENDMENT 2 :-CONTENTS OF BOARD REPORT

Rule 8(5) of the Companies (Accounts) Rules, 2014, prescribes that the Board's Report shall also include following matters -

i. the financial summary or highlights;
ii. the change in the nature of business, if any;
iii. the details of directors or key managerial personnel who were appointed or have resigned during the year;
iiia . a statement regarding opinion of the Board with regard to integrity, expertise and experience (including the proficiency) of the independent directors appointed during the year".

Explanation.-For the purposes of this clause, the expression "proficiency" means the proficiency of the independent director as ascertained from the online proficiency self-assessment test conducted by the institute notified under sub-section (1) of section 150. **[Inserted on 22.10.2019]**

AMENDMENT 3 :- PENALTY UNDER SECTION 137 (3)

Section 137(3) states that If company fails to comply with the requirement of submission of financial statement with RoC, the company shall be **liable to Penalty (earlier it was punishable with fine)** of one thousand rupees for every day during which failure continues subject to maximum of rupees ten lakh. The managing director and CFO if any, and, in the absence of such managing director or CFO, any other director who is charged by the Board with the responsibility of complying with the provisions of this section, in the absence of such director, all directors of the company **shall be liable to a penalty of one lakh rupees and in case of continuing failure, with further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees(earlier there was imprisonment also of Max.6 Months)(Read with Section 403 which deals with fee for filing). [Amended as per Companies (Amendment) Act, 2019].**

AMENDMENT 4 :- NATIONAL FINANCIAL REPORTING AUTHORITY (NFRA) [SECTION 132]

The Central Government may, by notification, constitute a National Financial Reporting Authority to provide for matters relating to accounting and auditing standards under this Act. **[Section 132(1)]**

The National Financial Reporting Authority shall perform its functions through such divisions as may be prescribed. **[Section 132(1A)] [Inserted by Companies Amendment Act,2019]**

Through Section 132 of the Companies Act, 2013, the **Central Government has introduced a new regulatory authority named as National Authority for Financial Reporting known as National Financial Reporting Authority (NFRA)** with wide powers

- to recommend,
- enforce and
- Monitor the compliance of accounting and auditing standards. The Companies Act, 1956 empowers the Central Government to form a Committee for recommendations on Accounting Standards which is National Advisory Committee on Accounting Standards (NACAS).
- This is now being renamed with enhanced independent oversight powers and authority as National Financial Reporting Authority (NFRA). **[Section 132(2)]**

NFRA shall be responsible for monitoring and enforcing compliance of auditing and accounting standards and for that purpose, oversee the quality of professions associated with ensuring such compliances. The Authority shall investigate professional and other misconducts which may be committed by Chartered Accountancy members and firms. There is also a provision for appellate tribunal(NCLAT).

The National Financial Reporting Authority **shall be a quasi – judicial body** to regulate matters **related to accounting and auditing.** With increasing demand of non – financial reporting, it may be referred to as a National level business Reporting Authority to regulate standards of **all kind of reporting- financial as well as non – financial, by the companies in future.**

National Financial Reporting Authority shall give its **recommendations** on accounting standards and auditing standards. It shall only recommend and it is the Central Government who shall prescribe such standards.

Objective

The objectives of National Financial Reporting Authority ***inter alia*** shall be as follows:

a. **Make recommendations** on formulation of accounting and auditing policies and standards for adoption by companies, class of companies or their auditors;
b. **Monitor and enforce the compliance** with accounting standards, monitor and enforce the compliance with auditing standards;
c. **Oversee the quality of service of professionals** associated with ensuring compliance with such standards and suggest measures required for improvement in quality of service, and
d. Perform such other functions as may be prescribed in relation to aforementioned objectives.

These objectives simply bring chartered accountants, cost accountants, management accountants, company secretaries as well as independent directors / members audit committees under jurisdiction of NFRA.

Constitution of NFRA

- The constitution of National Financial Reporting Authority, which is supposed to be constituted as an oversight regulatory body to recommend accounting and auditing standards, **shall be governed by sub - section (3) and (4) of section 132**. **Accordingly,**

- It shall consist of a chairperson, who shall be a person of eminence & having expertise in accountancy, auditing, finance or law, **to be nominated by Central Government, and such other prescribed members not exceeding 15, consisting of part time and full time members as may be prescribed.**

- The chairperson and all members shall make a declaration in prescribed form about no conflict of interest or lack of independence in respect of their appointment. The chairperson and all full – time members shall not be associated with any audit firm or related consultancy firm during course of their appointment and two years after ceasing to hold such appointment.

- The head office of National Financial Reporting Authority shall be at New Delhi and it may, meet at such other places in India, as it deems fit.

- Its accounts shall be audited by Comptroller and Auditor General of India (CAG) and such accounts as certified by CAG, together with audit report, shall be forwarded annually to the Central Government.

Each division of the National Financial Reporting Authority shall be presided over by the Chairperson or a full-time Member authorised by the Chairperson**.[Section 132(3A)] [Inserted by Companies Amendment Act,2019]**

There shall be an executive body of the National Financial Reporting Authority consisting of the Chairperson and full-time Members of such Authority for efficient discharge of its functions under sub-section (2) and sub-section (4). **.[Section 132(3B)] [Inserted by Companies Amendment Act,2019]**

Jurisdiction, Powers of and imposition of penalties by NFRA

The National Financial Reporting Authority shall have jurisdiction over bodies corporate and persons for matters of professional and other misconduct committed, by any member or firm of Chartered Accountants registered under the Chartered Accountants Act, 1949. No other institute or body (including professional institutes) shall initiate or continue any proceeding in such matters of misconduct where the authority has initiated an investigation under this section.

The Authority shall have powers as are vested in a civil court under Code of Civil Procedure, 1908 in respect of following matters:

i. Discovery and production of books of accounts and other documents;
ii. Summoning and enforcing the attendance of persons and examining them on oath;
iii. Inspection of any books, registers and other documents of any person;
iv. Issuing commission for examination of witness or documents.

Section 132(4) provides a bar on any body or any institute, in initiating or continuing the proceedings in such matters of misconduct where the National Financial Reporting Authority has initiated an investigation under this section;

The Authority shall have powers to make an order in relation to:

A. Imposing penalty of

i. **not less than one lakh rupees** which may extend to **five times** of the fees received **in case of individuals and**
ii. **not less than five lakh rupees** which may extend to **ten times** of the fees received in case of firms.

B. debarring the member or the firm from—
i. being appointed as an auditor or internal auditor or undertaking any audit in respect of financial statements or internal audit of the functions and activities of any company or body corporate; or
ii. performing any valuation as provided under section 247,

for a minimum period of six months or such higher period not exceeding ten years as may be determined by the National Financial Reporting Authority.". **[Amended as per Companies Amendment Act,2019]**

Section 132(5) provides that any person aggrieved by any order of the National Financial Reporting Authority may prefer appeal to Appellate Tribunal in such manner and on payment of such fee as may be prescribed.

Classes of companies and bodies corporate governed by the NFRA: (Rule 3)

(a) companies whose securities are listed on any stock exchange in India or outside India;

(b) unlisted public companies having paid-up capital of not less than rupees 500 crores or having annual turnover of not less than rupees 1,000 crores or having, in aggregate, outstanding loans, debentures and deposits of not less than rupees 500 crores as on the 31st March of immediately preceding financial Year;

(c) insurance companies, banking companies, companies engaged in the generation or supply of electricity, companies governed by any special Act for the time being in force or bodies corporate incorporated by an Act in accordance with clauses (b), (c), (d), (e) and (f) of sub-section (4) of section 1 of the Act;

Explanation.- For the purpose of this clause, "banking company" includes 'corresponding new bank' as defined in clause (d) of section 2 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 and clause (b) of section 2 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980) and 'subsidiary bank' as defined in clause (k) of section 2 of the Stat Bank of India (Subsidiary Bank) Act, 1959.**[Amended w.e.f 05.09.2019]**

(d) any body corporate or company or person, or any class of bodies corporate or companies or persons, on a reference made to the Authority by the central Government in public interest, and

(e) a body corporate incorporated or registered outside India, which is a subsidiary or associate company of any company or body corporate incorporated or registered in India as referred to in clauses (a) to (d), if the income or net worth of such subsidiary or associate company exceeds twenty per cent of the consolidated income or consolidated net worth of such company or the body corporate, as the case may be, referred to in clauses (a) to (d).

A company or a body corporate other than a company governed under this rule shall continue to be governed by the Authority for a period of three years after it ceases to be listed or its paid-up capital or turnover or aggregate of loans, debentures and deposits falls below the limit stated therein.

CHAPTER - AUDIT AND AUDITORS

AMENDMENT :- RESIGNATION OF AUDITOR[SECTION 140(2),(3) READ WITH RULE 8]

Section 140(2) states that the auditor who has resigned from the company shall file a statement in **Form ADT-3** indicating the reasons and other facts as may be relevant **with regard to his resignation as follows:**

In case of other than Government Company, the auditor shall **within 30 days from the date of resignation**, file such statement to the company and the registrar.

In case of Government Company or government controlled company, auditor shall **within 30 days from the resignation**, file such statement to the company and the Registrar and **also file the statement with the Comptroller and Auditor General of India (CAG).**

Section 140(3) states that If the auditor does not comply with the provisions of sub- section (2), he or it shall be liable to a penalty of fifty thousand rupees or an amount equal to the remuneration of the auditor, whichever is less, and in case of continuing failure, with further whichever is less, and in case of continuing failure, with further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees.."**[Amended as per Companies (Amendment) Act, 2019]**

CHAPTER - APPOINTMENT AND QUALIFICATION OF DIRECTORS

AMENDMENT 1 – PENALTY UNDER SECTION 165

Penalty:-If a person accepts an appointment as a director in contravention of above mentioned provisions, he shall be **liable to a penalty of five thousand rupees for each day after the first during which such contravention continues.[Amended as per Companies (Amendment) Act, 2019]**

AMENDMENT 2 :- CANCELLATION/SURRENDER/DEACTIVATION OF DIN [RULE 11]

1. The Competent Authority (Central Government/RD (North), / Authorised Officer by the RD) may, upon being satisfied on verification of particulars or documentary proof attached with the application along with specified fee received **from any person,** cancel or deactivate the DIN in case –

a) the DIN is found to be duplicated in respect of the **same person** provided the data related to both the DIN shall be merged with the validly retained number;

b) the DIN was obtained in a wrongful manner or by fraudulent means;

c) of the death of the concerned individual;

d) the concerned individual has been declared as a lunatic or of unsound mind by a competent Court;

e) if the concerned individual has been adjudicated an insolvent.

Provided that before cancellation or deactivation of DIN pursuant to clause (b), an opportunity of being heard shall be given to the concerned individual;'

f) on an application made in **Form DIR-5** by the DIN holder to surrender his or her DIN along with declaration that he has never been appointed as director in any company and the said DIN has never been used for filing of any document with any authority, the Central Government may deactivate such DIN but after verification of e-records.

2. The Central Government or Regional Director (Northern Region), or any officer authorised 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 or the web service DIR-3 KYC-WEB as the case may be** within stipulated time in accordance with Rule 12A. **[Inserted by Companies (Appointment and Qualification of Directors) fourth Amendment Rules, 2018, Effective Date : 10th July, 2018] [Again amended w.e.f 25.07.2019]**

3. The de-activated **DIN shall be re-activated only after e-form DIR-3-KYC or the web service DIR-3 KYC-WEB as the case may be** is filed along with fee as prescribed under Companies (Registration Offices and Fees) Rules, 2014. **[Inserted by Companies (Appointment and Qualification of Directors) fourth Amendment Rules, 2018, Effective Date : 10th July, 2018] [Again amended w.e.f 25.07.2019]**

AMENDMENT 3 :- DIRECTORS KYC [RULE 12A]

Every individual who holds **(earlier it was 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 September of immediate next financial year (earlier it was 30th June and prior to that it was 30th April of immediate next financial year). [Inserted by Companies (Appointment and Qualification of Directors) fourth Amendment Rules, 2018, Effective Date: 10th July, 2018 and amended on - 25.07.2019]**

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 5th October, 2018.[Inserted w.e.f 30.04.2019]**

Provided further that where an individual who has already submitted **e-form DIR-3 KYC** in relation to any previous financial year, submits **web-form DIR-3 KYC-WEB** through the web service in relation to any subsequent financial year it shall be deemed to be compliance of the provisions of this rule for the said financial year:

Provided also that in case an individual desires to update his personal mobile number or the e-mail address, as the case may be, he shall update the same by submitting **e-form DIR-3 KYC only:**

Provided also that fee for filing **e-form DIR-3 KYC or web-form DIR-3 KYC-WEB** through the web service, as the case may be, shall be payable as provided in Companies (Registration Offices and Fees) Rules, 2014.

Note: For the financial year ending on 31st March 2019, the individual shall submit **e-form DIR-3 KYC or web form DIR-3 KYC-WEB**, as the case may be, **on or before the 14th October, 2019. [Inserted w.e.f. 30.09.2019]**

Note:- As per **Companies (Registration offices and fees) Fifth Amendment Rules,2019** for the financial year ending on 31st March 2019, no fee shall be payable in respect of **e-form DIR-3 KYC or web form DIR-3 KYC-WEB** through web services till **14th October, 2019. [Inserted w.e.f. 30.09.2019]**

AMENDMENT 4 :-COMPANY TO INFORM DIN TO REGISTRAR[SECTION 157]

1. Every company shall, within fifteen days of the receipt of intimation of DIN from director, furnish the DIN to the Registrar/authorised office by the Central Government in **e-form DIR-3C.** The e-form is to be digitally signed by Company Secretary of the company or Company Secretary in Practice.

2. If a company fails to furnish Director Identification Number under section 157 (1), such company shall be liable to a penalty of twenty-five thousand rupees and in case of continuing failure, with further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of one lakh rupees, and every officer of the company who is in default shall be liable to a penalty of not less than twenty-five thousand rupees and in case of continuing failure, with further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of one lakh rupees."**.[Amended as per Companies(Amendment) Act, 2019]**

AMENDMENT 5 :- PUNISHMENT FOR DEFAULT OF CERTAIN PROVISION [SECTION 159]

If any individual or director of a company makes any default in complying with any of the provisions of section 152, section 155 and section 156, such individual or director of the company shall be liable to a penalty which may extend to fifty thousand rupees and where the default is a continuing one, with a further penalty which may extend to five hundred rupees for each day after the first during which such default continues. **[Amended as per Companies (Amendment) Act, 2019]**

AMENDMENT 6 :- DISQUALIFICATIONS OF DIRECTOR [SECTION 164]

1) Grounds of disqualification:

Section 164(1) Provides that a person **shall not be eligible for appointment** as a director of a company, **if –**

a) He is of unsound mind and stands so declared by a competent court;

b) He is an undischarged insolvent;

c) He has applied to be adjudicated as an insolvent and his application is pending;

d) He has been convicted by a court of any offence, whether involving moral turpitude or otherwise and sentenced in respect thereof to imprisonment **for not less than six months and a period of five years has not elapsed from the date of expiry of the sentence.**

Provided that if a person has been convicted of any offence and sentenced in respect thereof to imprisonment for a period **of seven years or more,** he **shall not be eligible to be appointed as a director in any company.**

e) An order disqualifying him for appointment as a director has been passed by a court or Tribunal and the order is in force;

f) He has not paid any calls in respect of any shares of the company held by him, whether alone or jointly with others, and six months have elapsed from the last day fixed for the payment of the call;

g) He has been convicted of the offence dealing with related party transactions under section 188 at any time during the last preceding five years; **or**

h) He has not complied with sub-section (3) of section 152.

i) He has not complied with the provisions of sub-section (1) of section 165.**[Inserted by Companies(Amendment) Act, 2019]**

CHAPTER – MEETINGS OF BOARD AND ITS POWERS

AMENDMENT 1 :- NON APPLICABILITY OF SECTION 186(11)

Section 186(11) provides that nothing contained in this section, **except sub-section (1),** shall apply—

a) to any loan made, any guarantee given or any security provided or any investment made by a banking company, **or** an insurance company, **or** a housing finance company in **the ordinary course of its business**, **or** a company established with the object of and engaged in the **business of financing industrial enterprises, or of providing infrastructural facilities;**

Note :- As per Rule 11(2), for the purposes of clause (a) of sub-section (11) of section 186, the expression **"business of financing industrial enterprises"(earlier it was business of financing of companies) shall include**, with regard to a Non-Banking Financial Company registered with Reserve Bank of India, "business of giving of any loan to a person or providing any guaranty or security for due repayment of any loan availed by any person in the ordinary course of its business". **[Amended w.e.f 11.10.2019]**

AMENDMENT 2 - CONDITIONS TO BE FULFILLED BEFORE ENTERING INTO RELATED PARTY TRANSACTIONS[RULE 15]

Rule 15 of the Companies (Meetings of Board and its Powers) Rules, 2014 provides that a company shall enter into any contract or arrangement with a related party subject to the following conditions, **namely:-**

1. The agenda of the Board meeting at which the resolution is proposed to be moved **shall disclose-**

a) the name of the related party and nature of relationship;
b) the nature, duration of the contract and particulars of the contract or arrangement;
c) the material terms of the contract or arrangement including the value, if any;
d) any advance paid or received for the contract or arrangement, if any;
e) the manner of determining the pricing and other commercial terms, both included as part of contract and not considered as part of the contract;
f) whether all factors relevant to the contract have been considered, if not, the details of factors not considered with the rationale for not considering those factors; and
g) any other information relevant or important for the Board to take a decision on the proposed transaction.

Where any director is interested in any contract or arrangement with a related party, such director **shall not be present at the meeting during discussions on the subject matter of the resolution relating to such contract or arrangement.**

First Proviso to the Section 188 (1) *of the Act* provides that no contract or arrangement, in the case of a company having a paid-up share capital of not less than such amount, or transactions **not**[Here not word is law maker's mistake] exceeding such sums, as prescribed, shall be entered into **except with the prior approval of the company by a resolution.**

Rule 15 of the Companies (Meetings of board and its Powers) Rules, 2014 provides that **except with the prior approval of the company by a resolution, a company shall not enter into a transaction or transactions,** where the transaction or transactions to be entered into,-

a) as contracts or arrangements with respect to clauses (a) to (e) of sub-section (1) of section 188, with criteria as mentioned below-

i. sale, purchase or supply of any goods or materials, **directly or through appointment of agent**, amounting to ten percent or more of the **turnover** of the company **[or rupees one hundred crore**, **whichever is lower, but now**

this limit of 100 crores is omitted on 18.11.2019], as mentioned in clause (a) and clause (e) respectively of sub-section (1) of section 188;

ii. selling or otherwise disposing of or buying property of any kind, **directly or through appointment of agent**, amounting to ten percent or more of **net worth** of the company **[or rupees one hundred crore, whichever is lower, but now this limit of 100 crores is omitted on 18.11.2019]**, as mentioned in clause (b) and clause (e) respectively of sub-section(1) of section 188;

iii. **leasing of property of any kind** amounting to ten percent or more of the turnover of the company**[Earlier it was ten percent or more of the net worth of the company or ten percent or more of the turnover of the company or rupees one hundred crore, whichever is lower but now this limit is amended on 18.11.2019]** , as mentioned in clause (c) of sub-section (1) of section 188;

iv. availing or rendering of **any services**, **directly or through appointment of agent**, amounting to ten percent more of the turnover of the company [**or rupees fifty crore**, **whichever is lower but now this limit of 50 crores is omitted on 18.11.2019]**as mentioned in clause (d) and clause (e) respectively of sub-section (1) of section 188.

CHAPTER- APPOINTMENT AND REMUNERATION OF KMPs

AMENDMENT 1 – SECTION 203(5) WHICH PROVIDES PENALTY FOR NON APPOINTMENT OF KMP

If any company makes any default in complying with the provisions of this section, such company shall be liable to a penalty of five lakh rupees and every director and key managerial personnel of the company who is in default shall be liable to a penalty of fifty thousand rupees and where the default is a continuing one, with a further penalty of one thousand rupees for each day after the first during which such default continues but not exceeding five lakh rupees**.".[Amended as per Companies (Amendment) Act, 2019].**

AMENDMENT 2 – SECTION 197 (7) OMITTED

Notwithstanding anything contained in any other provisions of this Act but subject to the provisions of this section, an independent director shall not be entitled to any stock option and may receive remuneration by way of fees provided under sub section (5), reimbursement of expenses for participation in the board and other meetings and profit related commission as may be approved by the members**.[This is omitted by Companies (Amendment) Act, 2019].**

AMENDMENT 3 – AMOUNT OF PENALTY AMENDED UNDER SECTION 197 (15)

If any person makes any default in complying with the provisions of this section, he shall be liable to a penalty of one lakh rupees and where any default has been made by a company, the company shall be liable to a penalty of five lakh rupees**.".[Amended as per Companies (Amendment) Act, 2019]**

CHAPTER :- GENERAL MEETINGS

AMENDMENT 1 :- AMOUNT OF PENALTY AMENDED UNDER SECTION 102(5)

Penalty:-Without prejudice to the provisions of sub-section (4), if any default is made in complying with the provisions of this section, every promoter, director, manager or other key managerial personnel of the company who is in default shall be liable to a penalty of fifty thousand rupees or five times the amount of benefit accruing to the promoter, director, manager or other key managerial personnel or any of his relatives, whichever is higher." **[Section 102(5)] (Amended as per Companies (Amendment) Act, 2019).**

AMENDMENT 2 :- AMOUNT OF PENALTY AMENDED UNDER SECTION 105(2)

If default is made in complying with sub-section (2), every officer of the company who is in default shall be **liable to a penalty of five thousand rupees. [Section 105(2)](Amended as per Companies (Amendment) Act, 2019).**

AMENDMENT 3 :- AMOUNT OF PENALTY AMENDED UNDER SECTION 117(2)

The Registrar shall register the same and If any company fails to file the resolution or the agreement under sub-section (1) before the expiry of the period specified therein, such company shall be liable to a penalty of one lakh rupees and in case of continuing failure, with further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of twenty-five lakh rupees and every officer of the company who is in default including liquidator of the company, if any, shall be liable to a penalty of fifty thousand rupees and in case of continuing failure, with further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees.". **[Section 117(2)] (Amended as per Companies (Amendment) Act, 2019).**

AMENDMENT 4 :- AMOUNT OF PENALTY AMENDED UNDER SECTION 117(2)

Default in filing of the report: If the company fails to file the report under sub-section (2) before the expiry of the period specified therein, such company shall be liable to a penalty of one lakh rupees and in case of continuing failure, with further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees and every officer of the company who is in default shall be liable to a penalty which shall not be less than twenty-five thousand rupees and in case of continuing failure, with further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of one lakh rupees." **[Section 121(3)] (Amended as per Companies (Amendment) Act, 2019)**

CHAPTER - ANNUAL RETURN

AMENDMENT :- AMOUNT OF PENALTY AMENDED UNDER SECTION 92(5)

If any company fails to file its annual return within a period of 60 days from the date of AGM or the Last day on which the AGM should have been as the case may be, such company and its every officer who is in default shall be liable to a penalty of fifty thousand rupees and in case of continuing failure, with further penalty of one hundred rupees for each day during which such failure continues, subject to a maximum of five lakh rupees." **[Section 92(5)] [Amended as per Companies (Amendment) Act, 2019]**

CHAPTER – CORPORATE SOCIAL RESPONSIBILITY (CSR)

AMENDMENT :- LIST OF CSR ACTIVITIES

Some activities are specified in **Schedule VII** as the activities which may be included by companies in their Corporate Social Responsibility Policies. The entries in the said Schedule VII must be interpreted liberally so as to capture the essence of the subjects enumerated in the said Schedule. The items enlisted in the amended Schedule VII of the Act, are broad-based and are intended to cover a wide range of activities as illustratively. **These are activities related to:**

i. eradicating hunger, poverty and malnutrition, promoting health care including preventive health care and sanitation including contribution to the Swach Bharat Kosh set-up by the Central Government for the promotion of sanitation and making available safe drinking water.

ii. promoting education, including special education and employment enhancing vocation skills especially among children, women, elderly and the differently abled and livelihood enhancement projects.

iii. promoting gender equality, empowering women, setting up homes and hostels for women and orphans; setting up old age homes, day care centres and such other facilities for senior citizens and measures for reducing inequalities faced by socially and economically backward groups;

iv. ensuring environmental sustainability, ecological balance, protection of flora and fauna, animal welfare, agro forestry, conservation of natural resources and maintaining quality of soil, air and water including contribution to the Clean Ganga Fund set-up by the Central Government for rejuvenation of river Ganga;

v. protection of national heritage, art and culture including restoration of buildings and sites of historical importance and works of art; setting up public libraries; promotion and development of traditional arts and handicrafts;

vi. measures for the benefit of armed forces veteran, war widows and their dependents;

vii. training to promote rural sports, nationally recognized sports, para olympic sports and Olympic sports;

viii. contribution to the Prime Minister's National Relief Fund or any other fund set up by the Central Government for socio-economic development and relief and welfare of the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities and women;

ix. Contribution to incubators funded by Central Government or State Government or any agency or Public Sector Undertaking of Central Government or State Government, and contributions to public funded Universities, Indian Institute of Technology (IITs), National Laboratories and Autonomous Bodies (established under the auspices of Indian Council of Agricultural Research (ICAR), Indian Council of Medical Research (ICMR), Council of Scientific and Industrial Research (CSIR), Department of Atomic Energy (DAE), Defence Research and Development Organisation (DRDO), Department of Science and Technology (DST), Ministry of Electronics and Information Technology) engaged in conducting research in science, technology, engineering and medicine aimed at promoting Sustainable Development Goals (SDGs) **(Earlier it was contributions or funds provided to technology incubators located within academic institutions which are approved by the Central Government); [Amended w.e.f 11.10.2019]**

x. rural development projects.

xi. slum area development where 'slum area' shall mean any area declared as such by the Central Government or any State Government or any other competent authority under any law for the time being in force.

xii. disaster management, including relief, rehabilitation and reconstruction activities. **[Inserted w.e.f 30.05.2019]** However, in determining CSR activities to be undertaken, preference would need to be given to local areas and the areas around where the company operates.

CHAPTER - MEMBERSHIP IN A COMPANY

AMENDMENT : -SIGNIFICANT BENEFICIAL OWNER [SECTION 90]

Section 90 of the Act provides that **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**.[Section 90(1)]**

Provided that the Central Government may prescribe a class or classes of persons who shall not be required to make declaration as stated above.

Further every company shall maintain a register of the interest declared by individuals stated above and changes therein which shall include the name of individual, his date of birth, address, details of ownership in the company and such other details as may be prescribed**.[Section 90(2)]**

The register so maintained shall be open to inspection by any member of the company on payment of such fees as may be prescribed.**[Section 90(3)]**

Every company shall file a return of significant beneficial owners of the company and changes therein with the Registrar containing names, addresses and other details as may be prescribed within such time, in such form and manner as may be prescribed.**[Section 90(4)]**

Every company shall take necessary steps to identify an individual who is a significant beneficial owner in relation to the company and require him to comply with the provisions of this section.**[Section 90(4A)] [Inserted by Companies (Amendment) Act,2019]**

A company shall give notice, in the prescribed manner, to any person (whether or not a member of the company) whom the company knows or has reasonable cause to believe—

1) to be a significant beneficial owner of the company;
2) to be having knowledge of the identity of a significant beneficial owner or another person likely to have such knowledge; **or**
3) to have been a significant beneficial owner of the company at any time during the three years immediately preceding the date on which the notice is issued, and who is not registered as a significant beneficial owner with the company as required under this section. **[Section 90(5)]**

The information required by the notice shall be given by the concerned person **within a period not exceeding 30 days** of the date of the notice. **[Section 90(6)]**

The company shall,—

1. where that person fails to give the company the information required by the notice within the time specified therein; or
2. where the information given is not satisfactory,

apply to the Tribunal within a period of fifteen days of the expiry of the period specified in the notice, for an order directing that the shares in question be subject to restrictions with regard to transfer of interest, suspension of all rights attached to the shares and such other matters as may be prescribed. **[Section 90(7)]**

On any application made to the Tribunal, it may, after giving an opportunity of being heard to the parties concerned, make such order restricting the rights attached with the shares **within a period of 60 days** of receipt of application or such other period as may be prescribed. **[Section 90(8)]**

The company or the person aggrieved by the order of the Tribunal may make an application to the Tribunal for relaxation or lifting of the restrictions placed under sub-section (8), **within a period of 1 year from the date of such order:**

Provided that if no such application has been filed within a period of one year from the date of the order under sub-section (8), such shares shall be transferred to the authority constituted under sub-section (5) of section 125, in such manner as may be prescribed; **[Section 90(9)] [Amended as per Companies (Amendment) Act, 2019].**

The Central Government may make rules for the purposes of this section. **[Inserted by Companies (Amendment) Act, 2019].**

If any person fails to make a declaration as required, he shall be punishable **with imprisonment for a term which may extend to one year or** with fine which shall not be less than one lakh rupees but which may extend to ten lakh rupees **or with both** and where the failure is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the failure continues. **[Section 90(10)] [Amended as per Companies (Amendment) Act, 2019].**

If a company, required to maintain register under sub-section (2) and file the information under sub-section (4) **or required to take necessary steps under sub-section (4A),** fails to do so or denies inspection as provided therein, the company and every officer of the company who is in default shall be punishable with fine which shall not be less than ten lakh rupees but which may extend to fifty lakh rupees and where the failure is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the failure continues **[Section 90(11)] [Amended as per Companies (Amendment) Act, 2019].**

If any person wilfully furnishes any false or incorrect information or suppresses any material information of which he is aware in the declaration made under this section, he shall be liable to action under section 447. **[Section 90(12)]**

SIGNIFICANT BENEFICIAL OWNER AMENDMENT RULES 2019

Duty of the reporting company [Rule 2A Inserted :- 08.02.2019]

1. Every reporting company shall take necessary steps to find out if there is any individual who is a significant beneficial owner, as defined in clause (h) of rule 2, in relation to that reporting company, and if so, identify him and cause such individual to make a declaration in **Form No. BEN-1.**
2. Without prejudice to the generality of the steps stated in sub-rule (1), every reporting company shall in all cases where its member (other than an individual), holds **not less than 10 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 subsection (5) of section 90, in **Form No. BEN-4.**

Declaration of significant beneficial ownership under section 90 [Rule 3 Amended:-08.02.2019]

1. On the date of commencement of the **Companies (Significant Beneficial Owners) Amendment Rules, 2019,** every individual who is a significant beneficial owner in a reporting company, shall file a declaration in **Form No. BEN-1** to the reporting company **within 90 days from such commencement**.

2. Every individual, who subsequently becomes a significant beneficial owner,or where his significant beneficial ownership undergoes any change shall file a declaration in **Form No. BEN-1** to the reporting company, **within 30 days** of acquiring such significant beneficial ownership or any change therein.

Explanation:- Where an individual becomes a significant beneficial owner, or where his significant beneficial ownership undergoes any change, **within 90 days of the commencement of the Companies (Significant Beneficial Owners) Amendment Rules, 2019,** it shall be deemed that such individual became the significant beneficial owner or any change therein happened on the date of expiry of **90 days from the date of commencement of said rules**, and the period of **30 days for filing will be reckoned accordingly.**

Return of significant beneficial owners in shares[Rule 4 Amended:-08.02.2019]

Upon receipt of declaration under rule 3, the reporting company shall file a return in **Form No. BEN-2** with the Registrar in respect of such declaration, **within a period of 30 days from the date of receipt of such declaration by it**, along with the fees as prescribed in Companies (Registration offices and fees) Rules, 2014

Application to the Tribunal[Rule 7Amended:-08.02.2019]

The reporting company shall apply to the Tribunal,

i. Where any person fails to give the information required by the notice in Form No. BEN-4, within the time specified therein; **or**
ii. Where the information given 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

Non-Applicability[Rule 8Amended:-08.02.2019]

These rules shall not be made applicable to the extent the share of the reporting company is held by,

a) the authority constituted under sub-section (5) of section 125 of the Act;
b) its holding reporting company:

Provided that the details of such holding reporting company shall be reported in **Form No. BEN-2.**

c) the Central Government, State Government or any local Authority;
d) (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 (lnVITs) regulated by the Securities and Exchange Board of India,

f) lnvestment Vehicles regulated by Reserve Bank of India, or Insurance Regulatory and Development Authority of India, or Pension Fund Regulatory and Development Authority.

SOME IMPORTANT DEFINITIONS

As per Rule 2(1)(d) of Significant Beneficial Owner 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;

As per Rule 2(1)(f) of Significant Beneficial Owner Amendment Rules 2019, "reporting company" **means** a company as defined in clause (20) of section 2 of the Act, required to comply with the requirements of section 90 of the Act;

As per Rule 2(1)(h) of Significant Beneficial Owner Amendment Rules 2019, "significant beneficial owner" in relation to a reporting company **means** an individual referred to in sub-section (1) of section 90, who acting alone or together, or through one or more persons or trust, possesses one or more of the following rights or entitlements in such reporting company, **namely:-**

i. holds indirectly, or together with any direct holdings **not less than 10 per cent. of the shares;**
ii. holds indirectly, or together with any direct holdings, **not less than 10 per cent. of the voting rights in the shares;**
iii. has right to receive or participate in **not less than 10 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:**

Explanation I - For the purpose of this clause, if an individual does not hold any right or entitlement indirectly under sub-clauses (i), (ii) **or** (iii), **he shall not be considered to be a significant beneficial owner.**

Explanation II - For the purpose of this clause, an individual shall be considered to hold a right or entitlement directly in the reporting company, if he satisfies any of the following criteria, **namely.'**

i. the shares in the reporting company representing such right or entitlement are held in the name of the individual;
ii. the individual holds or acquires a beneficial interest in the share of the reporting company under sub- section (2) of section 89, and has made a declaration in this regard to the reporting company.

Explanation III - For the purpose of this clause, an individual shall be considered to hold a right or entitlement indirectly in the reporting company, if he satisfies any of the following criteria, in respect of a member of the reporting company, **namely: -**

i. where the member of the reporting company is a body corporate (whether incorporated or registered in India or abroad), **other than a limited liability partnership, and the individual,-**

a) holds majority stake in that member; **or**
b) holds majority stake in the ultimate holding company (whether incorporated or registered in India or abroad) of that member;

ii. where the member of the reporting company is a Hindu Undivided Family (HUF) (through karta), and the individual is the karta of the HUF;

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.

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.

Explanation IV-Where the member of a reporting company is,

i. a pooled investment vehicle; or
ii. an entity controlled by the pooled investment vehicle,

based in a jurisdiction which does not fulfil the requirements referred to in clause (v) of Explanation III, the provisions of clause (i) or clause (ii) or clause (iii) or clause (iv) of Explanation III, as the case may be, shall apply.

Explanation V - For the purpose of this clause, if any individual, or individuals acting through any person or trust, act with a common intent or purpose of exercising any rights or entitlements, or exercising control or significant influence, over a reporting company, pursuant to an agreement or understanding, formal or informal, such individual, or individuals, acting through any person or trust, as the case may be, shall be deemed to be 'acting together'.

Explanation VI - For the purposes of this clause, the instruments in the form of global depository receipts, compulsorily convertible preference shares or compulsorily convertible debentures shall be treated as 'shares'.

As per Rule 2(1)(i) of Significant Beneficial Owner Amendment Rules 2019, "significant influence" **means** the power to participate, directly or indirectly, in the financial and operating policy decisions of the reporting company but is not control or joint control of those policies.

CHAPTER – OPPRESSION AND MISMANAGEMENT

AMENDMENT 1 - APPLICATION TO TRIBUNAL FOR RELIEF IN CASE OF OPPRESSION & MISMANAGEMENT [SECTION 241]

A. BY ANY MEMBER OF A COMPANY

Section 241(1) of the Companies Act, 2013 states that any member of a company, who has right to apply under section 244, **may apply to the Tribunal for complains that**—

a) The affairs of the company have been or are being conducted -

- in a manner prejudicial to public interest, **or**
- in a manner prejudicial or oppressive to him or any other member or members, **or**
- in a manner prejudicial to the interests of the company; **or**

b) The material change, has taken place in the management or control of the company, whether by -

- an alteration in the Board of Directors, or manager, **or**
- in the ownership of the company's shares, **or**
- if it has no share capital, in its membership, **or**
- in any other manner whatsoever,

And that by reason of such change, it is likely that the affairs of the company will be conducted in a manner prejudicial to its interests or its members or any class of members,

However, such material change shall not be a change brought about by, or in the interests of, any creditors, including debenture holders or any class of shareholders of the company.

B. BY CENTRAL GOVERNMENT

Section 241(2) of the Companies Act, 2013 states that the Central Government, if it is of the opinion that the affairs of the company are being conducted in a manner prejudicial to public interest, it may itself apply to the Tribunal for an order.

Section 241(3) of the Companies Act, 2013 states that where in the opinion of the Central Government there exist circumstances suggesting that—

(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; or

(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**. [This sub section is inserted by Companies Amendment Act,2019]**

Section 241(4) of the Companies Act, 2013 states that The person against whom a case is referred to the Tribunal under sub-section (3), shall be joined as a respondent to the application. **[This sub section is inserted by Companies Amendment Act,2019]**

Section 241(5) of the Companies Act, 2013 states that 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. **[This sub section is inserted by Companies Amendment Act, 2019]**

AMENDMENT 2 :- POWER OF TRIBUNAL TO ISSUE ORDERS [SECTION 242]

Section 242(1) states that on any application made under section 241, **the Tribunal is of the opinion—**

a) that the company's affairs have been or are being conducted in a manner prejudicial or oppressive to any member or members or prejudicial to public interest or in a manner prejudicial to the interests of the company; and

b) that to wind up the company would unfairly prejudice such member or members, but that otherwise the facts would justify the making of a winding-up order on the ground that it was just and equitable that the company should be wound up, the Tribunal may, with a view to bringing to an end the matters complained of, make such order as it thinks fit.

Filing of copy of Order of Tribunal [Section242(3)]

Section 242(3) provides that a certified copy of the order of the Tribunal under section 242(1) shall be filed by the company with the Registrar **within 30 days of the order of the Tribunal.**

Details in Order passed by Tribunal [Section 242(2)]

An order made by the Tribunal under sub – section (1) **shall provide for—**

a) the regulation of conduct of affairs of the company in future;

b) the purchase of shares or interests of any members of the company by other members thereof or by the company;

c) in the case of a purchase of its shares by the company as aforesaid, the consequent reduction of its share capital;

d) restrictions on the transfer or allotment of the shares of the company;

e) the termination, setting aside or modification, of any agreement, howsoever arrived at, between the company and the managing director, any other director or manager, upon such terms and conditions as may, in the opinion of the Tribunal, be just and equitable in the circumstances of the case;

f) the termination, setting aside or modification of any agreement between the company and any person other than those referred to in clause (e):

g) Provided that no such agreement shall be terminated, set aside or modified except after due notice and after obtaining the consent of the party concerned;

h) the setting aside of any transfer, delivery of goods, payment, execution or other act relating to property made or done by or against the company within three months before the date of the application under this section, which would, if made or done by or against an individual, be deemed in his insolvency to be a fraudulent preference;

i) removal of the managing director, manager or any of the directors of the company;

j) recovery of undue gains made by any managing director, manager or director during the period of his appointment as such and the manner of utilisation of the recovery including transfer to Investor Education and Protection Fund or repayment to identifiable victims;

k) the manner in which the managing director or manager of the company may be appointed subsequent to an order removing the existing managing director or manager of the company made under clause (h);

l) appointment of such number of persons as directors, who may be required by the Tribunal to report to the Tribunal on such matters as the Tribunal may direct;

m) imposition of costs as may be deemed fit by the Tribunal;

n) any other matter for which, in the opinion of the Tribunal, it is just and equitable that provision should be made.

Interim Order [Section 242(4)]:- The Tribunal may, on the application of any party to the proceeding, make any interim order which it thinks fit for regulating the conduct of the company's affairs upon such terms and conditions as appear to it to be just and equitable.

Section 242(4A) states that 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. **[This sub section is inserted by Companies Amendment Act, 2019]**

Alteration in Memorandum or Articles

Where an order of the Tribunal makes any alteration in the memorandum or articles of a company, then, the company shall not have power, except to the extent, if any, permitted in the order, to make, without the leave of the Tribunal, any alteration whatsoever which is inconsistent with the order, either in the memorandum or in the articles. **[Section 242(5)]**

The alterations made by the order in the memorandum or articles of a company shall, in all respects, have the same effect as if they had been duly made by the company in accordance with the provisions of this Act and the said provisions shall apply accordingly to the memorandum or articles so altered. **[Section242(6)]**

A certified copy of every order altering, or giving leave to alter, a company's memorandum or articles, shall within thirty days after the making thereof, be filed by the company with the Registrar who shall register the same. **[Section 242(7)]**

However, if a company contravenes the provisions of sub-section (5) of Section 242, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term 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. **[Section 242(8)]**

AMENDMENT 3 - CONSEQUENCE OF TERMINATION OR MODIFICATION OF AGREEMENTS [SECTION 243]

Section 243(1) states that where an order made under Section 242 terminates, sets aside or modifies an agreement—

a) such order shall not give rise to any claims whatever against the company by any person for damages or for compensation for loss of office or in any other respect either in pursuance of the agreement or otherwise;

b) no managing director or other director or manager whose agreement is so terminated or set aside shall, **for a period of five years from the date of the order terminating or setting aside the agreement**, without the leave of the Tribunal, be appointed, or act, as the managing director or other director or manager of the company.

Section 243(1A) states that 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. **[This sub section is inserted by Companies Amendment Act, 2019]**

Section 243(1B) states that 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. **[This sub section is inserted by Companies Amendment Act, 2019]**

Provided that the Tribunal shall not grant leave under this clause unless notice of the intention to apply for leave has been served on the Central Government and that Government has been given a reasonable opportunity of being heard in the matter.

Section 243(2) states that any person who knowingly acts as a managing director or other director or manager of a company in contravention of clause (b) of sub-section (1) or sub-section (1A), and every other director of the company who is knowingly a party to such contravention, shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to five lakh rupees, or with both. **[This sub section is amended by Companies Amendment Act, 2019]**