

NEWS ALERT

**Companies Amendment Act 2019 certain sections notified on
14th August 2019**

The Companies (Amendment) Act, 2019 (“CAA 2019”) which was notified on 31st July, 2019 by which the Companies Act, 2013 (“CA 2013”) was further amended. The Amendment Acts incorporates provisions introduced by the Ordinance dated 2nd November 2018 along with certain new provisions. The effective date of provisions which were there in Ordinance dated 2nd Nov 2018 remains as 2nd November 2018 and for other provisions the effective dates are notified by Central Government vide Notifications.

Following few Sections which are not notified so far under CAA 2019 are now notified with effect from 15th August 2019, vide Notification dated 14th August 2019.

List of Sections of CAA 2019 and its related Sections in CA 2013 are listed as below

Serial No.	Section under CAA 2019	Section under CA 2013	Particulars
1	Section 6	Section 26	Relating to Prospectus
2	Section 7	Section 29	Relating to Demat of shares
3	Section 8	Section 35	Relating to delivery of Prospectus
4	Section 14 (i) ,(iii) & (iv)	Section 90	Relating to SBO
5	Section 20	Section 132	Relating to NFRA
6	Section 31	Section 212	Relating to SFIO
7	Section 33	Section 241	Relating to Oppression & MisMagt
8	Section 34	Section 242	Relating to Powers of Tribunal
9	Section 35	Section 243	Relating to consequences of termination of agreements
10	Section 37	Section 272	Relating to Petition of Winding up
11	Section 38	Section 398	Relating to filing of documents in electronic form

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The amendments made vide the Notification dated 14th August 2019 is detailed as below'

1. The Company was required to file the prospectus with Registrar (RoC) and RoC was required to register it and after registration only the Company can offer shares to public.
Now the change is that the Company is required to file the prospectus with RoC and RoC is not required to register the same.
(Section 26 and 35 of CA 2013 is amended)
2. All public companies (listed or unlisted) were required to issue/ allot or transfer their shares or securities only in Demat Form and not in physical form.
Now the changes is that Ministry has power to prescribe any class of company (public or private) to issue / allot or transfer their shares only in Demat Form. However the Ministry has so far not prescribed any class of private limited companies.
(Section 29 of CA 2013 is amended)
3. Under the provisions of Section 90 of the CA 2013 for Register of Significant Beneficial Owner (SBO) in a company, four changes are made
 - 3.1 One is insertion of new sub-section 4A which reads as follow:
“(4A) 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.”;
 - 3.2 Section 90 (9) is substituted with following:
*“(9) 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 one 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, without any restrictions, to the authority constituted under sub-section (5) of section 125, in such manner as may be prescribed.**”*
 - 3.3 Section 90 (9A) is inserted as follow :
(9A) The Central Government may make rules for the purposes of this section.”;
 - 3.4 Section 90 (11) for penalty any non-compliance of provisions of Section 90 (4A) newly inserted sub-section is also included.

New Changes is that now the Company need to show its bonafide efforts to find SBO, otherwise the Company will be liable for default under section 90 (11) of the CA 2013. Further the Ministry has power to make rules required to be made for this section which is regarding SBO.

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One major change is that section 90 (9) is substituted. Earlier provision was that, the company or the person aggrieved by the order of the Tribunal may make an application in the Tribunal for relaxation of filing of the restrictions placed under sub-section 8. However with the amendment in this sub-section, the time limit is fixed as one year to make application to Tribunal and if the same is not made, such shares will be transferred to Investors Education and Protection Fund (IEPF).

(Section 90 of CA 2013 is amended)

4. On 1st October 2018, Section 132 (1) on National Financial Reporting Authority (NFRA) was enforced. NFRA was constituted to provide for matters relating to accounts and auditing standards under the Act.

Now the changes is that NFRA shall perform its function through such divisions as may be prescribed and each division of NFRA shall be presided over by the Chairperson or a full-time Member authorised by the Chairperson. There shall be an executive body of NFRA consisting of the Chairperson and full-time Members of NFRA for efficient discharge of its functions under this section except to make recommendations to the Central Government on the formulation and laying down of accounting and auditing policies and standards for adoption by companies or their auditors, as the case may be.

Earlier NFRA had power to debar the member or the firm from engaging himself or itself from practice as member of the Institute of Chartered Accountant of India referred to in clause (e) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949.

Now the changes is that NFRA can debar the member or the firm, for a minimum period of six (6) months or such higher period not exceeding ten (10) years from, 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 performing any valuation as provided under section 247.

(Section 132 of CA 2013 is amended)

5. Earlier powers were given to the Director, Additional Director or Assistant Director of Serious Fraud Investigation Office (SFIO), if such powers are given by the Central Government, to arrest any person for offenses under Section 447 (Fraud) of the Act.

Now the change is that the powers are given to any officer not below the rank of Assistant Director of SFIO, if such powers are given by the Central Government, to arrest any person for offenses under Section 447 (Fraud) of the Act.

Earlier such arrested person was required to be taken in 24 hours to a “Judicial Magistrate” or **Metropolitan Magistrate.**

Now the change is that such arrested person was required to be taken in 24 hours to a “Special Court or “Judicial Magistrate” or **Metropolitan Magistrate.**

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Following new sub section 14A is added under section 212 which reads as follow :

(14A) Where the report under sub-section (11) or sub-section (12) states that fraud has taken place in a company and due to such fraud any director, key managerial personnel, other officer of the company or any other person or entity, has taken undue advantage or benefit, whether in the form of any asset, property or cash or in any other manner, the Central Government may file an application before the Tribunal for appropriate orders with regard to disgorgement of such asset, property or cash and also for holding such director, key managerial personnel, other officer or any other person liable personally without any limitation of liability.”

With this insertion Central Government is empowered to make an application before the Tribunal for disgorgement of asset, property or cash from any Director, KMP or other officer of the Company or **any other person or entity** who has taken undue advantage or benefit by fraud.

(Section 212 of CA 2013 is amended)

6. Under Section 241 with respect to application to Tribunal for relief in case of Oppression, following four changes are being made:
 - 6.1 Section 241 (2) with respect to application to Tribunal for relief in case of Oppression, the Central Government may make an application to the Tribunal, if it is of the opinion that the affairs of the company are being conducted in prejudicial manner affecting public interest.
Now the change is that such application is required to be made to Principle Bench of the Tribunal.
 - 6.2 Sub Section (3) is inserted, which empowers Central Government to make application to Tribunal with a request to 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.
 - (a) any person concerned is 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 with business principles or prudent commercial practices;
 - (c) a company is or has been conducted and managed 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 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,

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6.3 Sub Section (4) is inserted, by which the person against whom a case is referred to the Tribunal under sub-section (3), shall be a respondent to the application.

6.4 Sub Section (5) is inserted, by which every application under sub-section (3)–shall contain a concise statement of such circumstances and materials as the Central Government may consider necessary for the purposes of the inquiry and the same shall be signed and verified in the manner laid down in the Code of Civil Procedure, 1908.

(Section 241 of CA 2013 is amended)

7. Under Section 242 with respect to Powers of Tribunal the following sub-section (4A) has been inserted:

(4A) At the conclusion of the hearing of the case in respect of sub-section (3) of section 241, the Tribunal shall record its decision stating therein specifically as to whether or not the respondent is a fit and proper person to hold the office of director or any other office connected with the conduct and management of any company.

Now the change is that Tribunal shall record its decision in the matter where Central Government had made an application before Tribunal for enquiry, stating therein specifically as to whether respondent, is fit and proper person to hold office of director or any other office connected with the conduct and management of any company.

(Section 242 of CA 2013 is amended)

8. Under Section 243 relating to consequences of termination or modification of certain agreements following two alterations were made.

8.1 sub-sections (1A) and (1B) are inserted:

(1A) The person who is not a fit and proper person pursuant to sub-section (4A) of section 242 shall not hold the office of a director or any other office connected with the conduct and management of the affairs of any company for a period of five years from the date of the said decision:

Provided that the Central Government may, with the leave of the Tribunal, permit such person to hold any such office before the expiry of the said period of five years.

(1B) Notwithstanding anything contained in any other provision of this Act, or any other law for the time being in force, or any contract, memorandum or articles, on the removal of a person from the office of a director or any other office connected with the conduct and management of the affairs of the company, that person shall not be entitled to, or be paid, any compensation for the loss or termination of office.

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8.2 In section 243 (2) alteration is made where earlier it was mentioned that no Managing Director or other Directors or Manager whose agreement is terminated or set aside shall act as such in the Company without the leave of the Tribunal, for the periods of 5 years from the date of such termination or setting aside. If they act as such they shall be punishable with imprisonment for a term which may extend to 6 months or with a fine which may extend to Rs.5 lakh or with both.

Now the change is that apart from Managing Director or other Directors or Manager whose agreement is terminated or set aside, the person who is declared by the Tribunal as not fit and proper person shall not act as Managing Director or Manager of a Company shall also be punishable with imprisonment for a term which may extend to 6 months or with a fine which may extend to Rs.5 lakh or with both.

With the amendments in section 241 to 243 read with Section 212 (14A) now the Central Government is empowered to initiate actions against not only the Directors, KMPs or other officers of a company on various grounds but also against any person or entity for fraud in a company by which they have taken undue advantage or benefit.

Further under Section 241 (3) the circumstances basis which the Central Government will form the opinion to initiate the case before the Tribunal requesting for inquiry and deciding whether the respondents are fit and proper person for management of the Company are very subjective and not defined anywhere like persistent negligence, breach of trust, sound business principles, prudent commercial practices, damage to interest of trade, industry or business and intent to defraud to its creditors, members or any other persons. These all circumstances are open for interpretation till the judicial pronouncement by Tribunal. This changes are suggested to give more powers to CG to oust fraudulent person to be in the management which is outcome of recent cases of corporate frauds.

(Section 243 of CA 2013 is amended)

9. Under Section 272 (3) relating to Petition for winding up, earlier the Registrar of Companies was entitled to present the Petition for winding up on any grounds mentioned under section 271 (1) except where the company has by special resolution resolved that the company be wound up by the Tribunal or where the Tribunal is of the opinion that it is just and equitable that the company should be wound up.

Now the change is that the Registrar of Companies can present the Petition for winding up of any company on all conditions mentioned under section 271 (1) except where the company has by special resolution resolved that the company be wound up by the Tribunal.

(Section 272 of CA 2013 is amended)

10. Under Section 398 (1) (f) relating to filing of applications, documents, inspection, etc., in the electronic form, earlier any change in the prospectus was required to be registered with the Registrar.

Now the change is that no registration is required for change in Prospectus of the Company. This amendment is pursuant to amendment in Section 26 and 35 of CA 2013 where registration of prospectus is no more required and only filing is to be done

(Section 398 of CA 2013 is amended)

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Conclusion:

These amendment are in line with the objective of government to bring transparency, good governance practice, remove defrauder from the management of the Company, oust and expel the Auditors for professional misconduct, Demat of shares of companies as Government may prescribe, which will be easy for Government to order transfer of the same to IEPF if the SBO is not identified where SBO exist.

However the apprehension remains for the wide powers given to the regulators under section 241 to 243 where apart from MD, KMP or Director even any person or entity can be made Respondents by the Central Government in case of matters related to fraud.

Disclaimer

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