

Newsletter for December, 2016
By Amita Desai & Co.



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Greetings and a warm welcome to our December Month's edition of Newsletter!

We are pleased to share our Newsletter for the month of December 2016. The newsletter covers the updates / amendments of [Ministry of Corporate Affairs \(MCA\)](#), [Securities and Exchange Board of India \(SEBI\)](#), and [Reserve Bank of India \(RBI\)](#).

The Newsletter is part of our knowledge sharing initiative. Efforts have been made to share notifications and circular issued by regulatory authorities during the month in concise and in simplified manner. We have tried to compile major amendments of Calendar Year 2016 issued by MCA as the [Article of the Month](#).

Please feel free to leave comments, thoughts or suggestions.

We appreciate your support and are so happy to have you as a reader.

With warmest thanks,

Amita Desai & Team



A. Enforcement of certain sections of Companies Act, 2013 related to National Company Law Tribunal

In continuation of phased implementation of National Company Law Tribunal (“Tribunal”), Ministry MCA has issued notification no. S.O 3677 (E) dated December 7, 2016 enforcing certain more sections and provisions of Companies Act, 2013 (“the Act”) empowering Tribunal with respect to matters related **Winding up, Reduction of Capital, Compromise or arrangement, Merger and Amalgamation.**

With aforesaid notification various sections and provisions of the Act are enforced with effect from **December 15, 2016.**

Below pasted is the link of our News Alert on aforesaid notification:

<http://amitadesai.com/images/uploads/downloads/News%20Alert%20on%20Powers%20of%20NCLT.pdf>

The link of the above Notification is as under:

<http://egazette.nic.in/WriteReadData/2016/172973.pdf>

B. Companies (Transfer of Pending Proceedings) Rules, 2016

MCA has issued notification no. G.S.R 1119 (E) dated December 07, 2016 introducing Companies (Transfer of Pending Proceedings) Rules, 2016. It shall come into force with effect from **December 15, 2016 except rule 4 relating to pending proceedings of voluntary winding up.**

All proceedings under the Act, including proceedings relating to arbitration, compromise, arrangements and reconstruction, other than proceedings relating to winding up will be transferred to the Benches of the Tribunal, except reserved for orders for allowing or otherwise of such proceedings which shall not be transferred. All applications and petitions relating to voluntary winding up of Companies pending before a High Court shall continue with and dealt with by the High Court in accordance with provisions of the Act.

All cases where opinion has been forwarded by Board for Industrial and Financial Reconstruction, for winding up of a Company to a High Court and where no appeal is pending, the proceedings for winding up initiated under the Act, pursuant to section 20 of the Sick Industrial Companies (Special Provisions) Act, 1985 shall continue to be dealt with by such High Court in accordance with the provisions of the Act.

Below pasted is the link of our News Alert on aforesaid notification:

<http://amitadesai.com/images/uploads/downloads/News%20Alert%20on%20Powers%20of%20NCLT.pdf>

The link of the above Notification is as under:

<http://egazette.nic.in/WriteReadData/2016/172976.pdf>

C. Companies (Removal of Difficulties) Fourth Order, 2016.

MCA has issued notification no. S.O. 3676(E) dated December 7, 2016 introducing Companies (Removal of Difficulties) Fourth Order, 2016.

Proceedings relating to cases other than winding-up, for which orders for allowing or otherwise of the proceedings are not reserved by the High Court shall be transferred to the Tribunal.

The proceedings relating to winding up of Companies which have not been transferred from the High Courts will be dealt with in accordance with provisions of the Companies Act, 1956 and the Companies (Court) Rules, 1959.

Below pasted is the link of our News Alert on aforesaid notification:

<http://amitadesai.com/images/uploads/downloads/News%20Alert%20on%20Powers%20of%20ONCLT.pdf>

The link of the above Notification is as under:

<http://egazette.nic.in/WriteReadData/2016/172971.pdf>

D. Enforcement of Insolvency and Bankruptcy Code (Section 33 to 54)

Ministry of Corporate Affairs (“MCA”) vide its notification dated December 09, 2016 has notified section 33 to 54 (both inclusive) of Insolvency and Bankruptcy code, 2016 (31 of 2016), which shall be effective from December 15, 2016. Section 33 to section 54 relates to the Liquidation process.

The link of the above Notification is as under:

http://www.mca.gov.in/Ministry/pdf/Notification_14122016.pdf

E. Companies (Compromises, Arrangements and Amalgamations) Rules, 2016

Ministry of Corporate Affairs (“MCA”) vide its notification dated December 14, 2016 has notified Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 which shall be effective from December 15, 2016.

Earlier, on December 7, 2016 MCA had notified certain section including section 230 (Compromises, Arrangements and Amalgamations) of the Companies Act, 2013. Both section and Rules relating to section 230 has come into force with effect from December 15, 2016.

Below pasted is the link of our News Alert on aforesaid notification:

[http://amitadesai.com/images/uploads/downloads/News%20Alert%20on%20Rules%20on%20Co\(Comp.%20Arrangt%20and%20Amalg\)%20Rules%202016.pdf](http://amitadesai.com/images/uploads/downloads/News%20Alert%20on%20Rules%20on%20Co(Comp.%20Arrangt%20and%20Amalg)%20Rules%202016.pdf)

The link of the above Notification is as under:

http://www.mca.gov.in/Ministry/pdf/compromisesrules2016_15122016.pdf

F. National Company Law Tribunal (Procedure for reduction of share capital of Company) Rules, 2016:

MCA vide its notification dated December 15, 2016 has issued rules of reduction of share capital of Company under Companies Act, 2013.

Form of Application or Petition for Reduction of share capital under section 66

An application to Tribunal to confirm a reduction of share capital of a Company shall be made in **Form No. RSC-1** along with the fees of Rs. 5000/-. The application shall be accompanied with following documents

- List of creditors certified by Managing Director or in his absence by any two Directors which is made as on a date not earlier than 15days prior to the date of filing of an application
- A certificate from auditor to the effect that the list of creditor is correct
- A certificate by the company's auditor to the effect that the accounting treatment proposed by the Company for reduction of share capital
- Declaration by director in respect of any repayment of the deposits or the interest

The link of the above Notification is as under:

<http://mca.gov.in/Ministry/pdf/NCLTRules2016.pdf>

G. Power delegated to Regional Director

MCA vide its notification dated December 19, 2016 has notified that Central Government has delegated certain powers to the Regional Director at Mumbai, Kolkata, Chennai, New Delhi, Ahmedabad, Hyderabad and Shillong subject to the condition that Central Government may revoke such delegation of powers or may itself exercise the powers under the said sections.

Powers delegated under following sections:

Section 8(4) (i) – A Company registered under section 8 shall not alter the provisions of its MOA & AOA except with the previous approval of the Central Government.

Section 8(6) -The Central Government may, by order, revoke the licence granted to a company registered under this section if the company contravenes any of the requirements of this section or any of the conditions subject to which a licence is issued or the affairs of the company are conducted fraudulently or in a manner violative of the objects of the company or prejudicial to public interest, and without prejudice to any other action against the company under this Act, direct the company to convert its status and change its name to add the word "Limited" or the words "Private Limited", as the case may be, to its name and thereupon the Registrar shall, without prejudice to any action that may be taken under sub-section (7), on application, in the prescribed form, register the company accordingly:

Provided that no such order shall be made unless the company is given a reasonable opportunity of being heard.

Section 13 (4) & (5) -The alteration of the memorandum relating to the place of the registered office from one State to another shall not have any effect unless it is approved by the Central Government on an application in such form and manner as may be prescribed.

The Central Government shall dispose of the application under sub-section (4) within a period of sixty days and before passing its order may satisfy itself that the alteration has the consent of the creditors, debenture-holders and other persons concerned with the company or that the sufficient provision has been made by the company either for the due discharge of all its debts and obligations or that adequate security has been provided for such discharge.

Section 111(3) - The company shall not be bound to circulate any statement as required by clause (b) of sub-section (1), if on the application either of the company or of any other person who claims to be aggrieved, the Central Government, by order, declares that the rights conferred by this section are being abused to secure needless publicity for defamatory matter.

Section 140(1) - The auditor appointed under section 139 may be removed from his office before the expiry of his term only by a special resolution of the company, after obtaining the previous approval of the Central Government in that behalf in the prescribed manner.

Section 16 - Rectification of name of Company.

Section 87 – Rectification by Central Government in Register of Charge

Section 230(5) - A notice under sub-section (3) along with all the documents in such form as may be prescribed shall also be sent to the Central Government, the income-tax authorities, the Reserve Bank of India, the Securities and Exchange Board, the Registrar, the respective stock exchanges, the Official Liquidator, the Competition Commission of India established under sub-section (1) of section 7 of the *Competition Act, 2002 (12 of 2003), if necessary, and such other sectoral regulators or authorities which are likely to be affected by the compromise or arrangement and shall require that representations, if any, to be made by them shall be made within a period of thirty days from the date of receipt of such notice, failing which, it shall be presumed that they have no representations to make on the proposals.

Section 233 (2), (3),(4),(5)and (6) –

(2)The transferee company shall file a copy of the scheme so approved in the manner as may be prescribed, with the Central Government, Registrar and the Official Liquidator where the registered office of the company is situated.

(3) On the receipt of the scheme, if the Registrar or the Official Liquidator has no objections or suggestions to the scheme, the Central Government shall register the same and issue a confirmation thereof to the companies.

(4) If the Registrar or Official Liquidator has any objections or suggestions, he may communicate the same in writing to the Central Government within a period of thirty days:

Provided that if no such communication is made, it shall be presumed that he has no objection to the scheme.

(5) If the Central Government after receiving the objections or suggestions or for any reason is of the opinion that such a scheme is not in public interest or in the interest of the creditors, it may file an application before the Tribunal within a period of sixty days of the receipt of the scheme under sub-section (2) stating its objections and requesting that the Tribunal may consider the scheme under section 232.

(6) On receipt of an application from the Central Government or from any person, if the Tribunal, for reasons to be recorded in writing, is of the opinion that the scheme should be

considered as per the procedure laid down in section 232, the Tribunal may direct accordingly or it may confirm the scheme by passing such order as it deems fit:

Provided that if the Central Government does not have any objection to the scheme or it does not file any application under this section before the Tribunal, it shall be deemed that it has no objection to the scheme.

Section 272 (3) – Petition for winding up.

Section 348 (1) – If the winding up of a company is not concluded within one year after its commencement, the Company Liquidator shall, unless he is exempted from so doing either wholly or in part by the Central Government, within two months of the expiry of such year and thereafter until the winding up is concluded, at intervals of not more than one year or at such shorter intervals, if any, as may be prescribed, file a statement in such form containing such particulars as may be prescribed, duly audited, by a person qualified to act as auditor of the company, with respect to the proceedings in, and position of, the liquidation,—

(a) in the case of a winding up by the Tribunal, with the Tribunal; and

(b) in the case of a voluntary winding up, with the Registrar:

Section 361 – Summary procedure for liquidation.

Section 362 – Sale of assets and recovery of debts due to Company.

Section 364 - Appeal by Creditor.

Section 365 - Order of Dissolution of Company.

Section 399 (1)(i) - inspect by electronic means any documents kept by the Registrar in accordance with the rules made, being documents filed or registered by him in pursuance of this Act, or making a record of any fact required or authorised to be recorded or registered in pursuance of this Act, on payment for each inspection of such fees as may be prescribed.

Section 442 – Mediation and Conciliation Panel.

H. National Company Law Tribunal (Amendment) Rules, 2016

MCA Vide its notification dated December 20th 2016 has issued National Company Law Tribunal (Amendment) Rules, 2016 (“Principle Rule”). The principal rules were issued by MCA vide notification dated 21st July, 2016, that came into force from 21st July, 2016.

The link of the above Notification is as under:

[http://mca.gov.in/Ministry/pdf/NCLT\(Amendment\)Rules_21122016.pdf](http://mca.gov.in/Ministry/pdf/NCLT(Amendment)Rules_21122016.pdf)

I. Enforcement Of Section 248 To 252 Of Companies Act, 2013

MCA vide its notification dated December 26, 2016 has notified section 248 to 252 of Companies Act, 2013 related to removal of Names of Company from the Register of Companies. The said sections are enforced from December 26, 2016.

Section 560 of Companies Act, 1956 related to Striking off the Companies name is replaced with enforcement of abovementioned section.

The procedure for removal of name of defunct Company under Fast Track Exit Scheme (FTE) will be replaced by new rules notified on the same day namely, Companies (Removal Of Names Of Companies From The Register Of Companies) Rules, 2016.

Below mentioned are the key provisions:

➤ **Removal of name of Company from Register on Suo-motu basis:**

The Registrar of Companies may remove the name of a Company from the register of Companies where Registrar has reasonable cause to believe that –

- (a) company has failed to commence its business within one year of its incorporation;
- (b) the subscribers to the memorandum have not paid the subscription which they had undertaken to pay within a period of one hundred and eighty days from the date of incorporation of a company and a declaration under sub-section (1) of section 11 to this effect has not been filed within one hundred and eighty days of its incorporation; or
- (c) a company is not carrying on any business or operation for a period of two immediately preceding financial years and has not made any application within such period for obtaining the status of a dormant company under section 455,

However following categories of Companies cannot be removed from the register

- I. Listed Companies;
- II. Companies that have been delisted due to non-compliance of listing regulations or listing agreement or any other statutory laws;
- III. Vanishing Companies;
- IV. Companies where inspection or investigation is ordered;
- V. Companies where notice under section 234 of Companies Act 1956 or section 207 of Companies Act, 2013 has been issued by Registrar;
- VI. Companies against which any prosecution for an offence is pending in any court;
- VII. Companies whose application for compounding is pending before the competent authority;
- VIII. Companies, which have accepted public deposit which are either outstanding or the Company is in default in repayment of the same;
- IX. Companies having charges which are pending for satisfaction, and
- X. Companies registered under section 25 of the Companies Act, 1956 or section 8 of the Act.

➤ **Application for removal of name**

An application can be made by Company for removing the name from Register under section 248 (2) of the Act by submitting **Form STK-2** along with prescribed **fees of ₹ 5000/-**. Every application shall be accompanied with the following attachments:

1. No Objection Certificate from appropriate Authority concerned
2. Indemnity Bond from Director in Form STK-3
3. Statement of Accounts certified by Chartered Accountant
4. An affidavit from Director in Form STK-4
5. Special Resolution duly signed by every Director
6. Statement regarding pending litigations, if any, involving Company

In case of Foreign National/ NRI, Indemnity Bond and declaration shall be notarized or apostilled or consularised.

- The notice to be published by MCA shall be in Form STK 5 or STK 6 respectively. Company shall also be required to place application on its website till its disposal.

The link of the above circular is as under:

http://mca.gov.in/Ministry/pdf/General_Circular_16_2016_26122016.pdf

The link of the above Notification is as under:

http://mca.gov.in/Ministry/pdf/Notification_28122016.pdf

The link of the above circular is as under:

http://mca.gov.in/Ministry/pdf/Rules_28122016.pdf

SEBI UPDATES:

A. Streamlining the process for acquisition of shares pursuant to tender offers made for takeovers, buy back and delisting of securities:

- SEBI vide its circular dated December 9, 2016 has simplified the process for acquisition of Shares pursuant to Tender-Offers made for Takeovers, Buy Back and Delisting of Securities.
- In the Current Mechanism, various transactions such as transfer of shares to special account, payment of consideration to shareholders, etc are routed through stock broker, however vide this circular, the process got more simplified as henceforth shares would be directly transferred to account maintained by clearing corporation and consideration would be directly credited to shareholders bank accounts without the interference of Stock Brokers.
- The Aforesaid measures will simplify the process and reduce the risk to investors.
- The link of the above circular is as under:
http://www.sebi.gov.in/cms/sebi_data/attachdocs/1481278444900.pdf

B. Filing of forms pas-4 and pas-5 in case of issuance of debt securities on private placement basis:

- SEBI vide its circular dated December 23, 2016 initiated filing of PAS-4 (Private Placement letter of offer) and PAS-5 (Record of Private Placement letter of offers) with ROC and SEBI in Soft Copy.
- Earlier Companies coming out with Private Placement of Debt Securities had to file PAS-4 and PAS-5 with ROC and SEBI in hard copy, however SEBI vide this circular as part of green initiative mandated filing of the same in soft copy, PDF format.
- The link of the above circular is as under:
http://www.sebi.gov.in/cms/sebi_data/attachdocs/1482490367327.pdf

RBI UPDATES:

A. Requirement of Customer Due Diligence and need for maintenance of records

RBI vide its notification dated December 02, 2016 has intimated that in terms of operation in dormant accounts with banks may be allowed after due diligence as per risk category of the customer.

Master Direction on KYC dated February 25, 2016, addressed to all the Regulated Entities (REs) in terms of which:

- a) As part of the Customer Due Diligence Procedure, certified copies of officially valid documents for proof of identity and address are to be obtained while establishing an account based relationship;
- b) REs shall, among others, take steps for preserving the customer account information including preservation of records pertaining to the identification of the customers and their addresses while opening the account, for at least five years after the business relationship ended.

It is reiterated that REs shall ensure the compliance, inter alia, as applicable on activation of dormant accounts, customer due diligence and record management, scrupulously.

The link of above notification is as under:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10767&Mode=0>

B. Amendments to Master Direction

RBI vide notification dated December 08, 2016 has intimated that in exercise of the power conferred under section 35A of the Banking Regulation Act, 1949 and section 35A read with section 56 of the Act, Rule 9 (14) of the Prevention of Money Laundering (Maintenance of Records) Rules, 2005 and all other laws enabling the Reserve Bank in this behalf, the Reserve Bank makes the various amendments in the definitions of KYC norms.

The link of above notification is as under:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10770&Mode=0>

C. Amendments on Master Direction on Know Your Customer

RBI vide notification dated December 08, 2016 has intimated the two major changes:

- a) It has been decided to allow One Time Pin (OTP) based e-KYC subject to certain restrictions
- b) All Schedule Commercial Bank (SCBs) are required to invariably upload the KYC data pertaining to all new individuals accounts opened on or after January 01, 2017, with Central KYC Records Registry.

The link of above notification is as under:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10771&Mode=0>

D. Compliance to provision of Master Direction on Know Your Customer (KYC)

RBI vide notification dated December 15, 2016 has intimated a compliance to the following provision of Master Direction on Know Your Customer (KYC):

- i. The Concurrent/internal Audit system of the Regulated Entities has to verify the compliance with KYC/AMC policies and procedures submit quarterly audit notes and compliance to the Audit Committee.
- ii. Instruction on operation of 'Small Accounts'
- iii. It is advised that the PAN of customers shall be obtained and verified while undertaking transaction as per the provision of Income Tax (I.T.) Rule 114 B, applicable to Banks

It has been brought to the notice of the RBI that strict compliance with above provision is not being ensured in some cases.

The link of above notification is as under:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10777&Mode=0>

E. Foreign Exchange Management (Transfer or Issue of Security by a person Resident outside India) Regulation, 2016

RBI vide Notification dated December 07, 2016 has intimated the following amendments in the Foreign Exchange Management (Transfer or issue of security by a person Resident outside India) Regulation, 2000:

SL. NO.	Sector/ Activity	Foreign Investment Cap (%)	Entry Route
AGRICULTURE			
1.	Agriculture & Animal Husbandry		
	a) Floriculture, Horticulture and Cultivation of vegetable & Mushrooms under controlled conditions; b) Development and production of seeds and planting material; c) Animal Husbandry (including breeding of dogs), Pisciculture, Aquaculture, Apiculture; and d) Services related agro and allied sectors.	100%	Automatic
5	Manufacturing	100%	Automatic
6	Defence		
	Defence Industry subject to industrial license under the industries (Development & Regulation) Act, 1951; and Manufacturing of small arms and ammunition under Arms Acts, 1959	100%	Automatic
Services Sector			
Information Services			

7	Broadcasting		
7.1	Broadcasting Carriage Services		
7.1.1	a) Teleports (setting up of up-linking HUBs/Teleports); b) Direct at Home; c) Cable Networks; d) Mobile TV; e) Headend-in-the Sky Broadcasting Services;	100%	Automatic
7.1.2	Cable Networks (Other MSOs not undertaking upgradation of networks towards digitalization and addressability and Local Cable Operators (LCOs)).	100%	Automatic
9	Civil Aviation		
9.2	Airports		
	a) Greenfield projects	100%	Automatic
	b) Existing Projects	100%	Automatic
16.3	Single Brand Retail trading (SBRT)	100%	Automatic up to 49%. Government route beyond 49%
17.	Pharmaceuticals		
17.1	Greenfield	100%	Automatic
17.2	Brownfield	100%	Automatic up to 74% Government route beyond 74%

The link of above notification is as under:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10800&Mode=0>

F. Master circular on Issuance and operations of Prepaid Payment Instruments

RBI vide circular dated December 27, 2016 has intimated to facilitate greater adoption of digital payments on issuance and operation of prepaid payment Instruments India:

- i. It include other entities / 'employers' such as unlisted corporate / partnership firms / sole proprietorship / public organization like municipal corporations, urban local bodies, etc. (employers) for onward issuances to their staff / employees / contract workers etc.
- ii. Banks shall extend this facility only to those entities / 'employer' that have a bank account with them and after obtaining an undertaking that they are not availing of this facility from any other bank.
- iii. Verification of the identity of the staff / employees / contract workers, etc. shall be the responsibility of the concerned employees.
- iv. Bank shall load/ reload PPIs after obtaining necessary authorization.

The link of above notification is as under:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10799&Mode=0>

G. Introductions of Interest Rate Options in India

RBI vide notification dated December 29, 2016 has intimated that Eligible Market participants are permitted to take positions Interest Rate Options for their own balance sheet management and for market making purposes. Participants, who are eligible as market makers are, however, advised to ensure that appropriate infrastructure and risk management systems are in place.

The link of above notification is as under:

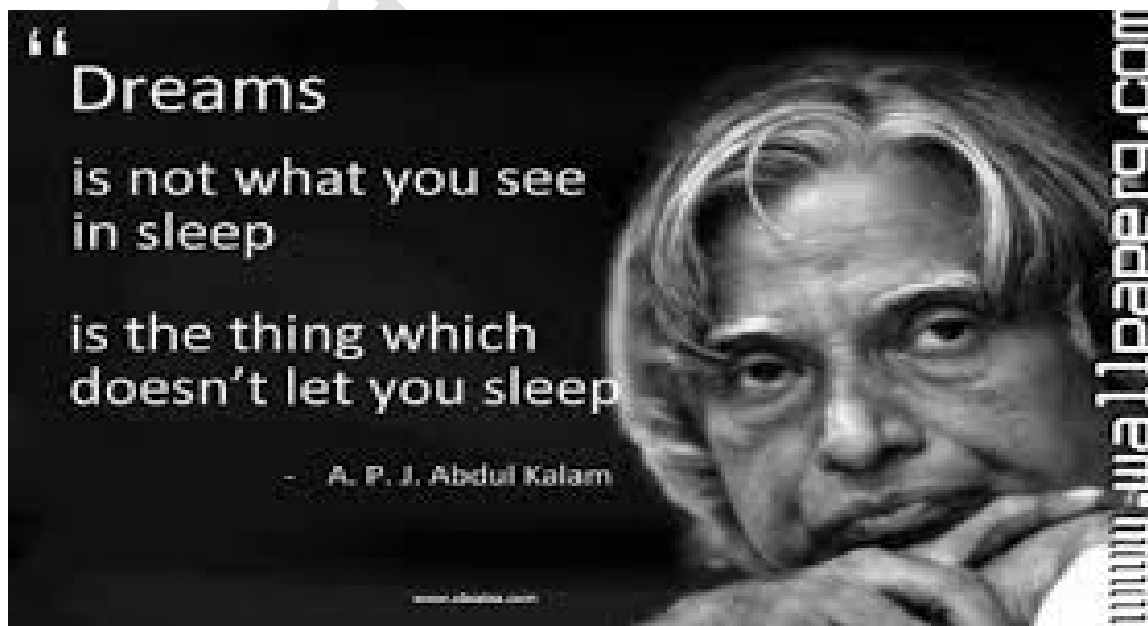
<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10802&Mode=0>

ARTICLE OF THE MONTH

Below mentioned is the link for our Article of the Month Major Amendments by Ministry of Corporate Affairs (MCA) for the Calendar Year January to December 2016:

<http://amitadesai.com/images/uploads/downloads/Article%20of%20the%20Month%20on%20Highlights%20of%202016.pdf>

INSPIRATIONAL QUOTES



Disclaimer

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