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**Some important changes happened in the Corporate and Legal world in the month of September 2018:**

**1. Relaxation of additional fees and extension of last date of filing of Form BEN-2 under the Companies Act, 2013**

MCA vide General Circular No. 07/2018 dated on 6<sup>th</sup> September, 2018 have given relaxation of additional fees and extension for Form BEN2.

The BEN form relates to disclosures by the companies of the ultimate beneficial owners. This form is introduced for obtaining the real ownerships behind all corporate entities.

As there were many issues and representation, the Ministry of Corporate Affairs has allowed that the time limit for filing the BEN-2 form would be 30 days from the date of deployment of BEN-2 e-form on the MCA-21 portal and no additional fee shall be levied if the same is filed within 30 days from the date of deployment of the said e-form.

**Impact:** Relief was granted to stakeholders as last date of filing of BEN-2 under the Companies Act, 2013 was extended for 30 days from the date of deployment of BEN-2 e-form on MCA-21 portal without additional fees. **The said form is not yet been notified.**

**2. Notification on 19<sup>th</sup> September, 2018**

MCA vide notification dated 19<sup>th</sup> September, 2018 has amended Section 135 of the Companies Act, 2013 read with the Companies (Corporate Social Responsibility Policy) Rules, 2014. So under new provisions, now the following provisions are to be considered and adopted:

1. Instead of three preceding financial year, now only preceding financial year is to be considered.
2. In case, there are no independent directors in the company, two or more directors will form the CSR Committee for the company.



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### 3. Amendment in Companies (Prospectus and Allotment of Securities) Rules, 2014

MCA vide notification dated 10<sup>th</sup> September, 2018 has granted powers to Central Government to Companies (Prospectus and Allotment of Securities) Rules, 2014 and consequently, rule 9 is been modified and new rule 9A is been introduced.

Under the newly introduced rule9A, **ALL** existing unlisted public companies will be required to issue securities in dematerialized form **only** as well as facilitate dematerialization of existing securities in dematerialized form

(2) Every unlisted public company making any offer for issue of any securities or buyback of securities or issue of bonus shares or rights offer shall ensure that before making such offer, entire holding of securities of its promoters, directors, key managerial personnel has been dematerialized in accordance with provisions of the Depositories Act 1996 and regulations made there under.

(3) Every holder of securities of an unlisted public company,-

(a) Who intends to transfer such securities on or after 2<sup>nd</sup> October, 2018, shall get such securities dematerialized before the transfer; or

(b) Who subscribes to any securities of an unlisted public company (whether by way of private placement or bonus shares or rights offer) on or after 2<sup>nd</sup> October, 2018 shall ensure that all his existing securities are held in dematerialized form before such subscription.

(4) Every unlisted public company shall facilitate dematerialization of all its existing securities by making necessary application to a depository as defined in clause (e) of sub-section (1) of section 2 of the Depositories Act, 1996 and shall secure International security Identification Number (ISIN) for each type of security and shall inform all its existing security holders about such facility.

(5) Every unlisted public company shall ensure that \_

(a) It makes timely payment of fees (admission as well as annual) to the depository and registrar to an issue and share transfer agent in accordance with the agreement executed between the parties;



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(b) It maintains security deposit at all times, of not less than two years, fees with the depository and registrar to an issue and share transfer agent in such form as may be agreed between the parties; and

(c) it complies with the regulations or directions or guidelines or circulars, if any, issued by the securities and Exchange Board or Depository from time to time with respect to dematerialization of shares of unlisted public companies and matters incidental or related thereto.

(6) No unlisted public company which has defaulted in sub-rule (5) shall make offer of any securities or buyback its securities or issue any bonus or right share till the payments to depositories or registrar to an issue and share transfer agent are made.

(7) Except as provided in sub-rule (s), the provisions of the Depositories Act 1996, the securities and Exchange Board of India (Depositories and participants) Regulations, 1996 and the securities and Exchange Board of India (Registrars to an Issue and share Transfer Agents) Regulations, 1993 shall apply mutatis mutandis to dematerialization of securities of unlisted public companies.

(8) The audit report provided under regulation 55A of the securities and Exchange Board of India (Depositories and participants) Regulations, 1996 shall be submitted by the unlisted public company on a half-yearly basis to the Registrar under whose jurisdiction the registered office of the company is situated.

(9) The grievances, if any, of security holders of unlisted public companies under this rule shall be filed before the Investor Education and protection Fund Authority.

(10) The Investor Education and protection Fund Authority shall initiate any action against a depository or participant or registrar to an issue and share transfer agent after prior consultation with the securities and Exchange Board of India.

**Impact:** Section have been amended & modified to bring consistency and transparency.

#### **4. Amendment in the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014**

MCA vide notification dated 10<sup>th</sup> September, 2018 has granted powers to Central Government to amend the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014.



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In exercise of the powers conferred by sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, namely: –

1. in the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014,

(i) In rule 6,

(a) For the heading ‘application to the Central Government’ the heading ‘Parameters for consideration of remuneration’ shall be substituted.

(b) The words ‘Central Government’ shall be omitted.

(ii) In rule 7, sub-rule (2) shall be omitted

(iii) For form no.MR-2, the following form shall be substituted

**5. Amendment in the Companies (Corporate Social Responsibility Policy) Rules, 2014**

MCA vide notification dated 19<sup>th</sup> September, 2018 has granted central Government to amend the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014,

2. In the Companies (Corporate Social Responsibility Policy) Rules, 2014, -

(1) In rule 2 refers to the definition in which:

(a) In sub-rule (1), in sub-clause (i) of clause (c), after the words “relating to activities”, the words “, areas or subjects” shall be inserted;

(b) in sub-rule (1), in sub-clause (ii) of clause (c), for the words “cover subjects enumerated”, the words “include activities, areas or subjects specified” shall be substituted;

(c) In sub-rule (1), in clause (e), for the words “company as”, the words “company in areas or subjects” shall be substituted.



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(2) In rule 5 refers to the CSR Committee, in clause (i) of sub rule (1), for the words “an unlisted public company or a private company”, the words “a company” shall be substituted.

(3) In rule 6 refers to CSR Policy (a) In sub-rule (1), in clause (a), for the words “falling within the purview of” the words “areas or subjects specified in” shall be substituted;  
(b) In sub-rule (1), in second proviso to clause (b), for the words, “activities included in Schedule VII” the words “areas or subjects specified in Schedule VII” shall be substituted.

(4) In rule 7 refers to CSR Expenses, for the words, “purview of”, the words “areas or subjects, specified in” shall be substituted.

## **6. Amendment in the Companies (Appointment and Qualification of Directors) Rules, 2014.**

MCA vide notification dated 20<sup>th</sup> September, 2018 has granted central Government to amend the Companies (Appointment and Qualification of Directors) Rules, 2014.

In exercise of the powers conferred under second proviso to sub-section (1), sub-sections (4), sub-section (6) of section 149, sub-section (3) and (4) of section 150, section 151, Sub section (5) of section 152, section 153, section 154, section 157, section 160, sub-section (1) of section 168 of and section 170 read with section 469 of the companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Appointment and Qualification of Directors) Rules, 2014, namely: -

In the rule 12A of the Companies (Appointment and Qualification of Directors) Rules, 2014, the words and figures “before 15th September, 2018,” the words and figures “before 5th October, 2018” shall be substituted

## **7. Amendment in the Companies (Registered Valuers and Valuation) Rules, 2017**

MCA vide notification dated 25<sup>th</sup> September, 2018 has granted central Government to amend the Companies (Registered Valuers and Valuation) Rules, 2017

In section 247 read with section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Registered Valuers and Valuation) Rules, 2017, namely:-

In rule 11 of the Companies (Registered Valuers and Valuation) Rules, 2017, for the figures, letters and word “30th September, 2018” occurring at both the places, the





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figures, letters and word "31<sup>st</sup> January, 2019" shall be substituted and in the Rule 14 clause (f), the words "one year", the words "two years" shall be substituted.

## 8. Notification issue on 18<sup>th</sup> September, 2018 for Limited Liability Partnership

MCA vide notification dated 18<sup>th</sup> September, 2018 has granted central Government to make the following rules further to amend the Limited Liability Partnership Rules, 2009.

Form 1 has been replaced with Form RUN-LLP (Reserve Unique Name-Limited Liability Partnership) and Form 2 has been replaced with Form FiLLiP (Form for incorporation of Limited Liability Partnership), Form 5, Form 17 and Form 18 shall be processed by the Registrar, Central Registration Centre (CRC) for and on behalf of the jurisdictional Registrar and also Provided that if an individual required to be appointed as designated partner does not have a DPIN or DIN, application for allotment of DPIN shall be made in Form FiLLiP :

Provided further that the application for allotment of DPIN shall not be made by more than two individuals in Form FiLLiP:

(2) (a) In case of re-submission of form, re-submit form within fifteen days from the date of such intimation given by the Registrar.

(b) After re-submission of the document, if the Registrar still finds that the document is defective or incomplete in any respect, he shall give one more opportunity of fifteen days time to remove such defects or deficiencies, total period of re-submission should not exceed thirty days.

(3) The Certificate of Incorporation of limited liability partnership shall be issued by the Registrar in Form 16."



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