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COMPANY SECRETARIES

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**Some important changes happened in the Corporate and Legal world in the month of March 2019:**

### **1. Amendment in the Companies (Incorporation) Rules, 2014**

MCA vide notification dated 6<sup>th</sup> March, 2019 has granted powers to Central Government to amend the Companies (Incorporation) Rules, 2014.

- (a) These rules may be called the Companies (Incorporation) Second Amendment Rules, 2019. They shall come into force on the date of their publication in the Official Gazette.
- (b) Earlier in notification dated 20<sup>th</sup> January, 2018, it was stated that companies incorporated with effect from the 26<sup>th</sup> January, 2018, with a nominal capital of less than or equal to rupees ten lakhs, fees on Form INC 32 (SPICe) shall not be applicable.

The words 'equal to rupees ten lakhs' shall now be substituted with 'equal to rupees fifteen lakhs' and will be in effect from 18<sup>th</sup> March, 2019.

**Impact:** This is a great initiative by MCA. Now every company with a nominal capital of less than or equal to rupees fifteen lakhs shall not pay fees on Form INC 32 (SPICe) with effect from 18<sup>th</sup> March, 2019.

### **2. Amendment in the Companies (Incorporation) Rules, 2014**

MCA vide notification dated 29<sup>th</sup> March, 2019 has granted powers to Central Government to amend the Companies (Incorporation) Rules, 2014.

- (a) These rules may be called the Companies (Incorporation) Third Amendment Rules, 2019. They shall come into force on the date of their publication in the Official Gazette.
- (b) A new rule was inserted namely Rule 38A which is in reference to Application for Registration of the Goods and Services Tax Identification Number (GSTIN), Employees' State Insurance Corporation (ESIC) registration plus Employees Provident Fund Organization (EPFO) registration.



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- (c) The application for incorporation of a company under rule 38 shall be accompanied by e-form AGILE (INC 35).
- (d) By filing e-form AGILE along with SPICE incorporation form at the time of registration, the company would be automatically enrolled for GSTIN, ESIC and EPFO. This is a link form to Incorporation forms namely Form INC 32, Form INC 33 and Form INC 34.
- (e) Effective dates for applying registrations through e-form AGILE are as follows:
  - For GSTIN: 31<sup>st</sup> March, 2019
  - For EPFO: 8<sup>th</sup> April, 2019
  - For ESIC: 15<sup>th</sup> April, 2019
- (f) Form AGILE contains details of description of goods and/or services to be provided by the Company, HSN code and/or SAC code i.e Codes used to classify goods and services under GST regime in India as provided on CBIC website ([www.cbic.gov.in](http://www.cbic.gov.in)), Directors' details, proof of office address etc.

**Impact:** This is a one more step by MCA for ease of doing business. Companies can apply for GSTIN, ESIC and EPFO altogether with Incorporation.

### 3. Clarification on filing of e-form RD-1

MCA vide notification dated 18<sup>th</sup> December, 2018 had notified Companies (Incorporation Fourth Amendment) Rules, 2018, whereby applications u/s 2(41) for change in a financial year and u/s 14 of the Companies Act, 2013 (conversion of public limited company into private company), has to be filed in e-form RD-1 which shall be processed by Regional Directors.

MCA clarified that until a revised version of e-form RD-1 is introduced, application made in e-form RD-1 for change in a financial year and conversion of public limited company into private company shall not be rejected on the basis that word 'OTHER' in the form is selected for purpose of application.

**Impact:** It was clarified by MCA that application in e-form RD-1 in context to section 2(41) and 14 of the Companies Act, 2013 shall not be merely rejected on selection 'OTHER' category in purpose of application.



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### 4. Case Study: Whether proceedings under Section 138 (Dishonour of cheque) of the Negotiable Instrument Act, 1881 be considered as civil or criminal in nature.

The nature of proceedings under Negotiable Instrument Act is still under a grey patch and ambiguous owing to the different views of the Court.

The Hon'ble Delhi High Court in the matter of Bhajanpura Cooperative Urban Thrift and Credit Society Ltd. v/s. Sushil Kumar, MANU/DE/2084/2014 held that proceedings under section 138 of NI Act, 1881 primarily is of quasi-civil and criminal in nature.

In M/s Meters and Instruments Pvt. Ltd. & Anr. V. Kanchan Mehta, (2018) 1 SCC 560, the Supreme Court observed that the offence under section 138 is primarily a civil wrong and the purpose of the provision is predominantly compensatory. The penal element is mainly for the purposes of enforcing the compensatory element.

The Hon'ble Supreme Court in Kaushalya Devi Massand v. Rookkishore Khore, (2011) 4 SCC 593 had held that the gravity of a complaint under the Negotiable Instrument Act, 1881 cannot be equated with an offence under the provisions of the Indian Penal Code, 1860 ("IPC") or other criminal offences. As per the Hon'ble Supreme Court, "an offence under Section 138 NI act is almost in the nature of a civil wrong, which has been given criminal overtones."

In Damodar S. Prabhu v. Sayed Babalal, it was held by the Apex Court that section 138 is actually in the nature of a civil wrong which has been given criminal implications. This is because the interest of the complainant is the recovery of the money and not sending the accused behind bars.

**Conclusion:** Basically, proceedings under Section 138 (Dishonour of cheque) of the Negotiable Instrument Act, 1881 is of civil nature but has been given criminal outcome.

### 5. Article: Corporate Social Responsibility: Comply or Explain

As per Companies Act, 2013, every company of Specified categories has to announce a Corporate Social Responsibility (CSR) policy. Specified categories includes every company having Networth of 500 crores or more or Turnover of 1000 crores or more or Net profit of 5 crores or more during immediately preceding financial year.



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Specified categories of companies are required to spend at least two percent of their average net profits made during the three immediately preceding financial years, in pursuance of their CSR policy towards specified activities.

During the process, there was a debate as to whether the spending requirements must be made mandatory, but the law adopts a “comply-or-explain” approach. Hence, while there is no obligation to mandatorily spend the prescribed share of profit towards CSR, there is a requirement for companies that do not comply to explain the reasons for non-compliance. These requirements, enshrined under section 135 of the Companies Act and in the Companies (Corporate Social Responsibility Policy Rules), 2014 came into effect on and from April 1, 2014.

**Conclusion:** There is no compulsion for the specified companies to spend share of profits towards CSR activity but the companies not complying with the same need to explain reason of non-compliance.

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We suggest readers to draw their conclusions after taking into consideration various other relevant sections, rules to be notified from time to time and applicable Secretarial Standards, Accounting Standards and Guidance notes and other notifications, circulars and amendments notified from time to time.

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