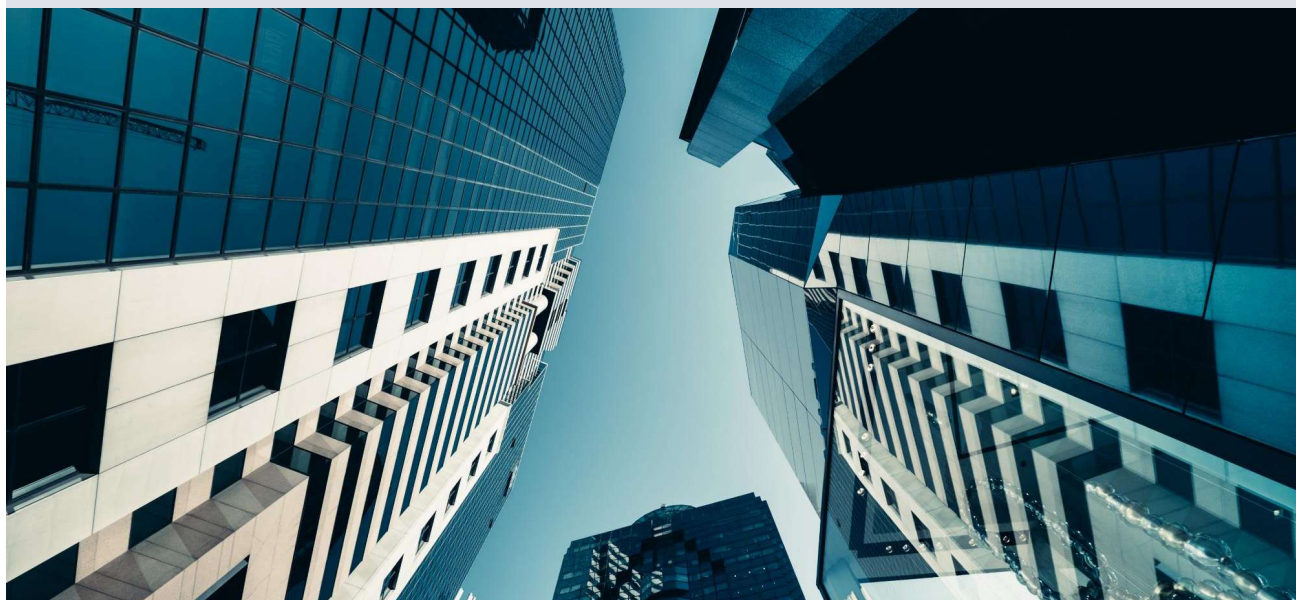

JB Nagar CPE Study Circle – WIRC - ICAI

**Study Circle Meeting –
16th June 2024**

**Session on Company Law –
Recent Amendments under
Companies Act – Applicable to
Private Companies**

- CS Raj Kapadia
- +91 9702017664
- csraj@rkkapadia.in



Agenda



Amendments under the Companies Act and Rules therein

Demat Provisions applicable to Private Companies

Beneficial Ownership and related provisions

Recent Adjudication Orders by RoC and RD

Q & A

Change Request Form

Circular w.e.f 19th February 2024



Web Based form



Request to Roc – Correction in Master Data / Comply with directions of Court / Tribunal



Not to be used

as substitute for existing process / forms for existing reporting requirement, approval related services. For process which can be resolved by raising tickets / helpdesk

Notification dated 2nd February 2024

Establishment of CPC



Centralized Processing Centre established at Indian Institute of Corporate Affairs (Gurgaon Office)



Registrar of CPC shall process and dispose of E Forms filed with fees.



Jurisdictional Registrar to continue to have jurisdiction in respect of all other provisions of Companies Act and Rules.



Forms processed by CPC to be notified

Forms under jurisdiction of Registrar of CPC

Details of E Forms with CPC

- Filing of Resolutions – S 117
 - Special Resolutions
 - Special Majority
 - Terms of MD
 - Winding up related resolutions
- Filing for 179(3) NA for Private Companies
 - Calls on Shares
 - Buyback
 - Borrowing
 - Invest / give loans
 - Approve FS
 - Amalgamate / Merger / Reconstruction / Takeover
 - Political Contributions
 - Appoint / remove KMP
 - Appoint Internal Auditor / Secretarial Auditor

Details of E Forms with CPC

- Alteration of Share Capital – SH 7
 - Increase in auth capital
 - Division / split
- E Form INC-24 – Change of Name
- INC 6 – Conversion of OPC
- INC 27 – Public to Pvt or PVT to Public
- INC 20 – Surrender of Sec 8 License
- DPT 3 – Sec 73 and 76 – Return of Deposit
- MSC 1 – Status of Dormant Company
- MSC 4 – Status of Active Company
- SH 8 – Buyback Offer
- SH 9 – Declaration of Solvency
- SH 11 – Return of Buyback

Notification

dt. 30/10/2023

Section 23 Sub – Clauses 3 and 4 made effective pursuant to Companies Amendment Act 2020

Section 23 (3) of Companies Act, 2013, as amended vide Companies Amendment Act 2020 was notified.

Permissible direct listing in stock exchanges

Permitted foreign jurisdiction

Companies (Listing of Equity Shares in Permissible Jurisdiction) Rules notified on 24th January 2024

Unlisted Public and Listed – Conditions as per SEBI, comply with IND AS, Prospectus in LEAP 1 within 7 days of finalizing and filing with exchanges.

LEAP Rules 2024

Permitted Exchanges

- Jurisdiction – International Financial Services Centre in India (Currently in GIFT City)
- Permitted Stock Exchange –
 - India International Exchange
 - NSE International Exchange

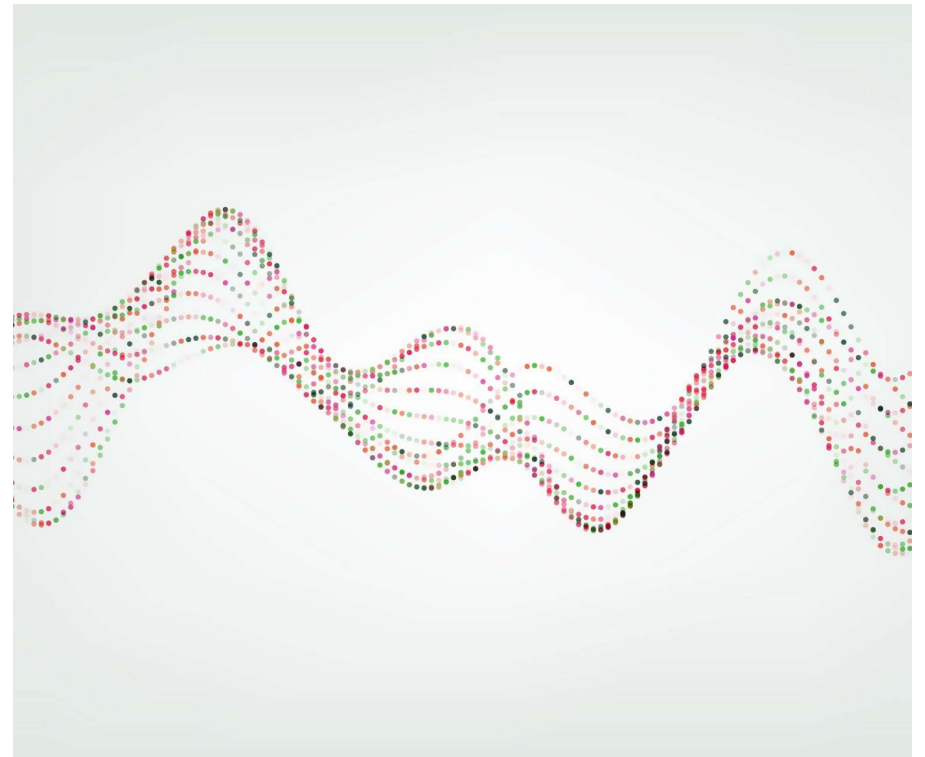
Stock

Companies not eligible

- Section 8 / Nidhi Company
- Guarantee Co having share capital
- O/s Public Deposit under Chapter V
- Negative net worth
- Default in payment of dues to Bank / PFI / Debenture / Secured Creditor. N.A. if 2 years lapsed since making good.
- Winding Up – pending
- Default in filing FS / Annual Return

Amendment dated 20th October 2023 – Companies Incorporation (Third Amendment) Rules, 2023

- In case of Restructuring – new management – resolution plan approved
- No appeal pending
- No inspection, investigation pending
- Shifting of Regd. Office may be allowed.
- “May include Order as to Costs” Omitted.



Companies (Removal of Names of Companies from the Register of Companies) Second Amendment Rules, 2023



No application to file unless all pending annual returns and FS filed.



Up to end of FY in which ceased to carry operation



Application in response to Registrar Notice under 248 – to file pending Annual Return and FS



Upon issue of notice by Registrar under 248 (5) – Publish in gazette, Cos not allowed to file application in this Section.

Companies (Removal of Names of Companies from the Register of Companies) Amendment Rules, 2023



With effect from 01/05/2023



Registrar, Centre for Processing
Accelerated Corporate Exit (C-PACE)
notified

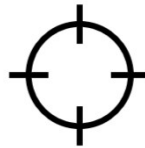


Application under S 248 – Strike Off and
related matters before Registrar – C-
PACE. STK 2 to be filed with fee of Rs.
10000

Circular regarding Logins on MCA Portal



Multiple IDs created on V2
– unable to create on V3 –
request for merging /
deactivation of duplicate IDs



Once registered on V3, V2
Id sent via email



Professionals of the ICAI,
ICMAI, ICSI – approach
respective Institutes and
changes to be made based
on recommendations

AGM / EGM through OAVM / VC

MCA Circular dated
25/09/2023

No official amendment yet in
Companies Act / Rules as regard
ongoing holding of AGM / EGM
through VC / OAVM

AGM / EGM due in 2023 and 2024

Conducted through VC / OAVM till
30/09/2024

Requirements in Circulars issued
vide 14/2020 dt. 08/04/2020 and
thereafter would continue

Not to be construed as extension of
due dates for holding AGM / EGM.

SIGNIFICANT BENEFICIAL OWNERSHIP

Provisions under Section 89, 90 and Rules therein.

Particulars	Coverage
Beneficial Ownership – Section 89 of Companies Act, 2013	Provisions Rules Procedures Forms
Beneficial Ownership – Section 90 of Companies Act, 2013	Categories of Members for SBO Rules Procedures

Beneficial Ownership under Companies Act, 2013 – Section 89

- Registered Owner vs. Beneficial Owner:
 - Registered Owner (RO) – On records as Owner
 - Beneficial Owner (BO) – a beneficial owner is a natural person or persons who ultimately owns or controls an interest in a legal entity or arrangement, such as a company, a trust, or a foundation
- Registered Owner (RO)
- Not holding Beneficial Interest
- Declaration to the COMPANY (MGT – 4 – within 30 days from event date)
- Specifying Name and other particulars of BO
- For BO – Holding / Acquired Beneficial Interest in an entity, to make declaration (MGT 5 within 30 days of receiving MGT 4)
- To Company specifying Nature and Particulars
- Within 1 month of acquiring or change in interest

MGT – 4 / MGT – 5

- Details of RO and BO
- Particulars of shares
- Declaration of Beneficial Interest being obtained
- Details of Interest – reason for not registering the shares in the name of the BO
- Particulars of change if any in Beneficial interest

Penalty – Rs. 50000 + Rs. 200 for each – Maximum Rs. 500000

Company – Return of Beneficial Ownership – MGT 6

Particulars of the Shares subject to BO and particulars of RO / BO.

For failure to file MGT – 6, Company + Officer in default – Rs. 1000/day – maximum Rs. 500000 for Company and Rs. 200000 for Officer in default.

Right not enforceable if Declaration not made by BO

No prejudice on the Company's Obligation to pay dividend.

Beneficial Interest includes:

Directly or indirectly

Through contract, arrangement or otherwise

Right or entitlement

Of a Person alone or together to

Exercise or cause to be exercise any or all rights attached

Participate / receive Dividend.

Provided that nothing contained in this rule shall apply in relation to a trust which is created, to set up a Mutual Fund or Venture Capital Fund or such other fund as may be approved by the Securities and Exchange Board of India

Section 89 not applicable to Government Company

For IFSC Public and Private Company, the due date for MGT 6 is 60 days instead of 30 days.

PERSON TO BE DESIGNATED:

Person designated -

- A company secretary, where applicable or
- a key managerial personnel, other than the company secretary; or
- every director, if there is no company secretary or key managerial personnel.

Until a person is designated as referred under sub-rule (4),

- company secretary, where applicable or
- every Managing Director or Manager, in case a company secretary has not been appointed; or
- every director, if there is no company secretary or a Managing Director or Manager.

Every company shall inform the details of the designated person in Annual return.

If the company changes the designated person at any time, it shall intimate the same to the Registrar in e-form GNL-2

Register of significant beneficial owners in a company – Sec 90



Section 90 of Companies Act, 2013

Individual – Acting alone or together through

- One or more person
- Trust,
- Person resident outside India

Holds Beneficial Interest of not < 25% or such % as prescribed

In Shares or right to exercise / exercising Control

Declaration to Company of his interest in the prescribed form *BEN – 1*

Company to maintain register of such interest declared and changes therein including particulars of (Form BEN – 3):

- Name
- DOB,
- Address
- Details of ownership

Register open to inspection by any member during business hours for not less than 2 hours on every working day as may be prescribed and on payment of fees not > Rs. 50 per inspection.

Contents of BEN 1 and BEN 3

- Name of Co. and Regd Address
- Name and details of BO
- Date of declaration recd
- Date of cessation
- Date of entry in register
- Date of filing BEN 2 (SRN)
- Instruction if any given by the member

Purpose of filing BEN – 1:

- Declaration of Beneficial Ownership
- Change

Particulars of BO

Nature of indirect holding through member

Status of SBO in Member

Whether any Direct holding of SBO

Return of SBO and changes in SBO within 30 days of receipt of declaration with Fees as applicable – Form BEN - 2

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.

BEN – 2:

- Purpose of filing the form – Declaration of HC or SBO or change in SBO
- Manner of SBO – Shares / Voting rights / dividend / exercise of control / Significant influence
- Particulars of member and details
- Particulars of SBO
- Attach – Declaration under Sec 90.

A Company to give notice to a person in Form BEN 4 if there is reason to believe -

- To be a significant beneficial owner of the company;
- To be having knowledge of the identity of a significant beneficial owner or another person likely to have such knowledge; or
- 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.

Person to revert within 30 days with information

If no info received or not satisfactory, the Company shall 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
- Any other restriction.

Application to the Tribunal

The reporting company shall apply to the Tribunal,

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

- restrictions on the transfer of interest attached to the shares in question;
- suspension of the right to receive dividend or any other distribution in relation to the shares in question;
- suspension of voting rights in relation to the shares in question;
- any other restriction on all or any of the rights attached with the shares in question



Tribunal 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 sixty days of receipt of application



Company or person aggrieved may make application for relaxation within 1 year of Order.



Provided that if no such application has been filed such shares shall be transferred without any restrictions to IEPF in such manner as may be prescribed



Penalty for contravention of Sec 90

- If Person fails to make declaration – Rs. 50000 + Rs. 1000 / day after first during which failure continues, Max Rs. 200000
- If a company:
 - Fails to file return
 - Fails to Maintain register
 - Fails to Identify individual and require to comply with the section
 - or denies inspection as provided therein,
- Rs. 100000 on Company + Rs. 500 / day up to Rs. 500000
- Every Officer – Rs. 25000 + Rs. 200 / day up to Rs. 100000.
- If any person willfully 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 – Punishment for Fraud

Companies (Significant Beneficial Ownership) Rules, 2018 - Definitions

- "control" means control as defined in clause (27) of section 2 of the Act
- "control" shall include the
 - right to appoint majority of the Directors or
 - to control the management or
 - policy decisions exercisable by a person or persons acting individually or in concert,
 - directly or indirectly,
 - including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner;
- "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;
- "partnership entity" means a partnership firm or a limited liability partnership

Definitions – Contd

- (h) “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 ten percent*, of the shares;
 - ii. holds indirectly, or together with any direct holdings, *not less than ten percent*, of the voting rights in the shares;
 - iii. has right to receive or participate in *not less than ten 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.

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.'

- the shares in the reporting company representing such right or entitlement are held in the name of the individual;
- 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.

Acting together:

- 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'

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: -



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,

- Holds majority stake in that member; or
- Holds majority stake in the ultimate holding company (whether incorporated or registered in India or abroad) of that member;



Where the member of the reporting company is a partnership entity (through itself or a partner),

and the individual is a partner; or

Holds majority stake in the body corporate which is a partner of the partnership entity; or

Holds majority stake in the ultimate holding company of the body corporate which is a partner of the partnership entity.

Where the member of the reporting company is a trust (through trustee), and the individual,-

is a trustee in case of a discretionary trust or a charitable trust;

is a beneficiary in case of a specific trust;

is the author or settlor in case of a revocable trust.



Where the member of the reporting company is a Hindu Undivided Family (HUF) (*through karta*), and the individual is the *karta* of the HUF;

Where the member of the reporting company is,-

- a pooled investment vehicle; or
- 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,-
 - is a general partner; or
 - is an investment manager; or
 - 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,

- a pooled investment vehicle; or
- an entity controlled by the pooled investment vehicle,
- Which doesn't fulfill the above requirement, the routine tests will apply.



The instruments in the form of global depository receipts, compulsorily convertible preference shares or compulsorily convertible debentures shall be treated as 'shares'.



"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]

- **Duty of the reporting company.**

- 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.
- Without prejudice to the generality of the steps stated above,, every reporting company shall in all cases where its member (other than an individual), holds *not less than ten per cent* of its;-
 - shares, or
 - voting rights, or
 - 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

Non-Applicability

- 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].
- the Central Government, State Government or any local Authority;
- 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;
- 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 (InVITs) regulated by the Securities and Exchange Board of India,
- Investment Vehicles regulated by Reserve Bank of India, or Insurance Regulatory and Development Authority of India, or Pension Fund Regulatory and Development Authority.

Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2023

No objection to scheme within 30 days from OL / RoC and

Govt satisfied that scheme in public interest or interest of Crs.

Confirmation order within next 15 days in Form CAA 12 (Total 45 days)

Within 60 days of filing of scheme – if confirmation not issued – deemed no objection and confirmation order to be issued.

Where objection received:

- From RoC / OL – Not sustainable and CG – Public Interest or Crs Interest – 30 days after expiry of above 30 days – Confirmation in CAA 12
- If CG – basis objection or otherwise – scheme not in Public Interest / Crs interest – Application before Tribunal within 60 days of scheme – Form CAA 13 – Scheme considered under S 232 of Act.
- Within 60 days – no Objection / no Application by CG – deemed no objection and confirmation order to be issued accordingly.

Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2023. – 27/10/2023

- Public Co – issued share warrants before commencement of Co Act 2013
- 3 months from commencement of these Rules, inform Registrar in PAS-7
- Notice in PAS 8 on website and newspaper in vernacular language in circulation in district and in English – within 6 months – surrender warrants and get shares Demat in Account
- If bearer does not surrender – demat such share warrants and trf to IEPF

Dematerialization of Securities of Private Cos – Notification dated 27/10/2023

- Rule 9B inserted vide Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2023.
- Private Company – Other than Small Co – Demat all securities and Issue Demat Securities
- As on 31/03/2023 – Pvt Co – Not Small Co – within 18 months – comply – i.e. by 30/09/2024.
- Any offer:
 - Issue
 - Buyback
 - Bonus
- Before making such offer – entire holding of Promoter / Director / KMP – in Demat Form.
- Not applicable to Government Company

Dematerialization of Securities of Private Cos – Notification dated 27/10/2023

- Every Shareholder of Pvt Co:
 - Transfer of Shares
 - Pvt Placement / Bonus / Rights Shares
- In Demat Form only – post 30 / 09 / 2024.

Small Company Definition

Particulars	Old Limits	New Limits
Paid up Capital	Rs. 2 Crores	Rs. 4 Crores
Turnover	Rs. 20 Crores	Rs. 40 Crores

However, the concept of small companies does not apply to the following companies:

A holding or a subsidiary company.

A company registered under section 8.

A body corporate or company governed by any special act.

Dematerializing of Securities of Private Company:

- Every Company to facilitate demat of securities – make application to depository – secure ISIN
- For each type of security
- Inform the shareholders of the same.
- Shareholders to have a Demat Account and submit the physical certificates to have them Dematerialized.
- Registrar / Share Transfer Agent (RTA) to be appointed as per terms of Agreement.
- Timely payment of Depository and RTA Fees by Pvt Companies.
- Depository Fees also includes a one-time Security Deposit.
- Fees to Depository includes One Time joining fee and AMC based on Paid Up Capital.

Dematerializing of Securities of Private Company:

- Form PAS – 6 to be filed every half year.
- Within 60 days from conclusion of every half year – i.e., 30th May and 29th November respectively.
- Certified by CA / CS in Practice.
- Particulars:
 - Each No of Classes – Preference / Equity – Prefilled as per Master Data
 - ISIN prefilled if available. If not, user to enter and shall be updated in Master Data
 - Total No. of Shares in Demat and Physical – Held by Promoter / Director / KMP
 - Shares held in Demat in NSDL / CDSL with particulars.
 - Certification.
- Grievances before the IEPF.

A background pattern of a network graph with nodes and connecting lines in shades of teal and grey.

Adjudication Orders

Brief points to be taken care of:

Brief particulars	Penalty and Section Ref
<ul style="list-style-type: none"> Pvt. Co. issued Non-Convertible Debentures to 183 debenture holders. Online AIF platform used for the same. Pitching sessions held on social media 	<p>Violation of S. 42(7) – Pvt Placement – not to use any social media / advt / marketing</p> <p>Penalty imposed under S. 42(10) on Co and Directors – Rs. 14757000.</p>
<p>DIN Number not mentioned in a reply submitted to RoC – Violation of Sec 158.</p>	<p>Penalty under S. 172. Penalty levied Rs. 50000 on Company and Rs. 50000 on the Director.</p>
<p>Same Company as above – order dated 15/04/2024 – Minutes of Board Meeting dated 29/11/2007 not bound, not dated and place of signing not mentioned</p>	<p>Penalties levied for noncompliance with secretarial standards (118(10)) and also for noncompliance with 118.</p>

Brief particulars	Penalty and Section Ref
<ul style="list-style-type: none"> Unlisted Public Co – not filed annual returns for 2014-15 till 2022-23. Liable for penalty under 92(5) 	Penalties levied under 92(5) on Companies and each officers for the years under default. Whether AGM held for all years? Effect on disqualification of Directors?
Private Limited Company – Only One Director on Board of the Company for 41 Days. Only One Non – Resident Director on the Board for 48 Days Gap between 2 successive Board Meetings exceeding 120 Days	Penalties levied under Sec 149(1) (a) Rs. 210000, Sec. 149(3) Rs. 247000 and Sec 173 Rs. 126000. Penalties on the Company and each officer.

Brief particulars	Penalty and Section Ref
<ul style="list-style-type: none"> Listed Company – Not filed annual return for FY 2018-19. SCN issued 	<p>The Company followed Calendar year as FY. The Company had filed within 30 days of AGM held on 09/08/2019. No Penalty was levied.</p>
<p>Company not filed BEN – 2. Reply of the Company to the SCN was not found satisfactory.</p>	<p>On examination of records available with MCA Portal, it was found that there were SBO of the Company and the contravention was established. Penalties were levied on Company, Promoter and Director</p>
<p>Contravention of S. 161. Additional Director appointed in 2011, regularized in 2012. Filed eventually in 2019.</p>	<p>Contravening the provisions. The notice of AGM in 2012 did not contain agenda item for regularization of Director. Penalties imposed on Company and Directors under S 172.</p>

Brief particulars	Penalty and Section Ref
<ul style="list-style-type: none"> OCD were issued as Rights Issue instead of as a Preferential Allotment under S 62, read with requirements of S 42. 	<p>It was held that Rights issue is for Equity / Preference Shares. OCD is to be issued under S 62 r.w, S 42. The non – compliance was for 3 such instances and penalized accordingly. Plea was made to reduce penalty owing to Small Company and Startup. Penalty was reduced by RD to 25%.</p>
<p>Company failed to file MSME 1. One of the suppliers complained to jurisdictional RoC, who issued SCN.</p>	<p>The Company stated that the party had initiated proceedings before Hon’ble Judicial Magistrate Court and stated in reply that the payment would be made if complaint withdrawn. Therefore, complaint was acknowledged. Penalty was levied under S. 405.</p>

Brief particulars	Penalty and Section Ref
<ul style="list-style-type: none">Complaint received from MSME supplier as regards non filing of MSME 1 form by Pvt Ltd Company.	<p>The Form was thereafter filed with delay. However, as regards the current dues, complaint was filed with MSME Facilitation Centre and therefore, payment was overdue. The reason was mentioned in the Form.</p> <p>As matter was sub – judice, the proceeding was dropped.</p>



THANK YOU

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