



Amendments To The Companies Act, 2013 ("CA 2013") By The Companies (Amendment) Act, 2019 ("CAA 2019")

*[Other Than Those Made By The Companies (Amendment)
Second Ordinance, 2019]*

*Privileged and Confidential
August 30, 2019*

Notes

- The CAA, 2019 has proposed further amendments, apart from the Companies (Amendment) Second Ordinance, 2019 (“Ordinance”), and this note covers amendments other than those contained in the Ordinance. Sections 6, 7 and 8, clauses (i), (iii) and clause (iv) of section 14, section 20, section 31, sections 33, 34 and 35, sections 37 and 38 of CAA 2019 were notified vide S.O.2497 dated August 14, 2019. Section 21 is yet to be notified
- The provisions of CAA 2019, except those mentioned above shall be deemed to have come into force on the 2nd day of November, 2018
- The Ordinance stands repealed with effect from 31st July, 2019. Notwithstanding such repeal, anything done or any action taken under the Ordinance shall be deemed to have been done or taken under the CA 2013

CAA 2019	CA 2013	Provisions	Implications	Remarks
6	26	Matters to be stated in prospectus	→ The requirement of registration of prospectus with the Registrar of Companies has been done away with. Instead the prospectus would be filed with the Registrar	→Prospectus to be filed in Form GNL-2
7	29	Public offer of securities to be in dematerialised form	→ The term 'public' has been omitted under section 29(1)(b). Government would now prescribe the class of companies (not restricted to public companies), which would be mandatorily required to hold and transfer securities only in dematerialised form	
8	25	Civil liability for mis-statements in prospectus	→ The reference of 'registration of prospectus with the Registrar' is replaced by 'filing of copy of prospectus with the Registrar'	

***Note: Refer to table given below*

CAA 2019	CA 2013	Provisions	Implications	Remarks
14	90	Register of significant beneficial owners in a company	<ul style="list-style-type: none"> → The company shall take necessary steps to identify an individual who is an SBO. Failure to take necessary steps has been made punishable with fine → The company / the person aggrieved by the order of the Tribunal (<i>in respect of an application made by the Company under sub-section (8) if any person fails to give information or gives information which is not satisfactory</i>) may make an application to the Tribunal for relaxation or lifting of the restrictions placed, within a period of one year from the date of such order. If no application is made, such shares shall be transferred, without any restrictions, to the authority constituted under sub-section (5) of section 125. (<i>Note: section 125(5) refers to IEPF</i>) → Sub-Section (9A) inserted to provide the power to the Central Government to make rules for the purposes of this section 	<ul style="list-style-type: none"> → Additional default added for the Company on failure to take necessary steps to identify an individual who is an SBO which has been made punishable with fine → If no application is made by the aggrieved of the order of the Tribunal within one year of such order, such shares shall be transferred to IEPF
20	132	Constitution of National Financial Reporting Authority (NFRA)	<ul style="list-style-type: none"> → NFRA to perform its functions through such divisions as may be prescribed by the Central Government → Executive body of NFRA shall consist of the Chairperson and full-time Members for efficient discharge of its certain functions → Debarring of the member or firm from being appointed as an auditor or internal auditor, or performing any valuation under section 247 for a minimum period of six months or such higher period not exceeding ten years 	<ul style="list-style-type: none"> → Debarring of the member or firm from being appointed as an auditor / internal auditor, or performing any valuation under section 247 for a minimum period of 6 months / such higher period not exceeding ten years

CAA 2019	CA 2013	Provisions	Implications	Remarks
21*	135	Corporate Social Responsibility	<ul style="list-style-type: none"> → For the companies who have not completed three financial years, the amount of CSR contribution shall be calculated on the average of net profits for the financial years since incorporation → The unspent CSR amount, except for the amount that relates to any ongoing projects, is required to be transferred to any of the funds mentioned in Schedule VII of the Act, within a period of six months from the end of the financial year → In case the unspent amount relates to any ongoing project subject to fulfilling of prescribed conditions, unspent amounts to be transferred by the company within a period of thirty days from the end of the financial year to a special account to be opened by the company in that behalf for that financial year in any scheduled bank to be called the Unspent Corporate Social Responsibility Account 	<ul style="list-style-type: none"> →For newly incorporated companies, the amount of CSR contribution shall be calculated on the average of net profits for the financial years since incorporation →The unspent CSR amount is required to be transferred within a period of six months from the end of the financial year, to any of the funds mentioned in Schedule VII of the Act.

**Note: Will come into force on a date yet to be notified*

CAA 2019	CA 2013	Provisions	Implications	Remarks
21*	135	Corporate Social Responsibility	<ul style="list-style-type: none"> → Such amount shall be spent by the company in pursuance of its obligation towards the Corporate Social Responsibility Policy within a period of three financial years from the date of such transfer, failing which, the company shall transfer the same to a Fund specified in Schedule VII, within a period of thirty days from the date of completion of the third financial year → Penal provisions: (a) The company – punishable with fine which shall not be less than Rs. 50,000 but which may extend to Rs. 25 lakhs;(b) Every officer of such company who is in default – shall be punishable with imprisonment for a term which may extend to 3 years or with fine which shall not be less than Rs. 50,000 but which may extend to Rs. 5 lakh, or with both → MCA empowered to give general or special directions to a company or class of companies as it considers necessary to ensure compliance of provisions of this section 	<p>→For unspent amount in any financial year –</p> <p>(a) Where the unspent amount in a financial year is towards any on-going project, transfer to a special account to be opened by the company in that behalf for that financial year in any scheduled bank to be called the Unspent Corporate Social Responsibility Account, by April 30 of following year</p> <p>(b) Where the unspent amount in a financial year is towards nospecific project, transfer to a Fund specified in Schedule VII, by September 30 of following year</p> <p>New penal provisions added</p>

**Note: Will come into force on a date yet to be notified*

CAA 2019	CA 2013	Provisions	Implications	Remarks
31	212	Investigation into affairs of Company by Serious Fraud Investigation Office	<ul style="list-style-type: none"> → Any officer not below the rank of Assistant Director of Serious Fraud Investigation Office (SFIO), if so authorised, may arrest any person in accordance with the provisions of this section → The person so arrested may be taken to a Special Court or Judicial Magistrate or Metropolitan Magistrate within 24 hours of his arrest → Where an investigation report submitted by SFIO states that a fraud has taken place and any director, KMP or officer has taken undue advantage or benefit, then the Central Government may file an application before the Tribunal with regard to disgorgement and such director, KMP or officer may be held personally liable without any limitation of liability 	→Where a KMP or officer has taken undue advantage or benefit, then the KMP or officer may be held personally liable without any limitation of liability
33	241	Application to Tribunal for relief in cases of oppression, etc	→ Central Government to prescribe such company or class of companies in respect of which, applications under such sub-section, shall be made before the Principal Bench of NCLT and shall be dealt with by such Bench. In certain circumstances, the Central Government may refer the matter and request to the Tribunal to inquire into the case and record a decision about whether the 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.	

CAA 2019	CA 2013	Provisions	Implications	Remarks
34	242	Powers of Tribunal	<p>→ In matters under section 241, the Tribunal shall record its decision stating 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</p>	
35	243	Consequence of termination or modification of certain agreements	<p>→ The person who is not a fit and proper person pursuant to 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 decision of the Tribunal</p> <p>→ 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</p> <p>→ The person so removed from the office of a director or any other office connected with the conduct and management of the affairs of the company shall not be entitled to, or be paid, any compensation for the loss or termination of office</p>	

CAA 2019	CA 2013	Provisions	Implications	Remarks
37	272	Power of Court to stay or restrain proceedings	<ul style="list-style-type: none"> → In section 272 (3), as provided under, the reference to clause (e) is omitted → The Registrar shall be entitled to present a petition for winding up in all cases specified under section 271, except where the company has passed a special resolution for winding up 	
38	398	Provisions relating to filing of applications, documents, inspection, etc., in electronic form	<ul style="list-style-type: none"> → Prospectus not required to be registered by the Registrar 	



Making Compliance
Work For You

Address

4/8, Santacruz Mansions,
2nd Floor, Santacruz (E),
Mumbai 400055

Telephone

(+91-22) 6710 0130
(+91-22) 6710 0131

Fax

(+91-22) 2610 8160

Email

contact.us@rpacs.in
