

# Recent Amendments in Companies Act, DPT-3, MSME



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**B. COM (H), FCA, FCS, FCMA, LL.B, MIMA, DISA, IP**

**Shared at**

**East Delhi Study Circle of NIRC of ICAI**

**31<sup>st</sup> January 2019**

# AGENDA

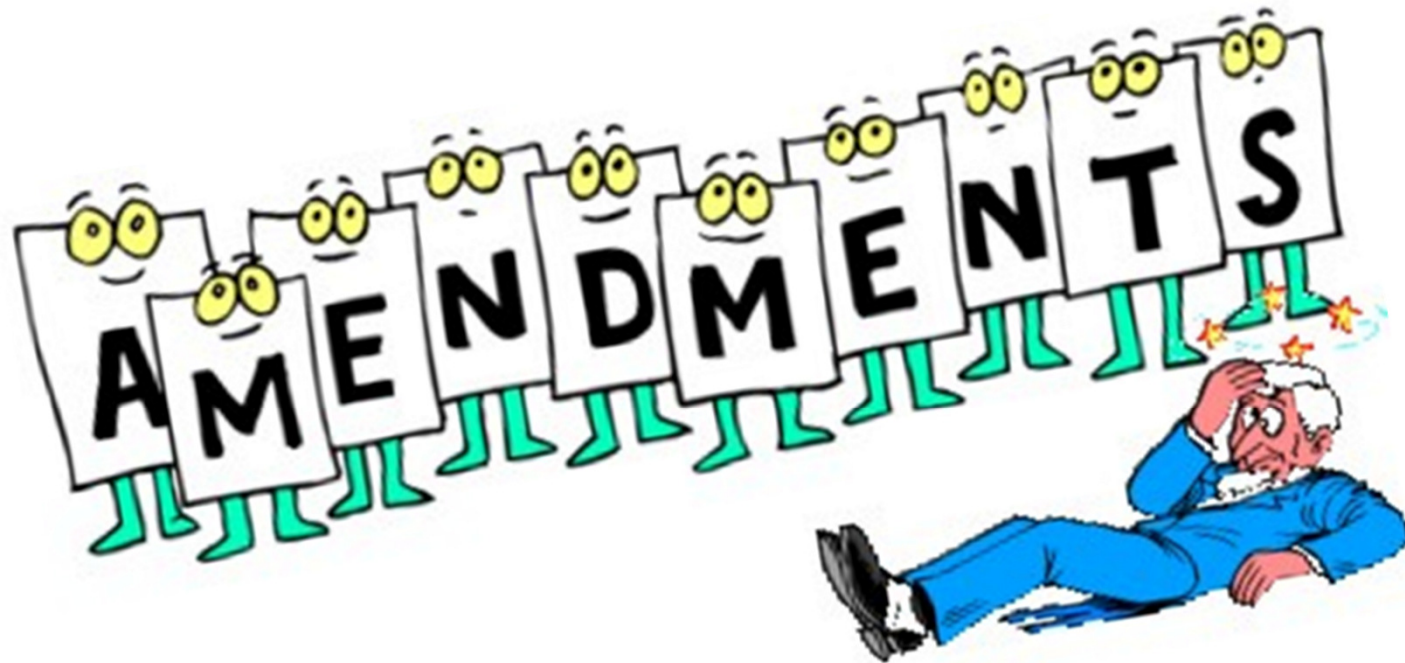
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- ✘ **Companies (Amendment) Ordinance 2019**
- ✘ **New Form DPT-3**
- ✘ **MSME Compliance**
- ✘ **ICAI clarification on rotation**



# COMPANIES (AMENDMENT) ORDINANCE 2018/19

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# SUMMARY

- ✘ **Ordinance promulgated on 2<sup>nd</sup> November 2018**
- ✘ **Companies (Amendment) Bill 2019 to replace the ordinance passed by Lok Sabha on 4<sup>th</sup> January 2019; pending with Rajya Sabha**
- ✘ **Companies (Amendment) Ordinance 2018 will cease to operate on 21<sup>st</sup> January 2019**
- ✘ **Hence, Companies (Amendment) Ordinance 2019 promulgated on 12<sup>th</sup> January 2019 to be effective from 2<sup>nd</sup> November 2018**
- ✘ **32 amendments**




# KEY AIMS

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- ✘ **Re-categorisation of certain offences, which are in the category of compoundable offences – Moving from Fines to Penalties.**
- ✘ **Reducing NCLT burden by introducing certain amendments and enhancing the role of RD**
- ✘ **In-house adjudication mechanism on an online platform and publication of orders on website.**
- ✘ **Enhancing accountability with respect to filing documents related to charges, non-maintenance of registered office, etc.**



# FINE REPLACED WITH PENALTY

- × **16 cases**
  - × **Fine by NCLT, Penalty by RoC / RD**
    1. **S. 53(3) – Prohibition on issue of shares at discount**
    2. **S. 64(2) - Notice to be given to Registrar for alteration of share capital**
    3. **S. 92(5) – Annual Return**
    4. **S. 102(5) - Statement to be annexed to Notice**
    5. **S. 105 - Proxies**
    6. **S. 117(2) - Resolutions and Agreements to be filed**
    7. **S. 121(3) -Report on annual general meeting**
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# **FINE REPLACED WITH PENALTY**

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- 8. S. 137(3) - Copy of financial statement to be filed with Registrar**
- 9. S. 140(3) - Removal, resignation of auditor and giving of special notice**
- 10. S. 157(2) - Company to inform DIN to Registrar**
- 11. S. 159 - Punishment for Contravention – in respect of DIN**
- 12. S. 165(6) - Number of Directorships**
- 13. S. 191(5) - Payment to Director for Loss of Office**
- 14. S. 197(15) - Overall maximum managerial remuneration and managerial remuneration in case of absence or inadequacy of profits**
- 15. S. 203(5) - Appointment of KMP**
- 16. S. 238(3) - Registration of the offer of scheme involving transfer of shares**



## **S. 2(41) FY & S. 14 CONVERSION**

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- ✘ **To have different Financial Year power given to CG from NCLT [S. 2(41)]**
- ✘ **Also, applications for conversion of a company from public to private (S. 14) are now to be made to the CG instead of the NCLT.**
- ✘ **Pending applications with the NCLT submitted prior to 2 November, 2018 in case of the above matters will be dealt by the NCLT.**





# COMMENCEMENT OF BUSINESS

- ✘ **S. 10A introduced – reintroduction**
- ✘ **Earlier removed by amending s. 11 through Companies (Amendment) Act 2015.**
- ✘ **Any company incorporated on or after 2<sup>nd</sup> November 2018, shall not commence business or exercise any borrowing powers, unless:**
  - + **it files a declaration within 180 days of incorporation in Form INC 20A, confirming that every subscriber to the Memorandum has paid the value of shares agreed to be taken by him, AND**
  - + **files a verification of its registered office address with the RoC within 30 days of incorporation.**

# COMMENCEMENT OF BUSINESS

- ✘ In case of default – penalty:
  - + Company – Rs. 50K
  - + OID – Rs. 1000/- per day subject to maximum Rs. 1 Lakh.
- ✘ Failure in filing and Registrar has reasonable cause to believe that company not carrying on any business – may initiate action for removal of name from Register of Companies u/s 248
- ✘ S. 248 also amended consequently.



# S. 12(9) REGISTERED OFFICE

- ✘ S. 12(9) introduced.
- ✘ In case RoC has reason to believe that company is not carrying any business or operations , he may call for physical verification of registered office
- ✘ And if not found complying with s. 12(1):
  - ✘ RO should be capable of receiving and acknowledging all communications and notices as may be addressed to it.
- ✘ May initiate action for removal of name from Register of Companies u/s 248



# S. 53 SHARES AT DISCOUNT

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- ✘ **Fine changed to penalty.**
- ✘ **Imprisonment of OID removed**
- ✘ **Penalty rationalised**
  - + **Earlier - Min. Rs. 1 Lakh Maximum Rs. 5 Lakhs**
  - + **Now - penalty equal to the amount raised by the issue of shares at a discount or five lakh rupees, whichever is lower.**
- ✘ **Company will also be liable to refund the money received with interest at 12% per annum from the date of issue of the shares.**



# **S. 64 ALTERATION OF AOA**

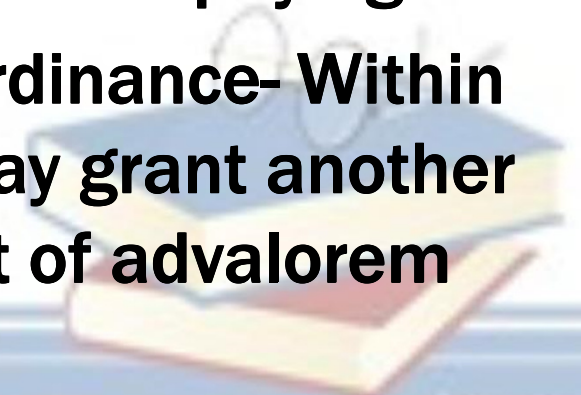
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- ✘ **Fine changed to penalty**
- ✘ **These powers have been transferred to central government from NCLT.**



# S. 77 CHARGES

- ✘ Earlier charge to be registered within 30 days of creation. RoC may permit reg. within 300 days of creation. If registration is not completed within 300 days, company to seek extension .
- ✘ Now:
  - + If the charge is created before the Ordinance - within 300 days - If not registered, to be completed within 6 months from the date of Ordinance on paying fee
  - + If the charge is created after the Ordinance- Within 60 days. If not registered - RoC may grant another 60 days on application on payment of advalorem fee.



# S. 86 CHARGES

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- ✘ If a person wilfully
  - + furnishes false or incorrect information, or
  - + suppresses material information
- ✘ which is required to be registered under this provision, he will be liable for fraud under section 447.



# **S. 87 RECTIFICATION OF CHARGES**

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- ✘ **S. 87 substituted - CG has power to rectify any omission or misstatement.**
- ✘ **Omission to file creation – no longer can be rectified**
- ✘ **Time of intimation of payment or satisfaction can be extended on CG satisfaction**
- ✘ **Omission or misstatement can be rectified on CG satisfaction**
- ✘ **Just and equitable ground for grant of relief – no longer allowed**





## **S. 90 SIGNIFICANT BENEFICIAL OWNERS**

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- ✘ **In case declaration is not made or it is not satisfactory, then company to apply within 15 days for restrictions on such shares to NCLT u/s 90(7).**
- ✘ **A person aggrieved by order of such restriction u/s 90(8) may apply for relaxation – now time period applying for relaxation restricted to 1 year from date of order.**
- ✘ **If no application made for relaxation within 1 year – shares shall be transferred to IPEF without any restrictions.**



## **S. 90 SIGNIFICANT BENEFICIAL OWNERS**

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- ✘ **Failure to declare this interest is punishable with a fine between Rs. 1 Lakh and Rs. 10 Lakh rupees, along with a continuing fine for every day of default of Rs. 1000/-.**
- ✘ **The Ordinance provides that such person may either be fined, or imprisoned for up to one year, or both.**



## S. 92 ANNUAL RETURN

- ✘ If filed within 60 days in MGT 7 – normal fee
- ✘ Upto 30.6.2018 additional fee till 300 days
- ✘ W.e.f. 1.7.2018 additional fee Rs. 100/- pd
- ✘ After that penalty (earlier fine w.e.f. 2<sup>nd</sup> November 2018):
  - + On Company and Officer in default
    - ✘ minimum 50K plus Rs. 100/- per day on continuous default.
    - ✘ maximum – 500K
  - + Imprisonment on Officer in default upto 6 months omitted



## S. 102 STATEMENT FOR SPECIAL BUSINESS

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- ✘ Fine converted to penalty
- ✘ Earlier for default – fine which may extend to Rs. 50000/- or 5 times of benefit accruing to promoter, director, KMP.. their relatives ..  
Whichever is more
- ✘ Now – penalty of Rs. 50K or 5 times of benefit accruing to promoter, director, KMP.. their relatives .. Whichever is higher



# S. 105 PROXIES

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- ✘ Fine converted to penalty
- ✘ Earlier for default – fine which may extend to Rs. 5000/-
- ✘ Now – penalty of Rs. 5K



# S. 117 FILING OF RESOLUTIONS

## ✘ Earlier for default – fine:

### + Company:

✘ Min. Rs. 1 Lakh; Max. Rs. 25 L

### + OID:

✘ Min. Rs. 50K; Max. Rs. 5 L

## ✘ Now – penalty:

### + Company:

✘ Min. Rs. 1 Lakh, continuing Rs. 500/- p.d.

✘ Max. Rs. 25 L

### + OID including liquidator:

✘ Min. Rs. 50K, continuing Rs. 500/- p.d.

✘ Max. Rs. 5 L



# S. 121 REPORT ON AGM

## ✘ Earlier for default – fine:

### + Company:

- ✘ Min. Rs. 1 Lakh; Max. Rs. 5 L

### + OID:

- ✘ Min. Rs. 25K; Max. Rs. 1 L

## ✘ Now – penalty:

### + Company:

- ✘ Min. Rs. 1 Lakh, continuing Rs. 500/- p.d.
- ✘ Max. Rs. 5 L

### + OID:

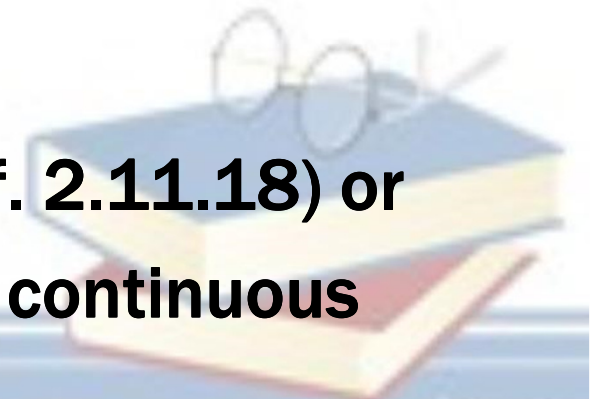
- ✘ Min. Rs. 25K, continuing Rs. 500/- p.d.
- ✘ Max. Rs. 1 L



# S. 137 FILING OF FS

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- ✘ To be filed with ROC in Form AOC -4 within 30 days of AGM
- ✘ Upto 30.6.2018 additional fee till 300 days
- ✘ W.e.f. 1.7.2018 additional fee Rs. 100/- pd
- ✘ Penalty on
  - + Company – 1k p. d > 10 L;
  - + MD, etc in charge by Board- if no one – all directors
    - ✘ Imp. upto 6months (Omitted w.e.f. 2.11.18) or
    - ✘ Penalty – 1L (Rs. 100/- per day if continuous default) to 5L or Both





# S. 140 AUDITOR RESIGNATION

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- ✘ Earlier for default – fine:
  - + Min. Rs. 50K or remuneration of auditor whichever is less
  - + Max. Rs. 5 L
- ✘ Now – penalty:
  - + Min. Rs. 50K or remuneration of auditor whichever is less; continuing Rs. 500/- p.d.
  - + Max. Rs. 5 L



# S. 157 INFORMING DIN TO ROC

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## ✘ Earlier for default – fine:

### + Company:

✘ Min. Rs. 25K; Max. Rs. 1 L

### + OID:

✘ Min. Rs. 25K; Max. Rs. 1 L

## ✘ Now – penalty:

### + Company:

✘ Min. Rs. 25K, continuing Rs. 100/- p.d.

✘ Max. Rs. 1 L

### + OID:

✘ Min. Rs. 25K, continuing Rs. 100/- p.d.

✘ Max. Rs. 1 L



# S. 159 INFORMING DIN TO ROC

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## ✘ Contravention of:

- + S. 152 – Appointment of Directors
- + S. 155 – More than 1 DIN
- + S. 156 – Director to intimate DIN

## ✘ Earlier for default – fine:

- + Imprisonment upto 6 months
- + Fine: upto Rs. 50K; Continuous Rs. 500/- p.d.

## ✘ Now – penalty:

- + Imprisonment removed
- + Rest same



## **S. 164/165 DIRECTOR DISQUALIFICATION**

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- ✘ **Under s. 165, a person cannot be a director in more than 20 companies.**
- ✘ **The Ordinance provides that contravening this provision will be a ground for disqualification from directorship.**
- ✘ **S. 165 – non-compliance – fine was: Min 5K to 25K p.d.**
- ✘ **Now penalty – 5k p.d.**



# S. 191 COMPENSATION TO DIRECTOR ON LOSS OF PROFIT

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- × Earlier Fine – Mn 25K; Max 1 L
- × Now: Penalty Rs. 1 L



## **S. 197 MANAGERIAL REMUNERATION**

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- ✘ **Restriction on Independent Director to get Stock Options – omitted – S. 197(7) omitted**
- ✘ **Earlier:**
  - + **Fine – 1 L to 5 L**
- ✘ **Now:**
  - + **Any person – Penalty – 1 L**
  - + **Company – Penalty – 5 L**



# S. 203 APPOINTMENT OF KMP

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## ✘ Earlier for default – fine:

### + Company:

- ✘ Min. Rs. 1 L; Max. Rs. 5 L

### + Director and KMP:

- ✘ Upto 50K; continuing Rs. 1000/- p.d.

## ✘ Now – penalty:

### + Company:

- ✘ Rs. 5 L

### + Director and KMP :

- ✘ Min. Rs. 50K, continuing Rs. 1000/- p.d.
- ✘ Max. Rs. 5 L



# **S. 441 COMPOUNDING**

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- ✘ **RD can compound offences with a penalty of up to Rs. 5 Lakhs.**
- ✘ **The Ordinance increases this ceiling to Rs 25 lakhs.**





# S. 447 FRAUD

- ✘ Imprisonment not less than 6 months to 10 years
- ✘ + Fine not be less than amount involved in the fraud which may extend to 3 times.
- ✘ If fraud in question involves public interest then the imprisonment shall not be less than 3 years.
- ✘ If amount involved in fraud is less than Rs. 10L or 1% of turnover – imprisonment upto 5 years or fine upto Rs. 25 Lacs or with both. No minimum term or amount [-\(9.2.2018\)](#)
- ✘ Ordinance – Fine limit increased to Rs. 50 Lacs



# **S. 454 PENALTIES ADJUDICATION**

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- ✘ **The Act allows the central government to appoint adjudicating officers to decide penalties under the Act.**
- ✘ **The Ordinance states that these officers, in addition to imposing penalties, may direct the defaulting entity to rectify the default.**



# **S. 454A REPEATED DEFAULT**

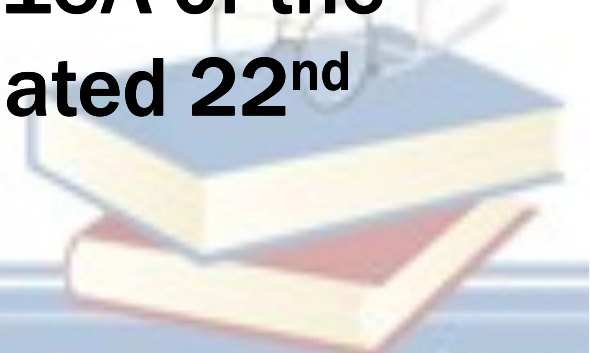
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- ✘ **New section introduced**
- ✘ **If a company, or an officer, or other person commits a default again within three years of the previous case, the entity will be liable to twice the penalty as provided for such default.**



# DPT-3

- ✘ **To be filed annually by 30<sup>th</sup> June and furnish information as on 31<sup>st</sup> March of that year duly audited by auditor of the company.**
- ✘ **Was to be filed only by companies accepting deposits**
- ✘ **Later companies accepting deposits from shareholders also covered**
- ✘ **Insertions made to Rule 16 and 16A of the Deposit Rules vide notification dated 22<sup>nd</sup> January 2019**
- ✘ **Form DPT-3 also amended.**



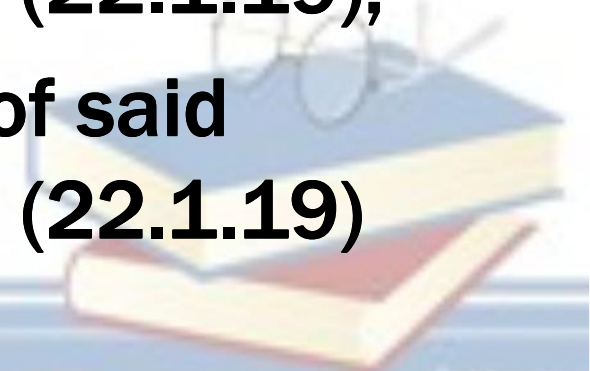
# DPT-3

- ✘ **Explanation to Rule 16 added – to clarify that now DPT-3 is to be filed annually for :**
    - + deposit or**
    - + particulars of transaction not considered as deposit or**
    - + both**
- by every company other than Government company.**



# DPT-3

- ✘ **Sub-rule (3) added to Rule 16A :**
  - + **Every company other than Government company shall file a onetime return of**
  - + **outstanding receipt of money or loan by a company but not considered as deposits, in terms of rule 2(1)(c)**
  - + **from 1st April, 2014 to the date of publication of this notification (22.1.19),**
  - + **within 90 days from the date of said publication of this notification (22.1.19)**
  - + **along with fee.**



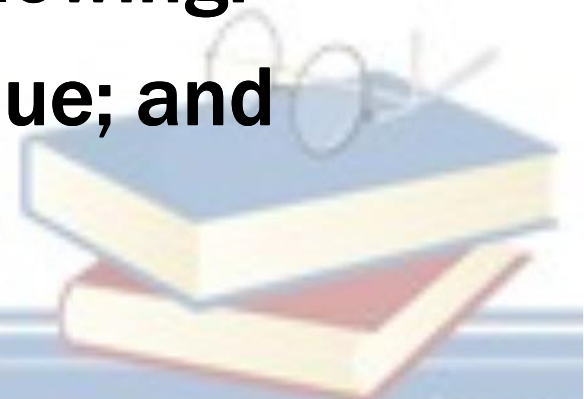
# DPT-3 - SUMMARY

- ✘ Every company receiving monies deposits, loans, ICD, advances, etc. to file DPT-3 annually
- ✘ 1 time return for all companies who have outstanding monies which are not deposits as per rule 2(1)(c)
- ✘ Point no. 14 of amended DPT-3 - Total amounts of outstanding money or loan received by a company but not considered as deposits in terms of rule 2(1)(c) of the Companies (Acceptance of Deposits) Rules, 2014 as specified in rule 16(A)(3)



# MSME FORM 1

- ✘ Notification dated 2<sup>nd</sup> November 2018
- ✘ All companies who get supplies of goods or services from micro and small enterprises **and** whose payments to them exceed 45 days from the date of acceptance or the date of deemed acceptance of the goods or services as per the provisions of the Act, shall submit a half yearly return to the MCA stating the following:
  - + (a) The amount of payments due; and
  - + (b) The reasons of the delay.





# MSME FORM 1

- ✘ MCA notified Specified Companies (Furnishing of information about payment to micro and small enterprises suppliers) Order 2019 on 22<sup>nd</sup> January 2019
- ✘ 1<sup>st</sup> Return with 30 days of notification
- ✘ MSME Form 1 to be filed half-yearly by Specified Companies by 31<sup>st</sup> October / 30<sup>th</sup> April
- ✘ Reason for Delay to be given
- ✘ Director / CEO / CS (employed) to certify



# MSME FORM 1

- ✘ **Applicable if goods / services received from micro and small enterprises who have filed memorandum with MSME Authorities.**
- ✘ **Default if payment delayed:**
  - + **If date agreed upon in writing - within that date (can't agree beyond 45 days)**
  - + **If not agreed in writing within 15 days of date of acceptance**
- ✘ **Interest compound interest with monthly rest from the appointed day or from the date immediately following the date agreed upon, @ 3 times the Bank Rate**



# ICAI CLARIFICATION – ROTATION

- ✘ Rotation mandatory if auditor is an individual after 1 term of 5 consecutive yrs; and
- ✘ If auditor is firm – 2 terms of 5 consecutive yrs.
- ✘ Mandatory for
  - + All listed companies
  - + Unlisted Public Cos. having capital  $\geq$  Rs.10 Crs.
  - + Pvt. Ltd. Cos. having capital  $\geq$  Rs. 20 Crs. – **50 Cr**  
**w.e.f.22<sup>nd</sup> June 2017**
  - + All companies having public borrowings from financial institutions, banks or public deposits of Rs. 50 Crs. or more



# **ICAI CLARIFICATION – ROTATION**

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- ✘ **Whether the auditor who was an auditor of the company in the year 2017 can be reappointed by the company as the company ceases to fall under the criteria of rotation of auditors**
- ✘ **Clarification – yes allowed**



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