Ministry of Corporate Affairs(MCA) vide its notification dated 31.07.2018 has made effective Section 36 of Companies Amendment Act, 2017 with effect from 31.07.2018.

Section 36 of CAA, 2017 amends Section 134 of the Companies Act, 2013 which provides provisions of Financial Statements, Board Reports etc. Following are the amendments in Section 134 which has been made effective:

1. The financial statements shall be signed by Chairperson of the company if authorised or by two directors one of whom shall be MD and CEO, CFO and CS wherever they are appointed. In case of OPC, only by one director.

2. Extract of Annual Return (MGT-9) to be included with Board's Report is replaced with the Web address, if any as referred under section 92(3) of CA, 2013 [Interestingly, the amendment of CAA, 2017 regarding Section 92(3) of CA, 2013 is not yet made effective].

3. Iisted companies and prescribed public companies shall include in its Board Report annual performance report of Board, its committees and individual directors.

4. Disclosures required under section 134, if included in Financial Statements, shall be referred to instead of repeating in Board's Report.

5. If the policy of Nomination and remuneration committee u/s 178(3) and CSR policy u/s 135 is made available on website of the company, then only brief of such policies and changes if any shall be included in Board's Report with a reference of Company's website.

Ministry of Corporate Affairs has notified the amended Section 42 and its corresponding Rule No. 14 of the Companies Act, 2013 with effect from August 07, 2018.

Please find herewith the broad changes made in the revised section 42 and its corresponding rules:

(a) Deletion of requirement w.r.t. value of offer or invitation per person: The requirement of the value of offer or invitation per person of INR 20,000/- of face value of the securities has been done away with.

(b) Usage of Share Application Money: Now a company is not permitted to utilize the share application money received by it unless (i) allotment is made; and (ii) the return of allotment, in e-form PAS – 3, is filed with the Registrar of Companies.

(c) Reduction in time period for filing e-form PAS3: Now, a company is required to file the return of allotment within 15 days of allotment instead of 30 days.

(d) Separate penal provisions for non-filing of e-form PAS – 3: Where a company defaults in filing e-form PAS – 3 within 15 days of allotment, the company, its promoters and directors shall be liable with a penalty INR 1,000/- per day but not exceeding INR 25,00,000/-.

(e) Common private placement offer cum application form: The form PAS-4 has been revised and has a small section of application letter that needs to be filed in by the applicant. This application needs to be submitted by the applicant along with subscription money paid either by cheque, demand draft or other banking channel and not by cash.

(f) Fresh offer prior to allotment: Earlier there was a restriction that no fresh offer or invitation can be made unless the allotment w.r.t. any earlier offer has been completed or the offer has been withdrawn or abandoned. Now a carve out has been provided that where he number of persons to whom the offer is made does not exceed 200, the company may, at any time, make more than one issue of securities to such class of identified persons.

(g) Restriction on rights of renunciation: The revised section specifically restricts any right of renunciation of the private placement offer that is been made by the issuer company. The earlier section and rules did not have the said restriction.

(h) Revision of penalty amount: The penal provision has been revised from ‘the amount involved in the offer or invitation or Rupees Two Crore, whichever is higher” to ‘the amount involved in the offer or invitation or Rupees Two Crore, whichever is lower”.