

**THE COMPANIES AMENDMENT ORDINANCE – 2018 [9 of 2018]**  
**– A REVIEW**

All are aware that the provisions of the Companies Act, 2013, came in to force with effect from 12.09.2013, and with other provisions notified in a phased manner from 01.04.2014.

With in a period of 15 months of the commencement, on the pretext of ease of doing business in India, and to overcome some practical difficulties as to implementation of the provisions, some amendments were proposed to the Companies Act, 2013, and accordingly, the Companies Amendment Act, 2015, and the provisions of the same were made effective from 29.05.2015, in a phased manner.

Even after the above amendment, there were lot of provisions which required amendments/relaxations, and accordingly the Ministry had come with 4 notifications Dt:05.06.2015, giving exemptions/relaxation from the applicability of various provisions of the Act to Government Companies, Private Companies, Section 8 Companies and Nidhi Companies.

To sort out any further difficulties, the Ministry had constituted a Corporate Law Committee, to obtain opinion from the various sections in the industry and recommend amendments to the Act, and the Companies Amendment Bill, 2016, was introduced in the parliament for its consideration. After taking their own sweet time, finally the Companies Amendment Bill, 2016, become Companies Amendment Act, 2017, and noticed effect from 26.01.2018, in a phased manner.

With in a span of 4 years of its notification, the Companies Act, 2013, has got amended two times, and don't even talk about the plethora of notifications, circulars, exemption notifications.

Now again, the policy makers had felt it appropriate to amend the Companies Act, 2013, and as the parliament is not in session, the same has been done through an Ordinance. The said Ordinance, received the assent of the Hon'ble President of India on 02.11.2018.

<b>Sl. No.</b>	<b>Section(s) under the CA, 2013, amended</b>	<b>Amendment relating to</b>	<b>Remarks/Comments /Penalty</b>
1	Amendment to Section 2 (41)	Substitution of a new proviso in place of the existing proviso, delegating the authority for change of Financial Year in respect of a Company or Body Corporate which is a holding company or subsidiary or associate Company of a company incorporated outside india to Central Government(CG) (presently powers are vested with NCLT).  Applications pending before the Hon'ble NCLT as on the date of notification of the ordinance, shall be disposed-off by the NCLT.	<b>Welcome amendment in view of reducing the complexity, and inturn the CG may delegate the power to the Regional Director or ROC.</b>
3	Insertion of a new Section 10A.	Re-introducing the requirement of filing declaration, as to receipt of subscription moneys from the subscribers, and Obtaining Certificate of Commencement of Business, ( <b>earlier was contained in Section 11, which was omitted by the Companies amendment Act, 2015</b> ), and penalty for non-compliance.	<b>Welcome amendment.</b>  <b>Will result in only people who are serious of doing business to form a company.</b>

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Sl. No.	Section(s) under the CA, 2013, amended	Amendment relating to	Remarks/Comments /Penalty
		<p>Making mandatory, the requirement of filing of the form for intimating the registered office of the Company within 30 days of Incorporation.</p> <p>Non-filing of declaration to be a ground of Striking Off, by the ROC, in addition to penalty.</p>	
3.	Amendment to Section 12 – Registered office	<p>Insertion of a new sub-section (9) immediately after Sub-Section (8) giving powers to the ROC for physical verification of the Registered office of the company.</p> <p>Non filing of the intimation as to the registered office and non having/maintenance of Registered office, will be a ground of Striking Off, by the ROC.</p>	<p><b>Welcome amendment.</b></p> <p><b>Will result in only people who are serious of doing business to form a company</b></p>
4.	Amendment to Section-14 – Alteration of Articles	<p>Substitution of a new proviso in place of the existing 2<sup>nd</sup> proviso to Section 14(1), delegating the authority for conversion of the Public Company to Private Company, to Central Government (CG) (presently powers are vested with NCLT).</p> <p>Applications pending before the Hon'ble NCLT as on the date of notification of the ordinance, shall be disposed-off by the NCLT.</p>	<p><b>Welcome amendment in view of reducing the complexity, and inturn the CG may delegate the power to the Regional Director or ROC.</b></p>
5.	Amendment to Section 53 – Issue of Shares at Discount	<p>Substitution of Sub-Section 3 to Section 53, (in relation to penalty for contravention on issuing of shares). For non-compliance, the Company and every officer who is in default, shall be liable to a penalty of upto an amount equal to the amount raised through issue of shares or Rs.5,00,000, which ever is less; and amount is also liable to be refunded to the respective persons, along with interest @12% P.A.</p>	<p><b>Amendment relaxing from imprisonment of officer in default.</b></p>
6.	Amendment to Section 64 – Notice to Registrar of Alteration of Capital	<p>Substitution of Sub-section 2 of Section 64, with a new sub-Section-2, rephrasing the penalty provisions i.e., for filing of Form SH-7, beyond 30 days of such alteration, then Company and every Officer who is in default, shall be liable of Rs. 1000/- per day or Rs.5 Lakhs, which ever is less.</p>	

Sl. No.	Section(s) under the CA, 2013, amended	Amendment relating to	Remarks/Comments /Penalty
7.	Amendment to Section - 77 - Duty to register charges	<p>Proviso to Section 77 (1) has been amended providing powers to ROC, for allowing registration of creation of charge, (a) within a period of 300 days, from the date of creation of charge, and (b) if created on or after the commencement of the Ordinance, then with 60 days after the commencement of Ordinance, on payment of additional fees.</p> <p>If the charge is not registered within period as specified above, then (a) the charges created before the commencement of ordinance can be registered within 6 months from the commencement of Ordinance, on payment of such additional fees; and (b) the charges created on or after the commencement of ordinance, within a further 60 days after payment of such advalorem fees.</p>	
8.	Amendment to Section - 86 - Punishment for Contravention	Insertion of a Sub-Section (2) to Section 86, to provide for punishment for fraud, to any person who wilfully furnishes any false or incorrect information in relation to creation of charge.	
9.	Amendment to Section 87 - Rectification of register of charges	Substitution of Section 87 with a new section, with powers being conferred on the Registrar, for rectification of register, relating to omission of filing of satisfaction or misstatement of any particulars for creation/modification/satisfaction of charge.	
10.	Amendment to Section 90 - Investigation of Beneficial Ownership of shares in certain cases.	<p>Substitution of existing Sub-Section (9) of Section 90 with a new sub-section.</p> <p>The amendment/ substitution provides for a period of one year, from the date of the Order of the Tribunal, within which the aggrieved part can make an application for the Tribunal for relaxing/lifting the restrictions.</p> <p>If no such application is filed, then the shares will be transferred to IEPF.</p> <p>Further, Sub-Section 10, stands amended, to include imprisonment</p>	<b>Welcome amendment to maintain proper governance.</b>

		for up to 1 year, in additional to fine.	
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<b>Sl. No.</b>	<b>Section(s) under the CA, 2013, amended</b>	<b>Amendment relating to</b>	<b>Remarks/Comments /Penalty</b>
11.	Amendment to Section 92 - Annual Return	Substitution of Sub-Section (5) with a new Sub-Section to provide for only fine on the Company and on every officer in default; and also to provide for a daily penalty for continuous failure to file the required documents.  The provision as to imprisonment for non-filing of Annual Return, has been done away with.	<b>Welcome Amendment</b>
12.	Amendment to Section 102 - Explanatory statement	Rephrasing of the wordings of Sub-Section-5, so as to include the recovery of moneys as per Sub-Section 4.	<b>Welcome Amendment</b>
13.	Amendment to Section 105 - Proxies	Rephrasing of the wordings of Sub-Section-3, in respect of penalty for non compliance of the provisions of Sub-Section 2.	<b>Welcome Amendment</b>
14.	Amendment to Section 117 - Agreement and Resolutions to be filed.	Rephrasing of the wordings of Sub-Section-2, in respect of penalty for non compliance of the provisions of Sub-Section 1, and also to provide for a daily penalty for continuous failure to file the required documents.	<b>Welcome Amendment</b>
15.	Amendment to Section 121 - Report on Annual General Meeting.	Rephrasing of the wordings of Sub-Section-3, in respect of penalty for non compliance of the provisions of Sub-Section 1, and also to provide for a daily penalty for continuous failure to file the Report.	<b>Welcome Amendment</b>
16.	Amendment to Section -137 - Copy of Financial Statements to be filed with Registrar.	Substitution of Sub-Section (3) with a new Sub-Section to provide for only fine on the Company and on every officer in default; and also to provide for a daily penalty for continuous failure to file the required documents.  The provision as to imprisonment for non-filing of Financial Statements, has been done away with.	<b>Welcome Amendment</b>
17.	Amendment to Section 140 - Removal, Resignation of	Rephrasing of the wordings of Sub-Section-3, in respect of penalty for non compliance of the provisions of Sub-Section 2, and also to provide	

	Auditor	for a daily penalty for continuous failure to file the Form with ROC.	
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Sl. No.	Section(s) under the CA, 2013, amended	Amendment relating to	Remarks/Comments /Penalty
18.	Amendment to Section 157 – Company to inform DIN to ROC.	Rephrasing of the wordings of Sub-Section-1, in respect of penalty for non compliance of the provisions of Sub-Section-1, and also to provide for a daily penalty for continuous failure to file the Form with ROC.	
19.	Amendment to Section 159 – Punishment for contravention.	Rephrasing of the wordings of Section in respect of penalty for non compliance of the provisions of Section 152, 155, 156; and also to provide for a daily penalty for continuous contravention.	
20.	Amendment to Section 164 – Disqualification for appointment of Director	Insertion of a new clause (i), in Sub-Section -1 of Section 164, to provide that a director who has not complied with the provisions of Section 165 (Holding office of Director in not more than 20 companies), is dis-qualified to act as Director.	
21.	Amendment to Section 165 – Number of Directorships	Rephrasing of the wordings of Sub-Section-6 in respect of penalty for non compliance of the provisions of Sub-Section-1; and omitting the maximum daily penalty of Rs.25,000/-, thereby the penalty of Rs.5,000/- per day, for the period which the contravention continues, is provided.	
22.	Amendment to Section 191 - Payment to Director for Loss of Office, etc.,..	Amendment to Sub-Section-5, thereby the minimum penalty of Rs.25,000/- has been omitted, and accordingly, the directors, not complying with the provisions of Section 191, shall be liable to a penalty of Rs. 1 Lakh.	
23.	Amendment to Section 197 – Managerial Remuneration	Omission of Sub-Section -7, which restricts issue of ESP to Independent Director. Henceforth, the same is permitted.  Substitution of Sub-Section-15 with a new sub-Section to provide for penalty for non-compliance of Section 197, by any person – Rs.1 Lakh. Non-compliance by the Company then – Rs.5 Lakhs.	
24.	Amendment to Section 203 – Appointment of KMP	Rephrasing the words of Sub-Section-5 to provide for penalty for non-compliance of Section-203, by A Director/KMP – minimum Rs.50,000/-, and also to provide for a daily penalty for continuous contravention, and a maximum of Rs. 5 Lakhs. Non-compliance by	

		the Company then – Rs.5 Lakhs.	
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Sl. No.	Section(s) under the CA, 2013, amended	Amendment relating to	Remarks/Comments /Penalty
25.	Amendment to Section 238- Registration of Offer of Schemes Involving Transfer of Shares.	Amendment to Sub-Section-3, thereby the minimum penalty of Rs.25,000/- has been omitted, and accordingly, the directors, not complying with the provisions of Sub-Section (1), shall be liable to a penalty of Rs. 1 Lakh.	
26.	Amendment to Section 248 - Power of Registrar to Remove Name of Company from Register of Companies.	Amendment to Sub-Section-1, to include the following additional reasons for the Registrar to remove the name of the Company from the Register of Company, in addition to existing reasons: <ul style="list-style-type: none"> <li>➔ Non filing of declaration within 180 days of incorporation, as to receipt of monies from the subscribers</li> <li>➔ The Company has not been carrying on any business or operations as revealed after the physical verification by ROC.</li> </ul>	
27.	Amendment to Section 441 - Compounding of offences	Amendment of Clause (b) of Sub-Section-1, increasing the penalty amount from Rs.5 Lakhs to Rs. 25 Lakhs, thereby all the offences, liable to penalty of upto Rs.25 Lakhs will be compounded by the Regional Director, and any offences liable to penalty beyond Rs.25 Lakhs will be compounded by the Hon'ble NCLT.  Amendment to Sub-Section 6, to clearly provide for that the offences liable with imprisonment only or with imprisonment and also with fine shall not be compoundable.	
28.	Amendment to Section 446B - Punishment for noncompliance by OPC/Small Companies  Notified with effect from 09.02.2018, by the Companies Amendment Act, 2017	Rephrasing of the said section, to provide for the penalties applicable to offences/non-compliances of the provisions of Section 92, 117 and 137 by OPCs and Small Companies and the officers in default of the said companies.	

Sl. No.	Section(s) under the CA, 2013, amended	Amendment relating to	Remarks/Comments /Penalty
29.	Amendment to Section 447 – Punishment for Fraud	Amendment to the 2 <sup>nd</sup> Proviso to Section 447, thereby it provides for penalty of Rs.50 Lakhs in place of the existing 25 Lakhs, and accordingly, any person guilty of fraud, where the fraud involves an amount less than Rs.10 Lakhs or 1 % of the turnover of the company, whichever is lower, and does not involve public interest such fraud shall be punishable with imprisonment for a term which may extend to five years or with fine which may extend to Rs. 50 Lakhs or with both.	
30.	Amendment to Section 454 – Adjudication of Penalties.	<p>Substitution of Sub-Section -3, with a new sub-section, to provide for the Adjudicating authority on the Company, Officer, <b>or any other person</b>, stating the non-compliance.</p> <p>In addition to the above, the Adjudicating authority shall direct the company, officer in default or any other person to rectify the default.</p> <p>Rephrasing of the words in Sub-Section 8, to give a polished presentation of the section.</p>	
31	Insertion of a New Section 454-A – Penalty for repeated default.	A new section has been inserted, which provides that where a company or an officer of a company or any other person , having already been subjected to penalty for default under any provision of the Act, again commits the said default with in a period 3 years, from the date of imposing of the penalty by the RD or the Adjudicating authority, then such defaulter shall be liable for the second or subsequent defaults for an amount equal to twice the amount of penalty provided for such default under the relevant provisions of the Act.	

From the above, it can be seen that major amendments relate to change of wordings in the section, relating to de-criminalisation of offences, i.e., change of terminology from “**punishable with fine**” to “**Liable to a penalty**”, replacing the provisions as to imprisonment with only to fines, and in some extreme offences, the imprisonment provision are retained.

Even after the above ordinance, the Ministry of Corporate affairs, has noted that

certain 20 other amendments of urgent nature would be required to strengthen the corporate governance and enforcement framework, and has sought for /comments recommendations from the public at large, and such comments/recommendations are to be submitted on or before 20.11.2018. So, there is every possibility of another amendment to the Act.