Companies Act 2013

Companies (Amendment) Ordinance 2019

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Background

No.	Activity	Date
1	Govt constituted a Committee to review penal provisions of the Act and give recommendations	13/7/2018
2	Committee submitted its report	14/8/2018
3	Cabinet approved Ordinance 2018 to make amendments	1/11/2018
4	Ordinance 2018 issued by President and notified and came into effect	2/11/2018
5	Companies (Amendment) Bill 2019 passed by Lok Sabha to replace Ordinance 2018	4/1/2019
6	Ordinance 2018 lapsed since Amendment Bill 2019 not passed by Rajya Sabha	21/1/2019
7	Ordinance 2019 issued by President to replace Ordinance 2018 *(Deemed to have come into force on 2/11/2018)*	12/1/2019

Provisions other than fines and penalties

Amendments at a glance

- Change of financial year
- Declaration of commencement of business
- Physical verification of registered office – Power to remove name
- Time for registration and modification of charges
- Conversion of public company to private company
- Significant beneficial owners
- Disqualification of director

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Sec.2(41) – Change of financial year

Existing position	**Revised position**
Approval of NCLT is required for adopting a financial year other than 1st April to 31st March.	Approval of Central Government is required for adopting a financial year other than 1st April to 31st March.

Procedure for change in financial year (Rule 40A)

No.	Activity	Form
1	File application with RD with filing fee alongwith: a) Grounds and reasons for application b) Minutes of Board meeting c) Power of Attorney or Memorandum of Appearance	RD-1
2	RD may ask for further information or ask to remove deficiency	
3	Reply by company to RD within 15 days (maximum 2 re-submissions allowed)	RD-GNL-5
4	RD may reject within 30 days of application or re-submission in case reply not filed or RD not satisfied	
5	If RD satisfied, he may convey approval within 30 days of application or last re-submission, failing which approval will be automatically issued	
6	Company to file order of RD with ROC within 30 days of receipt alongwith filing fee	INC-28

New Sec.10A – Commencement of business

Existing position

No such provision. Company can start business immediately on incorporation.

Revised position

- No company (**private or public**) incorporated post 2.11.2018 can commence business or exercise borrowing powers unless a declaration is filed within 180 days that:
  a) subscribers have paid value of shares; and
  b) registered office is verified.
- In case of failure, ROC can strike off name of company.
- *[Form INC.20A to be filed as per Rule 23A of Companies (Incorporation) Rules 2014 alongwith copy of approval of sectoral regulator like RBI, SEBI etc. where applicable.]*

Sec.12(9) – Registered Office

Existing provision

No specific provision for physical verification of registered office by ROC.

Revised provision:

If ROC believes that no business is being carried out by the company, he can arrange physical verification of the registered office. If no such office is found, he can strike off name of the company.

(Relevant rules are yet to be notified.)

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Sec.14 – Conversion of public company into private company

Existing position	Revised position
Application for conversion to be made to **NCLT**.	Now such application is to be made to the **Central Govt**.

Procedure for conversion of public co. into private co.

(Rule 41)

No.	Activity	Form
1	Pass special resolution and file with ROC	MGT-14
2	Prepare list of creditors and debenture-holders	
3	At least 21 days before filing application: a) Issue advertisement in 2 newspapers (English & local languages)	INC-25A
	b) Send registered AD notice to individual creditor and debenture-holder	
	c) Send registered AD notice to RD, ROC and regulatory body, if any	

No.	Activity	Form
4	File application with RD within 60 days of special resolution with fee alongwith: a) Draft MoA and AoA b) Minutes of general meeting c) Copy of BR or PoA for filing application d) Declaration by KMP (or director if no KMP): – No.of members upto 200 and no deposit accepted in violation – compliance of Sec.73 to 76A, 177, 178, 185, 186 and 188 - No resolution is pending for filing u/s 179(3) - Never listed, and if listed, delisting procedure complied with e) List of creditors & debenture-holders f) Affidavit by CS, if any, and minimum 2 directors (including MD if any) regarding list of claims payable	RD-1
5	RD may within 30 days of application ask for further clarification or remove defect, if any.	44
6	Company to file reply within 15 days (max. 2 resubmissions allowed)	RD-GNL-5

No.	Activity	Form
7	RD may reject the application within 30 days of application or resubmission in case no reply received or reply not satisfactory, failing which approval letter to be issued automatically	
8	In case any objection is received or RD has any objection, he may hold hearing within 30 days and company to file affidavit	
9	RD to pass order for rejection or approval within 30 days of hearing, failing which approval letter to be issued automatically	
10	In case no consensus is received within 60 days, RD will reject application within 60 days (Conversion will not be allowed if enquiry or inspection or investigation is initiated against the co. or prosecution is pending)	
11	Company to file order of RD with ROC within 15 days of receipt with fee	INC-28

Sec.77 – Registration of charges

<u>Existing provision</u>:

Charge may be registered within 30 days. However, additional 270 days are allowed on payment of additional fee.

<u>Revised provision</u>

- Initial period of 30 days can be extended by ROC by additional 30 days on application.
- In case of failure to register within additional 30 days, ROC on application may allow additional 60 days from date of application for which ad valoram fee will be levied.
- Existing charges pending registration to get timeline of 6 months from 2.11.2018 to register on payment of additional fee.

(Relevant rules are yet to be notified.)

Sec.86 – Charges – punishment for contravention

Existing provision:	Revised provision
No such provision.	Willful furnishing of false or incorrect information or knowingly suppressing any material information pertaining to registration of charges will tantamount to be a **fraud** and will attract action under **Section 447**.

Sec.87 – Rectification of Register of Charges by CG

Existing provision:	**Revised provision**
CG can grant relief: i) In case of omission to file the return ii) On just and equitable ground	CG cannot grant relief in these two cases. Relief can be given only in case of delay in filing or any omission or misstatement in the return filed.

Sec.90 – Register of beneficial owners

<u>Existing provision</u>:

No time limit was prescribed for making application to NCLT u/s 90(9) for relaxation or lifting of restrictions placed u/s 90(8).

<u>Revised provision</u>

- Limitation period of **1 year** has been prescribed for making application to NCLT against order passed u/s 90(8) restricting rights attached to relevant shares.
- In case of failure to file such application within 1 year, such shares will be transferred to IEPF.

Sec.164 – Disqualification of directors

Existing provision:

Section 164 contains various disqualifications of director.

Section 165 puts restriction on number of companies in which a person can be a director as 20.

Non-compliance of section 165 is not a ground for disqualification of director.

Revised provision

- Non-compliance of Section 165(1) has been added as new disqualification of director u/s 164.
- *[Gujarat High Court in its order dated 18.12.2018 in Gaurang Balwantlal Shah vs. Union of India has held that Sec.164(2) cannot have retrospective effect and DIN of director cannot be cancelled or deactivated except under circumstances mentioned in Rule 11 of Companies (Appointment of Directors) Rules 2014.]*

Provisions relating to offences

Sec.441 – Power of RD to compound offences

Existing provision:	**Revised provision**
For fine upto Rs.5 lacs	*For fine upto Rs.25 lacs*

Imprisonment provisions removed

Section	Subject
53	Prohibition of issue of shares at discount
92	Non-filing of annual return (MGT-7)
137	Filing of financial statements
155	Obtaining more than one DIN
156	Intimation of DIN by director
159	Punishment for contravention of Sections 152 (appointment of directors), 155 (prohibition to obtain more than one DIN) and 156 (Director to intimate DIN).

Fine changed to Penalty

Section	Subject
53(3)	Prohibition of issue of shares at discount
64(2)	Notice to ROC for alteration of share capital
92(5)	Non-filing of annual return (MGT-7)
102(5)	Mis-statement in explanatory statement
105(3)	Notice of general meeting to contain clause for proxies
117(2)	Filing of MGT-14
121(3)	Report on AGM (MGT-15)
137(3)	Filing of financial statements
140(3)	Non-filing of ADT-3 (resignation) by auditor
157(2)	Failure to intimate DIN of directors to ROC
159	Punishment for contravention of Sections 152 (appointment of directors), 155 (prohibition to obtain more than one DIN) and 156 (Director to intimate DIN).
165(6)	Non-compliance of permissible number of directorships by director
191(5)	Payment to director for loss of office
197(15)	Overall maximum managerial remuneration in case of adequacy of profit
203(5)	Appoint of KMP
238(3)	Registration of offer of schemes involving transfer of shares
446B	Default in filing annual return by OPC and small company

Other changes in penal provisions

Section	Nature of default	Changes made
10A	Failure to furnish declaration for commencement of business	New penal provision added
90B	Failure to make declaration of substantial beneficial owner	New penal provision added
447	Punishment for fraud	Amount of fine increased from Rs.25 lacs to Rs.50 lacs
454	Adjudication of penalty	➢ In addition to company and officer in default, 'any other person' also included. ➢ Adjudicating officer can also direct to rectify the default.
454A (new)	Penalty for repeated default (new provision)	In case default is repeated within 3 years, amount of penalty will be doubled.


Any Questions...
Just Ask!

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