

HIGHLIGHTS OF COMPANIES (AMENDMENT) ORDINANCE, 2018

The Companies (Amendment) Ordinance, 2018 promulgated on November 02, 2018 thereby amending some of the sections of the Companies Act, 2013.

Giving effect to the recommendations placed in the Report of the Committee to review Offences under the Companies Act, 2013, the Companies (Amendment) Ordinance, 2018 provides much needed relief to the corporates and professionals alike by decriminalising a host of offences. Considering re-categorisation of certain 'acts' punishable as compoundable offences to 'acts' carrying civil liabilities, the Ordinance further promotes the Indian Government's intent to promote ease of doing business.

The main reforms undertaken through the Ordinance include the following:

- Re-categorising of offences which are in the category of compoundable offences to an in-house adjudication framework. However, no change has been made in respect of any of the non-compoundable offences.
- Ensuring compliance of the default and prescribing stiffer penalties in case of repeated defaults.
- De-clogging the NCLT by:
 - enlarging the jurisdiction of Regional Director ("RD") by enhancing the pecuniary limits up to which they can compound offences under section 441 of the Act.
 - vesting in the Central Government the power to approve the alteration in the financial year of a company under section 2(41); and
 - vesting the Central Government the power to approve cases of conversion of public companies into private companies.
- Other corporate governance related reforms include re-introduction of declaration of commencement of business provision; greater accountability with respect to filing documents related to creation, modification and satisfaction of charges; non-maintenance of registered office to trigger de-registration process; holding of directorships beyond permissible limits to trigger disqualification of such directors.

(A) Re-categorising of offences:

The list of offences which are re-categorised as defaults carrying civil liabilities which would be subject to an in-house adjudication mechanism, along with the pre-ordinance punishment in each case is as under:

S. No.	Section	Nature of default	Punishment	
			Pre-Ordinance	Post ordinance
1.	Section 53(3) Prohibition of issue of shares at a discount	Prohibition of issue of shares at a discount	Fine or imprisonment or both	Non-compliance with sub-section (3) of Section 53 shall result in the company and any officer in default being liable to a penalty, instead of being punishable with fine or imprisonment or with both.
2.	Section 64(2) Notice to be given to Registrar for alteration of share capital	Failure/delay in filing notice for alteration of share capital	Fine only	Non-compliance with sub-section (1) of Section 64 shall result in the company and any officer in default being liable to a penalty, instead of being punishable with fine.
3.	Section 92(5) Annual return	Failure/delay in filing annual return	Fine or imprisonment or both	Non-compliance with sub-section (4) of Section 92 shall result in: (i) the company being liable to a penalty, instead of being punishable with fine; and (ii) every officer in default being liable to a penalty, instead of being punishable with fine or imprisonment or with both.
4.	Section 102(5)	Attachment of a	Fine only	Non-compliance with Section 102 shall result in

	Statement to be annexed to notice	statement of special business in a notice calling for general meeting		every promoter, director, manager or other key managerial personnel who is in default being liable to a penalty, instead of being punishable with fine.
5.	Section 105(3) Proxies	Default in providing a declaration regarding appointment of proxy in a notice calling for general meeting	Fine only	Non-compliance with sub-section (2) of Section 105 shall result in every officer in default being liable to a penalty, instead of being punishable with fine.
6.	Section 117(2) Resolutions and Agreements to be filed	Failure/Delay in filing Certain resolutions	Fine only	Non-compliance with sub-section (1) of Section 117 shall result in the company and every officer in default including liquidator of a company, if any, being liable to a penalty, instead of being punishable with fine.
7.	Section 121(3) Report on annual general meeting	Failure/Delay in filing Report on AGM by public listed company	Fine only	Non-compliance with sub-section (2) of Section 121 shall result in the company and every officer in default being liable to a penalty, instead of being punishable with fine.
8.	Section 137(3) Copy of financial statement to be filed with Registrar	Failure/Delay in filing financial statement	Fine or imprisonment or both	Non-compliance with sub-section (1) or (2) of Section 137 shall result in: (i) the company being liable to a penalty, instead of being punishable with fine; and (ii) the managing director and the Chief Financial Officer of the company, if any, and, in the absence of the managing director and the Chief Financial Officer, any other director who is charged by the board of directors with the responsibility of

				complying with the provisions of Section 137, and, in the absence of any such director, all the directors of the company, being liable to a penalty, instead of being punishable with fine or imprisonment or with both.
9.	Section 140(3) Removal, resignation of auditor and giving of special notice	Failure/Delay in filing statement by auditor after resignation	Fine only	Non-compliance with sub-section (2) of Section 140 shall result in the auditor being liable to a penalty, instead of being punishable with fine.
10.	Section 157(2) Company to inform Director Identification Number to Registrar	Failure/Delay by company in informing DIN of director	Fine only	Non-compliance with sub-section (1) of Section 157 shall result in the company and every officer in default being liable to a penalty, instead of being punishable with fine.
11.	Section 159 Punishment for Contravention - in respect of DIN	Contraventions related to DIN	Fine or imprisonment or both	Penalty for default in certain provisions Non-compliance with Section 152 (Appointment of directors), Section 155 (Prohibition to obtain more than one Director Identification Number) and Section 156 (Director to intimate Director Identification Number) shall result in any individual or director of a company in default being liable to a penalty, instead of being punishable with fine or imprisonment.
12.	Section 165(6) Number of Directorships	Accepting directorships beyond specified limits	Fine only	If a person accepts appointment as a director in contravention of sub-section (1) of Section 165 such person shall be liable to a penalty, instead of being punishable with fine.
13.	Section 191(5)	Payment to director	Fine only	Non-compliance with Section 191 shall result in the

	Payment to Director for Loss of Office, etc., in connection with transfer of undertaking, property or shares	not to be made on loss of office		director of the company being liable to a penalty, instead of being punishable with fine.
14.	197(15) Overall maximum managerial remuneration and managerial remuneration in case of absence or inadequacy of profits	Managerial remuneration	Fine only	Under sub-section (15) Non-compliance with Section 197 shall result in any person in default being liable to a penalty, instead of being punishable with fine.
15.	203(5) Appointment of Key Managerial Personnel	Appointment of KMPs in certain class of companies	Fine only	Non-compliance with Section 203 shall result in the company, every director and key managerial personnel of the company who is in default being liable to a penalty, instead of being punishable with fine.
16.	238(3) Registration of the offer of scheme involving transfer of shares	Registration of the offer of scheme involving transfer of shares	Fine only	Non-compliance with clause (c) of sub-section (1) of Section 238 shall result in the director being liable to a penalty, instead of being punishable with fine.

(B) Ensuring compliance of the default and prescribing stiffer penalties in case of repeated defaults.

To achieve the said reform, the Ordinance has modified sub-section (3) and (8) of section 454 and also introduced a new section 454A as follows:

S. No.	Section	Title	Post ordinance Impact
1.	454(3)	Adjudication of Penalties	The adjudicating officer shall also give the direction of making good of the default at the time of levying penalty.
2.	454(8)	Adjudication of Penalties	Default would occur when the company or the officer in default would fail to comply with the order of the adjudicating officer or RD as the case may be.
3.	454A	Penalty for repeated default	A new section has been inserted to provide where a penalty in relation to a default has been imposed on a person under the provisions of CA 2013, and the person commits the same default within a period of three years from the date of order imposing such penalty, passed by the adjudicating officer or RD as the case may be, it or he shall be liable for the second and every subsequent defaults for an amount equal to twice the amount provided for such default under the relevant provision of CA 2013.

(C) De-clogging the NCLT

- **enlarging the jurisdiction of Regional Director (“RD”) by enhancing the pecuniary limits up to which they can compound offences under section 441 of the Act.**

S. No.	Section	Title	Post ordinance Impact
1.	441(1)(b)	Compounding of Certain Offences	Power of Regional Director to compound offence punishable increased upto Rs. 2,500,000/- Pre-Amendment, where the maximum amount of fine which may be imposed for such offence did not exceed five lakh rupees , such offence was compounded by the Regional Director or any officer authorised by the Central Government. Through the Amendment, where the maximum amount of fine which may be imposed for such offence does not exceed Twenty five lakh rupees , such offence shall be compounded by the Regional Director or any officer authorised by the Central Government.
2.	441(6)(a)	Compounding of Certain Offences	Section 441(6)(a), which requires the permission of the Special Court for compounding of offences, being redundant provision, is omitted.

- **vesting in the Central Government the power to approve the alteration in the financial year of a company under section 2(41)**

As per Companies Act, in case of Indian company having Holding/ subsidiary/ Associate Company situated outside India, it is allowed the change the financial year as per such company with the approval of Tribunal. Through this Ordinance, Power of Tribunal has been transferred from Tribunal to Central Government, therefore, financial year of Company can be changed with approval of Central Government.

- **vesting the Central Government the power to approve cases of conversion of public companies into private companies**

In terms of Section 14(1), for Conversion of Public Company into Private Limited Company, the power to approve is shifted from Tribunal to Central Government.

(D) Other corporate governance related reforms:

S. No.	Section	Title	Post ordinance Impact
	10A	Insertion of new section 10A Commencement of business, etc.	Re-introduction of section 11 omitted under the Companies (Amendment) Act, 2015 (after doing away with the requirements of minimum paid up capital) to provide for a declaration by a company having share capital before it commences its business or exercises borrowing power. Non-compliance of section 11 by an officer in default shall result in liability to a penalty instead of fine.
	12	Registered Office of Company	Insertion of sub-section (9) to section 12, stating that <i>"If Registrar has reasonable cause to believe that the company is not carrying on any business or operations, he may, without prejudice to the provision of sub-section (8), cause a physical verification of the registered office of the company and if any default is found in complying with the requirements of sub-section (1), initiate action for the removal of the name of the company from the register of companies under Chapter XVIII".</i>
	90	Register of significant beneficial owners in a company.	Considering the importance of the disclosures under section 90, the punishment for violation of section 90(1) prescribed under section 90(10) is enhanced to the effect that the contravention is punishable with fine or imprisonment or both, instead of being punishable with only fine.
	164	Disqualifications from appointment of directors	A new clause (i) after clause (h) in section 164(1) inserted, whereby a person shall be subject to disqualification if he accepts directorships exceeding the maximum number of directorships provided in section 165.

A copy of the said Ordinance is available at the following link:

<http://egazette.nic.in/WriteReadData/2018/191731.pdf>
