
The Companies (Amendment) Ordinance, 2018 – Key amendments

November 6, 2018

In brief

The Companies (Amendment) Ordinance, 2018 received the President of India's assent bringing into force further amendments to certain provisions of the Companies Act, 2013 (Act) with effect from 2 November, 2018. The Ordinance promulgated is based on the recommendations made by the Committee appointed by the Government to review offences under the Act.

The twin objectives of the Ordinance are the promotion of Ease of Doing Business along with better corporate compliance. The key aim of the amendments are as follows:

- Re-categorisation of certain offences, which are in the category of compoundable offences to an in-house adjudication framework, wherein defaults would be subject to the penalty levied by an adjudicating officer.
- Instituting a transparent and technology driven in-house adjudication mechanism on an online platform and publication of the orders on the website.
- De-clogging the National Company Law Tribunal (NCLT) by introducing certain amendments and enhancing the role of the Regional Director (RD).
- Tackling the larger issue of "shell companies," enhancing accountability with respect to filing documents related to charges, non-maintenance of registered office, etc.

The key amendments are analysed below.

In detail

Re-introduction of commencement of business declaration

- Companies incorporated after 2 November, 2018 with share capital, shall not commence any business or exercise any borrowings power unless:
 - A declaration is filed by a director within 180 days of the date of incorporation, confirming that every subscriber has paid up the value of shares agreed to be taken.

- Company has filed the verification of its registered office with the registrar.

- In case no declaration is filed within 180 days of incorporation and the registrar has reasonable cause to believe that the company is not conducting any business or operations, the registrar may initiate the removal of its name from the register of companies.

Physical verification of registered office

The registrar has the power to

conduct physical verification of the registered office and initiate strike-off of the company, if there is reasonable cause to believe that the company is not conducting any business or operations.

Registration of charges

- In case of charges created before 2 November, 2018 the registrar may—on application by the company—allow registration of the charge, within a period of 300 days of such charge creation. If the registration is not made within 300 days, the registration of the

charge can be made within six months from the date of commencement of the Ordinance.

- In case of charges created after 2 November, 2018 the registrar may—on application by the company—allow registration of the charge within 60 days of such charge creation. If the charge is not created within the aforesaid period, the registration shall be made within an additional period of 60 days after payment of such *ad-valorem* fees.

Significant beneficial ownership disclosure

- Considering the importance of the disclosure, the punishment for non-compliance is enhanced to the effect that the contravention is punishable with fine or imprisonment (up to one year) or both, instead of being punishable with only a fine.
- In case the rights of a shareholder have been suspended by the NCLT for not providing disclosure, the

company or person aggrieved by its order may make an application to it for relaxation or lifting of restrictions within a period of one year from the date of order.

Re-categorisation of certain offences

Certain offences have been re-categorised as defaults carrying civil liabilities to bring them under an in-house adjudication mechanism. The key provisions amended are as follows:

- Issue of shares at a discount.
- Non-filing of annual return within the due date.
- Failure/ delay in filing financial statement.
- Contraventions related to Director Identification Number.
- Failure/ delay in filing certain resolutions.
- Failure/ delay in filing statement by the auditor after resignation.
- Managerial remuneration.

- Appointment of Key Management Personnel in certain class of companies.

De-clogging of NCLT

- Offences (with only fine or imprisonment or fine), where the maximum amount of fine is up to INR 2.5 million, will be compounded by the RD. The earlier limit was up to INR 0.5 million only, and any matter beyond such limit had to be compounded with the NCLT.
- The applications for change of financial year and conversion of a company from public to private are now to be made to the Central Government 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.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact your local PwC advisor

¹ The applicable authority under the Central Government is yet to be notified

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