



HIGHLIGHTS OF COMPANIES (AMENDMENT) ACT, 2019

BACKGROUND:

The government introduced Companies Amendment Bill, 2019 in Lok Sabha on 27th July, 2019. Further, the bill was passed by Rajya Sabha on 30th July, 2019 and received the assent of president on 31st July 2019. This is the third amendment in 5 years after most of the Companies Act became effective on 01st April, 2014.

Moving from liberalization in 2015 and 2017 amendments to strengthening Corporate Governance regime seems to be the motto of Companies Amendment Act, 2019. The amendment has mixed bags of changes with declogging NCLT from procedural matters, esops for Independent Directors, decriminalizing procedural defaults, penalizing CSR defaults, reducing charge creation timelines and handing over exclusive power in the hands of Central Government to implicate anyone for Oppression and Mismanagement. It looks as if more of socialistic changes and considering present situation of financial stress, how India Inc will response to these amendments needs to be monitored.

KEY HIGHLIGHTS:

SECTION	ANALYSIS
Section 10A: Commencement of Business, etc. (Notified w.e.f 02nd Nov, 2018)	<p>Section 10A is a newly inserted section and is applicable to Companies which are incorporated after the commencement of the Companies (Amendment) Act, 2019 (i.e., 08th November, 2018)</p> <p>The Company shall file a declaration in form INC-20A that every subscriber to the memorandum has paid the value of the shares within 180 days.</p> <p>The Company shall not commence any business and exercise any borrowing power unless a declaration is filed within 180 days from the date of incorporation declaring that every subscriber to the memorandum has paid the value of the shares within 180 days and also Company has filed with the Registrar a verification of its registered office within 30 days of its incorporation.</p> <p>Further, section 248 is also amended wherein the Tribunal shall have the power to remove name of company from register of companies in case: (a) there is a failure in filing of form INC-20A within 180 days of incorporation (b) Company is not carrying on any business as revealed in physical verification of the Registered office.</p> <p><i>(Section 11 which was similar to Section 10A was omitted by Companies</i></p>



	<p><i>Amendment Act, 2015 for ease of doing business and same section is now introduced for better Corporate Governance and to fix responsibility of subscriber to bring the initial share capital)</i></p>
<p>Section 26: Matters to be stated in prospectus (Notified w.e.f 15th Aug, 2019)</p>	<p>The requirement of registration of prospectus with the Registrar of Companies has been done away with and instead the prospectus would be filed with the Registrar.</p>
<p>Section 29: Public offer of securities to be in dematerialised form (Notified w.e.f 15th Aug, 2019)</p>	<p>Every Company making public offer and such other class or classes of companies as may be prescribed shall issue the securities only in dematerialised form.</p> <p>Instead of such other class or classes of Public companies, the amended section prescribes for such other class or classes of companies. The term 'public' has been omitted. Government would now prescribe the class of companies (not restricted to public companies), which would be mandatorily required to issue the securities only in dematerialised form.</p> <p>In case of such class or classes of unlisted companies as may be prescribed, the securities shall be held or transferred only in dematerialised form.</p> <p><i>(The heading of Section 29 reads as "Public offer of securities to be in dematerialized form", private company does not make any public offer of its securities and yet the section is made applicable to private companies through this amendment).</i></p>
<p>Section 77: Duty to register Charges, etc (Notified w.e.f 02nd Nov, 2018)</p>	<p>As per the amended provision, Charge has now to be registered within 30 days of creation which, on an application, may be extended by the Registrar to additional 30 days on payment of additional fees. In case the charge is not registered within the extended period, the registrar shall allow the registration to be made within the further period of 60 days after the payment of ad valorem fees.</p> <p><i>(In total only 120 days are allowed to register the charges instead of 300 days as per erstwhile provisions, no clarity is provided on extension of time after 120 days. Further the additional fees are increased substantially and new ad valorem fees concept is added.)</i></p>
<p>Section 90: Register of significant beneficial owners in a company (Notified w.e.f 15th Aug, 2019)</p>	<p>Sub Section 4A is added in Section 90 making every company responsible to take necessary steps to identify an individual who is a SBO and require him to give declaration in form BEN-1.</p>



<p>Section 132: Constitution of National Financial Reporting Authority (NFRA) (Notified w.e.f 15th Aug, 2019)</p>	<p>Debarring powers of NFRA has been amended, whereas NFRA shall now have power to debar the member or firm from being appointed as an auditor or internal auditor etc. or performing any valuation under section 247 in case professional or other misconduct is proved. <i>(Before amendment NFRA had powers to debar the member of ICAI from engaging himself or itself from practice as a member of ICAI. So it means the powers of debarring members still rest with ICAI)</i></p>
<p>Section 135: Corporate Social Responsibility (Yet to be notified)</p>	<p>Amendment in sub-section (5) first proviso of Section 135 –</p> <p>The companies that have not completed a period of 3 financial years in operation, shall, for the purpose of calculating CSR spend, consider the immediately preceding financial years.</p> <p>Companies that are unable to spend the CSR amount, shall have to ensure the following –</p> <p>a. If the unspent amount does not relate to any ongoing project then such unspent amount shall have to be transferred to a Fund specified in Schedule VII (Prime Minister’s Relief Fund, Clean Ganga Fund, Swach Bharat Kosh) within a period of six months of the expiry of the financial year.</p> <p>b. If the unspent amount relates to any ongoing project then it shall be transferred by the Company within a period of thirty days from the end of the financial year to a special account called ‘Unspent Corporate Social Responsibility Account’ in any scheduled bank and such amount shall be spent by the company in pursuance of the obligation towards CSR Policy within a period of three financial years from the date of such transfer. If within this period, the amount still remains unspent, then such amount shall have to be transferred to a Fund specified in Schedule VII within a period of thirty days from the date of completion of the third financial year.</p> <p>Penalty Clause (Insertion of sub-section (7)) –</p> <p>If the company contravenes the above provisions, the company shall be punishable with a fine between INR 50,000 to INR 25,00,000 and every officer of the company who is in default shall be punishable with imprisonment for a term upto three years or with fine between INR 50,000 to INR 5,00,000 or with both</p> <p>Directions for Compliance (Insertion of sub-section (8)) –</p> <p>The Central Government may give such general or specific directions to a company as it considers necessary to ensure compliance of provisions of sec 135 and such companies shall comply with such directions.</p>



	<p><i>In light of the above amendments in sec 135, the companies shall have to ensure necessary planning and action immediately in order for smooth compliance as well as good utilization and impact of the CSR monies spent.</i></p> <p>A question to think on: <i>In cases where NGO or implementing agency may have not utilized or expensed out the funds in that respective financial year then whether it still qualifies as amount spent for the Company or those funds have to be called back from NGO or implementing agency and transferred to unspent account.</i></p>
<p>Section 164: Disqualifications for appointment of director (Notified w.e.f 15th Aug, 2019)</p>	<p>A new clause (h) in sub-section (1) is inserted, whereby a person shall be disqualified if he accepts appointment as Director in more than 20 Companies out of which he cannot be a director in more than 10 Public Companies</p>
<p>Section 197: Overall maximum managerial remuneration in case of inadequacy of profits (Notified w.e.f 15th Aug, 2019)</p>	<p>Sub-section (7) of the Section has been removed which pertained to a prohibition on entitlement of stock option by independent directors.</p> <p>As per regulation 17 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 an independent director shall not be entitled to any stock option. Hence, the amendment shall not be applicable in case of listed companies</p>
<p>Section 212: Investigation into affairs of Company by Serious Fraud Investigation Office (Notified w.e.f 15th Aug, 2019)</p>	<p>Any officer not below the rank of Assistant Director of Serious Fraud Investigation Office (SFIO), if so authorized, may arrest any person in accordance with the provisions of this section. Earlier, authorization was given specifically to any Director, Additional director or Assistant director.</p> <p>The person so arrested may be taken to a Special Court or Judicial Magistrate or Metropolitan Magistrate within 24 hours of his arrest.</p>
<p>Section 241, 242 & 243 Powers of Tribunal (Notified w.e.f 15th Aug, 2019)</p>	<p>Central Government may now file oppression and mismanagement application to Tribunal if it is of the opinion that any person concerned in the management of the Company is guilty of fraud, misfeasance, <i>persistent negligence or default in carrying out his obligations under the Act,</i></p> <p>Tribunal to now pass the order stating whether the respondent is fit and proper person to be a director in any Company and if not a fit and proper person then that person shall not hold the office of a director or any other office connected with the conduct and management of the affairs of any company <i>for a period of five years</i> from the date of the decision of the Tribunal.</p>



Section 441: Compounding of Certain Offences (Notified w.e.f 02 nd Nov, 2018)	The Amendment act has increased the limit of offence for compounding before the Regional Director from 5 Lakhs to 25 Lakhs For Compounding the offence, provision for the permission of the Special Court is omitted.
Section 454A: Penalty for repeated default (Notified w.e.f 02 nd Nov, 2018)	Section 454A has been inserted in order to address the situation of repeated default. This section has been inserted to provide where a penalty in relation to a default has been imposed on a person under the provisions of Companies Act, 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 Regional Director 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 Companies Act, 2013.

OTHER AMENDMENTS:

SECTION	ANALYSIS
Section 2(41) : Financial Year (Notified w.e.f 02 nd Nov, 2018)	Application in form RD-1 to follow a different financial year for consolidation of accounts by a company which is a holding, subsidiary, associate of a company outside India and which is required to follow a different financial year can be now made to the Regional Director instead of the National Company Law Tribunal (NCLT). Pending applications with the NCLT before amendment shall be still disposed by the NCLT.
Section 14: Alteration of Articles (Notified w.e.f 02 nd Nov, 2018)	As per the amended provision, approval of the Central Government and not the NCLT shall be required for giving effect to any alteration that shall result in the conversion of a private company into a public company. Pending applications with the NCLT before amendment shall be still disposed by the NCLT.
Section 86: Punishment for contravention (Notified w.e.f 02 nd Nov, 2018)	A person shall be liable for punishment under fraud (under section 447) if he willfully furnishes any false or incorrect information or knowingly suppresses any material information at the time of registration of charge.



<p>Section 272: Power of Court to stay or restrain proceedings (Notified w.e.f 15th Aug, 2019)</p>	<p>In section 272 (3), as provided under, the reference to clause (e) is omitted:</p> <p>The Registrar shall be entitled to present a petition for winding up under section 271, except on the grounds specified in clause (a) or clause (e) of that sub-section:</p> <p>271(e) provides that a company may, on a petition under section 272, be wound up by the Tribunal, if the Tribunal is of the opinion that it is just and equitable that the company should be wound up.</p>
<p>Section 454: Adjudication of Penalties (Notified w.e.f 02nd Nov, 2018)</p>	<p>The adjudicating officer can now impose penalty on Company, Officer in default and any other person he considers to be in default and further may also give the direction of making good of the default at the time of levying penalty.</p>
<p>Section 454A: Penalty for repeated default (Notified w.e.f 02nd Nov, 2018)</p>	<p>Section 454A has been inserted in order to address the situation of repeated default. In case of same second and every subsequent default committed within 3 years then a penalty equivalent to twice the amount provided for such default under the relevant provision of Companies Act, 2013 shall be leviable.</p>

PENAL PROVISIONS:

SECTION & NATURE OF DEFAULT	PRE AMENDMENT	POST AMENDMENT
<p>Section 53: Prohibition of issue of shares at a discount (Notified w.e.f 02nd Nov, 2018)</p>	<p>Company – Fine Rs.1 Lakh to 5 Lakhs</p> <p>Officer in default – Imprisonment upto 6 months or fine Rs.1 Lakh to 5 Lakhs or both</p>	<p>Company & Officer in default – penalty upto the amount raised or Rs. 5 Lakhs whichever is less</p> <p>Company shall also be liable to refund the money received with the interest of 12% p.a.</p>
<p>Section 64: Failure/delay in filing notice with registrar for alteration of share capital (Notified w.e.f 02nd Nov, 2018)</p>	<p>Company or Officer in default – fine Rs.1,000 per day till default continues or Rs. 5 Lakhs whichever is less</p>	<p>Company or Officer in default – penalty Rs.1,000 per day till default continues or Rs. 5 Lakhs whichever is less</p>
<p>Section 92: Failure/delay in filing</p>	<p>Company - Fine Rs. 50000 to Rs. 5 Lakhs</p>	<p>Company and officer in default - Penalty Rs. 50000 and in case of</p>



<p>annual return (Notified w.e.f 02nd Nov, 2018)</p>	<p>Officer in default – imprisonment upto 6 months or fine Rs. 50000 to Rs. 5 Lakhs or both</p>	<p>continuing offence, further penalty of Rs.100 each day subject to maximum Rs. 5 lakhs</p>
<p>Section 102: Attachment of a statement of special business in a notice calling for general meeting (Notified w.e.f 02nd Nov, 2018)</p>	<p>Officer in default – fine Rs.5000 or five times the amount of benefit accruing whichever is more</p>	<p>Officer in default – Penalty Rs.5000 or five times the amount of benefit accruing whichever is more</p>
<p>Section 105: Default in providing a declaration regarding appointment of proxy in a notice calling for general meeting (Notified w.e.f 02nd Nov, 2018)</p>	<p>Officer in default – fine upto Rs.5000</p>	<p>Officer in default – penalty of Rs. 5000</p>
<p>Section 117: Failure/Delay in filing Certain resolutions (Notified w.e.f 02nd Nov, 2018)</p>	<p>Company – Fine Rs. 1 Lakh to Rs. 25 Lakhs</p> <p>Officer in default - Fine Rs. 50,000 to Rs. 5 Lakhs</p>	<p>Company – Penalty Rs. 1 Lakh and in case of continuing offence, further penalty of Rs.500 each day subject to maximum Rs. 25 lakhs</p> <p>Officer in default - penalty Rs. 50000 and in case of continuing offence, further penalty of Rs.500 each day subject to maximum Rs. 5 lakhs</p>
<p>Section 121: Failure/Delay in filing Report on AGM by public listed company (Notified w.e.f 02nd Nov, 2018)</p>	<p>Company - fine Rs.1 Lakh to Rs. 5 Lakhs</p> <p>Officer in default - fine Rs. 25000 to Rs. 1 Lakhs</p>	<p>Company – penalty Rs. 1 Lakh and in case of continuing offence, further penalty of Rs.500 each day subject to maximum Rs. 5 lakhs</p> <p>Officer in default - penalty Rs. 25000 and in case of continuing offence, further penalty of Rs.500 each day subject to maximum Rs. 1 lakh.</p>



<p>Section 137: Failure/Delay in filing financial statement (Notified w.e.f 02nd Nov, 2018)</p>	<p>Company: fine Rs.1000 every day subject to maximum Rs.10 lakhs</p> <p>Officer in default - imprisonment upto 6 months or fine Rs. 1 Lakhs to Rs. 5 Lakhs or both</p>	<p>Company: penalty Rs.1000 every day subject to maximum Rs.10 lakhs</p> <p>Officer in default: penalty Rs. 1 Lakhs and in case of continuing offence, further penalty of Rs.100 each day subject to maximum Rs. 5 lakh</p>
<p>Section 140: Failure/Delay in filing statement by auditor after resignation (Form ADT-3) (Notified w.e.f 02nd Nov, 2018)</p>	<p>Auditor: Fine Rs. 50,000 to Rs. 5 Lakhs or amount equal to remuneration of auditor, whichever is less</p>	<p>Auditor: Penalty of Rs. 50,000 to Rs. 5 Lakhs or amount equal to remuneration. Further penalty of Rs. 500 every day</p>
<p>Section 157: Failure to intimate DIN of directors to the Registrar (Notified w.e.f 02nd Nov, 2018)</p>	<p>Company: Fine Rs. 25,000 to Rs. 1 Lakh</p> <p>Officer in default: Fine Rs. 25,000 to Rs. 1 Lakh</p>	<p>Company: Penalty of Rs. 25,000 to Rs. 1 Lakh. And in case of continuing offence, further Penalty of Rs. 100 per day.</p> <p>Officer in default: Penalty of Rs. 25,000 to Rs. 1 Lakh</p>
<p>Section 159 : Punishment for contravention of sections 152, 155, and 156 (Notified w.e.f 02nd Nov, 2018)</p>	<p>Individual or Director: Imprisonment of 6 months Or Fine of Rs. 50,000 and in case of continuing offence Further Fine of Rs. 500 per day</p>	<p>Individual or Director: Imprisonment of 6 months Or Penalty of Rs. 50,000 and in case of continuing offence Further Penalty of Rs. 500 per day</p>
<p>Section 165: Non compliance of permissible number of directorship by director (Notified w.e.f 02nd Nov, 2018)</p>	<p>Director: fine of Rs. 5,000 to Rs. 25,000</p>	<p>Director: Penalty of Rs. 5000 per day</p>
<p>Section 191: Contravention for payment to directors for loss of office (Notified w.e.f 02nd Nov, 2018)</p>	<p>Company: Fine Rs. 25000 to Rs. 1Lakh</p>	<p>Company: Penalty of Rs. 1 Lakh</p>



<p>Section 197: Contravention in Overall maximum managerial remuneration in case of inadequacy of profits (Notified w.e.f 02nd Nov, 2018)</p>	<p>Company: Fine Rs. 1 Lakhs to Rs. 5 Lakhs</p>	<p>Company: Penalty Rs. 1 Lakhs to Rs. 5 Lakhs</p>
<p>Section 203: Default in appointment of Key Managerial Personnel (Notified w.e.f 02nd Nov, 2018)</p>	<p>Company: Fine Rs. 1 Lakh to 5 lakhs</p> <p>Officer in default: fine of Rs. 50,000 and in case of continuing default, Further Fine of Rs. 1000 everyday</p>	<p>Company: Penalty Rs. 1 Lakh to 5 lakhs</p> <p>Officer in default: penalty of Rs. 50,000 to Rs. 5 lakhs and in case of continuing default, Further penalty of Rs. 1000 everyday</p>
<p>Section 238: Non Registration of the offer of scheme involving transfer of shares (Notified w.e.f 02nd Nov, 2018)</p>	<p>Director: Fine Rs. 25,000 to Rs. 5 Lakh</p>	<p>Director: Penalty of Rs. 1 Lakh</p>
<p>Section 446: Default in filing annual return by OPC and small company (Notified w.e.f 02nd Nov, 2018)</p>	<p>½ of fine or imprisonment or both as may be specified in section 92(5) of the Act</p>	<p>½ of penalty as may be specified in section 92(5) of the Act</p>
<p>Section 447: Penal provisions for fraud involving Rs. 10 lakh or 1% of turnover and does not involve public interest (Notified w.e.f 02nd Nov, 2018)</p>	<p>Any person guilty : Imprisonment of 5 years Or Fine of Rs. 25 Lakh</p>	<p>Any person guilty : Imprisonment of 5 years Or Fine of Rs. 50 Lakh</p>