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MCA has notified establishment of Registrar of Companies cum Official Liquidator at Dehradun, Uttarakhand

MCA vide notification dated 26th October, 2018 has notified establishment of Registrar of Companies cum Official Liquidator at Dehradun having territorial jurisdiction in the whole state of Uttarakhand for discharging the functions of Registrar of Companies.

Ministry of Law and Justice passed Companies Amendment (Ordinance), 2018

Companies Amendment (Ordinance), 2018 amending Companies Act, 2013 was passed by Ministry of Law and Justice on 2nd November, 2018 which brought 32 amendments to the Companies Act, 2013 and it shall come into force at once.



Major highlights of the Companies Amendment (Ordinance), 2018 are below:

1. Substitution of First Proviso of Section 2 Clause 41: "Financial Year"

Under current provisions as per Companies Act, 2013 in case of Indian company having Holding/ subsidiary/ Associate Company situated outside India, it is allowed to change the financial year as per such company with the approval of Tribunal.

As amended by Companies Amendment (Ordinance), 2018: Power of Tribunal has been transferred to **Central Government**. Therefore, after notification of Ordinance, financial year of Company can be changed with approval of Central Government.

2. Certificate of commencement of Business: New Section 10A inserted after Section 10:

As per 10A, a company incorporated after Ordinance shall not commence its business or exercise any borrowing powers unless-

- **A declaration** is filed by the directors within 180 days from date of incorporation of company with ROC that 'every subscriber to the MOA has paid the value of the shares agreed to be taken by him'
- A verification of registered office as required to file u/s 12(2) within 30 days of incorporation.

Note:

If company fails to file such declaration within 180 days from the date of incorporation then ROC has reasonable cause to believe that the Company is not carrying on any business or operation, ROC may, initiate action for removal of name of Company (Strike off)

3. Maintenance of Registered office of Company:

Addition of subsection (9) after Section 12 subsection 8:

Under current provisions as per Companies Act, 2013- As per Section 12(1) a company shall, within thirty days of its incorporation and at all times thereafter, have a registered office capable of receiving and acknowledging all communications and notices as may be addressed to it.

As amended by Companies Amendment (Ordinance), 2018: Registrar may do physical verification of the Registered office of Company and if any default is found to be made in complying with provision of Section 12(1) (extract mentioned above) ROC may, initiate action for removal of name of Company (Strike off)

4. Conversion of Public Company into Private Limited Company: Substitution of Provisos of Section 14 Sub section 1:

As per Section 14(1) for conversion of Public Company into Private Limited Company approval of Tribunal is required.

As amended by Companies Amendment (ordinance), 2018: Power of Tribunal has been transferred to **Central Government**. Therefore, after notification of ordinance Public Company can be convert into Private Company with approval of Central Government.

5. Duty to Register Charge:

Substitution of first and Second Provisos of Section 77 Sub section 1:

Under current provisions as per Companies Act, 2013- As per Section 77(1) Company can file form for registration of Charge after 30 days till 300 days with additional fees and if company fails to file within 300 days can file form as per Section 87 condonation from Regional Director.



As amended by Companies Amendment (ordinance), 2018: In case of charge created after the commencement of ordinance, 2018 then registrar shall allow such registration **“within period of 60 days of such creation”**.

If Company fails to file within 60 days of creation, “Roc may allow such registration to be made **within a further period of 60 days after** payment of such advalorem fees as may be prescribed”

Therefore, period of 300 days has been removed by the ordinance.

Note: Maximum time period for registration/modification of charges to be 30 days + additional 30 days. Further condonation to be done in 60 days. ***After total of 120 days Charge Cannot be Registered**

6. Condonation of delay In Satisfaction charge –Section 87: Section 87 substituted by new Section:

This section now applicable only for “Satisfaction of Charge”. Power of Creation of Charge u/s 87 has been removed.

7. Significant Beneficial Owner u/s Section 90: Substitution of Sub Section 9 of Section 90:

Under current provisions as per Companies Act, 2013- “The Company or the person aggrieved by the order of the Tribunal may make an application to the Tribunal for relaxation or lifting of the restrictions placed under sub-section (8).

As amended by Companies Amendment (ordinance), 2018: The company or the person aggrieved by the order of the Tribunal may make an application to the Tribunal for relaxation or lifting of the restrictions placed under sub-section (8) **“within period of one year from the date of such order”**

Provided that, If no application is filed within period of one Year ‘Shares shall be transferred to the authority constituted u/s 125(5).

8. Annual Return under Section 92: Substitution of Sub Section 5 of Section 92: “Reduction in Penalty”

As amended by Companies Amendment (ordinance), 2018: If any company fails to file Annual Return before expiry of 60 days, such company and its officer who is in default shall be liable to a penalty of “50,000/-“ and in case of continuing failure, with further penalty of “Rs. 100” for each day during which such failure continues.

9. Disqualification of Director under Section 164: Addition of clause (h) in Section 164(1)

Under current provisions as per Companies Act, 2013- As per Section 165, No person, after the commencement of this Act, shall hold office as a director, including any alternate directorship, in more than twenty companies at the same time.

As amended by Companies Amendment (ordinance), 2018: If default made in Section 165, then director shall be considered as disqualified under Section 164. "Breach in Maximum no of Directorships to be a Ground for Disqualification.

10. Managerial Remuneration– Section 197: Subsection 7 Shall be omitted:

(7) Notwithstanding anything contained in any other provision of this Act but subject to the provisions of this section, an *independent director* shall not be entitled to any stock option and may receive remuneration by way of fees provided under sub-section (5), reimbursement of expenses for participation in the Board and other meetings and profit related commission as may be approved by the members.

As amended by Companies Amendment (ordinance), 2018: Sub section 7 omitted, therefore, remuneration to Independent Directors in form of Sitting fees has been removed from the Act. "**Stricter norms for IDs & capping of their sitting fee & remuneration.**"

11. Compounding of Offence– Section 441:

Under current provisions as per Companies Act, 2013, where the maximum amount of fine which may be imposed for such offence does not exceed five lakh rupees, by the Regional Director or any officer authorised by the Central Government, (Power of RD to compound offence punishable upto Rs. 500,000/-)

As amended by Companies Amendment (ordinance), 2018: where the maximum amount of fine which may be imposed for such offence does **not exceed Twenty five lakh rupees**, by the Regional Director or any officer authorised by the Central Government, **(Power of RD to compound offence punishable increased upto Rs. 2,500,000/-)**

Note: Prior permission of Special Court not required for Compounding of offences punishable with imprisonment or fine or with both by NCLT

[1] All the matters filed with NCLT before date of commencement of the Ordinance, 2018 shall be disposed off by the Tribunal in according with earlier provisions.

[2] All the matters filed with NCLT before date of commencement of the Ordinance, 2018 shall be disposed off by the Tribunal in according with earlier provisions. shall come into force.

National Financial Reporting Authority Rules, 2018

MCA vide its notification dated 13th November, 2018 has notified National Financial Reporting Authority Rules, 2018 which shall come into force from the date of their publication in official gazette.



These rules contains the Composition of Authority, Manner of Appointment of members, Medical Fitness of members, Resignation of members, Removal from Office, Procedure for inquiry of misbehavior or incapacity of the chairperson or a member, Term of Office, Vacancy, etc. and they are made in consonance of section 132 of Companies Act, 2013 which is Constitution of National Financial Reporting Authority.

SEBI issues circular on disclosure of reason for delay in submission of financial results by listed companies

Securities and Exchange Board of India vide circular CIR/CFD/CMD-1/142/2018 dated 19th November, 2018 mandates all listed entities and all recognised stock exchanges to disclose the reason for delay in submission of financial results by them.



1. Regulation 33 of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“Listing Regulations”), inter-alia, specifies timelines for submission of financial results by listed entities to stock exchanges within forty-five/sixty days from the end of the quarter/financial year.
2. In case of non-compliance of various provisions of the Listing Regulations including non-submission/delayed submission of financial results, SEBI has prescribed a standard operating procedure through certain circulars, the latest being the circular dated May 3, 2018. Such penalties, freezing of promoter shareholding, etc. act as deterrents for listed entities to delay disclosure of their financial results.
3. Nevertheless, wherever there were delays in submission of financial results by certain listed entities to the stock exchanges in the past, while the fact of delay was intimated by the listed

entity, the reasons for the same were not disclosed / were not brought out clearly. In such cases, the investors were often left unaware as to the reasons for such delays which may have had an impact on their investment decision.

Hence, there is a need for disclosure by listed entities of reasons for delay in submission of financial results.

4. Accordingly, if any listed entity does not submit its financial results in accordance with the timelines specified in Regulation 33 of Listing Regulations, listed entity shall disclose detailed reasons for such delay to the stock exchanges within one working day of the due date of submission for the results as required under Regulation 33. However, if the decision to delay the results was taken by the listed entity prior to the due date, the listed entity shall disclose detailed reasons for such delay to the stock exchanges within one working day of such decision.
5. The Stock Exchanges are advised to bring the provisions of this circular to notice of the listed entities and also to disseminate it on their websites as this circular shall come into force with immediate effect.

MSME notification on reporting with MCA

The Ministry of Micro, Small and Medium Enterprises issued a notification on 2nd November, 2018, which prescribes half-yearly reporting to Ministry of Corporate Affairs (MCA) for the Companies which receives services or goods from micro or small enterprises and whose payments to micro and small enterprises suppliers exceed 45 days.



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