



## Inside this edition

- Delegation of powers to Regional Directors
- The Companies (Amendment) Ordinance, 2018
- Acceptance of Probate of Will or Will for Transmission of Securities held in dematerialized mode
- Disclosure regarding implementation of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

## Delegation of powers to Regional Directors

**MCA vide its notification dated 18<sup>th</sup> December**, In exercise of the powers conferred by section 458 of the Companies Act, 2013 (18 of 2013), the Central Government hereby delegates to the Regional Directors all over India the powers and functions vested in it under the provisions of the Companies Act, 2013 subject to the condition that the Central Government may revoke such delegation of powers or may itself exercise the powers under the Act, if in its opinion such a course of action is necessary in the public interest.

## The Companies (Amendment) Ordinance, 2018

In exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance. An ordinance to further amend the Companies Act, 2013. Short title and commencement.

This Ordinance may be called the Companies (Amendment) Ordinance, 2018.

### 2. Definition of “Financial Year” under Companies Act, 2013

In section 2 of the Companies Act, 2013 (hereinafter referred to as the principal Act), in clause (41),—

(a) for the first proviso, the following provisos shall be substituted, namely:—

“Provided that where a company or body corporate, which is a holding company or a subsidiary or associate company of a company

incorporated outside India and is required to follow a different financial year for consolidation of its accounts outside India, the Central Government may, on an application made by that company or body corporate in such form and manner as may be prescribed, allow any period as its financial year, whether or not that period is a year:

Provided further that any application pending before the Tribunal as on the date of commencement of the Companies (Amendment) Ordinance, 2018, shall be disposed of by the Tribunal in accordance with the provisions applicable to it before such commencement”;

(b) in the second proviso, for the words “Provided further that”, the words “Provided also that” shall be substituted.

### **3. Filing Form of commencement of business**



After section 10 of the principal Act, the following section shall be inserted, namely:—“10A.(1) A company incorporated after the commencement of the Companies (Amendment) Ordinance, 2018 and having a share capital shall not commence any business or exercise any borrowing powers unless—

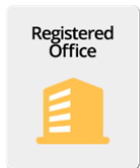
(a) a declaration is filed by a director within a period of one hundred and eighty days of the date of incorporation of the company in such form and verified in such manner as may be prescribed, with the Registrar that every subscriber to the memorandum has paid the value of the shares agreed to be taken by him on the date of making of such declaration; and

(b) the company has filed with the Registrar a verification of its registered office as provided in sub-section (2) of section 12.

(2) If any default is made in complying with the requirements of this section, the company shall be liable to a penalty of fifty thousand rupees and every officer who is in default shall be liable to a penalty of one thousand rupees for each day during which such default continues but not exceeding an amount of one lakh rupees.

(3) Where no declaration has been filed with the Registrar under clause (a) of sub-section (1) within a period of one hundred and eighty days of the date of incorporation of the company and the Registrar has reasonable cause to believe that the company is not carrying on any business or operations, he may, without prejudice to the provisions of sub-section (2), initiate action for the removal of the name of the company from the register of companies under Chapter XVIII.

#### **4. Registered office of the company**



In section 12 of the principal Act, after sub-section (8), the following sub-section shall be inserted, namely:—

“(9) If the Registrar has reasonable cause to believe that the company is not carrying on any business or operations, he may cause a physical verification of the registered office of the company in such manner as may be prescribed and if any default is found to be made in complying with the requirements of sub-section (1), he may without prejudice to the provisions of sub-section (8), initiate action for the removal of the name of the company from the register of companies under Chapter XVIII.”.

#### **5. Approval of conversion of public company into private company**



In section 14 of the principal Act,—

(i) in sub-section (1), for the second proviso, the following provisos shall be substituted, namely:—

“Provided further that any alteration having the effect of conversion of a public company into a private company shall not be valid unless it is approved by an order of the Central Government on an application made in such form and manner as may be prescribed:

Provided also that any application pending before the Tribunal, as on the date of commencement of the Companies (Amendment) Ordinance, 2018, shall be disposed of by the Tribunal in accordance with the provisions applicable to it before such commencement.”;

(ii) in sub-section (2), for the word “Tribunal”, the words “Central Government” shall be substituted

“(3) Where any company fails to comply with the provisions of this section, such company and every officer who is in default shall be liable to a penalty which may extend to an amount equal to the amount raised through the issue of shares at a discount or five lakh rupees, whichever is less, and the company shall also be liable to refund all monies received with interest at the rate of twelve per cent. per annum from the date of issue of such shares to the persons to whom such shares have been issued.”.

#### **6. Notice to be given to the registrar for alteration of share capital .**

In section 64 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) Where any company fails to comply with the provisions of sub-section (1), such company and every officer who is in default shall be liable to a penalty of one thousand rupees for each day during which such default continues, or five lakh rupees whichever is less.”.

### 7. Period of registration of charges .



In section 77 of the principal Act, in sub-section (1), for the first and second provisos, the following provisos shall be substituted, namely:—

“Provided that the Registrar may, on an application by the company, allow such registration to be made—

(a) in case of charges created before the commencement of the Companies (Amendment) Ordinance, 2018, within a period of three hundred days of such creation; or

(b) in case of charges created on or after the commencement of the Companies (Amendment) Ordinance, 2018, within a period of sixty days of such creation, on payment of such additional fees as may be prescribed:

Provided further that if the registration is not made within the period specified—

(a) in clause (a) to the first proviso, the registration of the charge shall be made within six months from the date of commencement of

the Companies (Amendment) Ordinance, 2018, on payment of such additional fees as may be prescribed and different fees may be prescribed for different classes of companies;

(b) in clause (b) to the first proviso, the Registrar may, on an application, allow such registration to be made within a further period of sixty days after payment of such advalorem fees as may be prescribed.”.

### 8. Punishment for furnishing any false information



Section 86 (1) shall be numbered as sub-section (1) thereof and after sub-section (1) as so numbered, the following sub-section shall be inserted, namely:—

1. “(2) If any person wilfully furnishes any false or incorrect information or knowingly suppresses any material information, required to be registered in accordance with the provisions of section 77, he shall be liable for action under section 447.”.

### 9. Rectification by the central government in register of charges



For section 87 of the principal Act, the following section shall be substituted, namely:—

Rectification by Central Government in Register of charges.

“87. The Central Government on being satisfied that —

(a) the omission to give intimation to the Registrar of the payment or satisfaction of a charge, within the time required under this Chapter; or

(b) the omission or misstatement of any particulars with respect to any such charge or modification or with respect to any memorandum of satisfaction or other entry made in pursuance of section 82 or section 83,

was accidental or due to inadvertence or some other sufficient cause or it is not of a nature to prejudice the position of creditors or shareholders of the company, it may, on the application of the company or any person interested and on such terms and conditions as the Central Government deems just and expedient, direct that the time for the giving of intimation of payment or satisfaction shall be extended or, as the case may require, that the omission or misstatement shall be rectified.”.

#### 10. Transfer of shares if no application has been filed



In section 90 of the principal Act,—

(i) for sub-section (9), the following sub-section shall be substituted, namely:—

“(9) 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 a period of one year from the date of such order:

Provided that if no such application has been filed within a period of one year from the date of the order under sub-section (8), such

shares shall be transferred to the authority constituted under sub-section (5) of section 125, in such manner as may be prescribed;

(ii) in sub-section (10),—

(a) after the word “punishable”, the words “with imprisonment for a term which may extend to one year or” shall be inserted;

(b) after the words “ten lakh rupees”, the words “or with both” shall be inserted.

#### 11. Penalty for not filing the annual return



In section 92 of the principal Act, for sub-section (5), the following sub-section shall be substituted, namely:—

“(5) If any company fails to file its annual return under sub-section (4), before the expiry of the period specified therein, such company and its every officer who is in default shall be liable to a penalty of fifty thousand rupees and in case of continuing failure, with further penalty of one hundred rupees for each day during which such failure continues, subject to a maximum of five lakh rupees.”.

#### 12. Penalty for not annexing the statement to the notice



In section 102 of the principal Act, for sub-section (5), the following sub-section shall be substituted, namely:—

If any default is made in complying with the provisions of this section, every promoter, director, manager or other key managerial personnel of the company who is in default shall be liable to a penalty of fifty thousand rupees or five times the amount of benefit

accruing to the promoter, director, manager or other key managerial personnel or any of his relatives, whichever is higher.”.



### **13. Penalty for not complying with the provision relating to the appointment of proxies**

In section 105 of the principal Act, in sub-section (3), for the words “punishable with fine which may extend to five thousand rupees”, the words “liable to a penalty of five thousand rupees” shall be substituted.

### **14. Penalty for not filing the resolutions and agreements**

In section 117 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) If any company fails to file the resolution or the agreement under sub-section (1) before the expiry of the period specified therein, such company shall be liable to a penalty of one lakh rupees and in case of continuing failure, with further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of twenty-five lakh rupees and every officer of the company who is in default including liquidator of the company, if any, shall be liable to a penalty of fifty thousand rupees and in case of continuing failure, with further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees.”.

### **15. Penalty for not filing the report on Annual General Meeting**



In section 121 of the principal Act, for sub-section (3), Amendment of the following sub-section shall be substituted, namely:

“(3) If the company fails to file the report under sub-section (2) before the expiry of the period specified therein, such company shall be liable to a penalty of one lakh rupees and in case of continuing failure, with further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees and every officer of the company who is in default shall be liable to a penalty which shall not be less than twenty-five thousand rupees and in case of continuing failure, with further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of one lakh rupees.”.

### **16. Penalty for not filing the financials with the Registrar**



In section 137 of the principal Act, in sub-section (3),—

(a) for the words “punishable with fine”, the words “liable to a penalty” shall be substituted;

(b) for the words “punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees or with both”, the words “shall be liable to a penalty of one lakh rupees and in case of continuing failure, with further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees” shall be substituted.

### 17. Penalty for not complying with the provisions relating to the resignation of the auditor

In section 140 of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely:—

“(3) If the auditor does not comply with the provisions of sub-section (2), he or it shall be liable to a penalty of fifty thousand rupees or an amount equal to the remuneration of the auditor, whichever is less, and in case of continuing failure, with further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees.”.

### 18. Penalty for not furnishing the Director Identification Number



In section 157 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) If any company fails to furnish the Director Identification Number under sub-section (1), such company shall be liable to a penalty of twenty-five thousand rupees and in case of continuing failure, with further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of one lakh rupees, and every officer of the company who is in default shall be liable to a penalty of not less than twenty-five thousand rupees and in case of continuing failure, with further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of one lakh rupees.”.

### 19. Penalty for not complying with the provisions of the Section 152, 155 & 156

For section 159 of the principal Act, the following section shall be substituted, namely:—

Penalty for default of certain Provision

“159. If any individual or director of a company makes any default in complying with any of the provisions of section 152, section 155 and section 156, such individual or director of the company shall be liable to a penalty which may extend to fifty thousand rupees and where the default is a continuing one, with a further penalty which may extend to five hundred rupees for each day after the first during which such default continues.”.

### 20. Disqualification for appointment of director



In section 164 of the principal Act, in sub-section (1), after clause (h), the following clause shall be inserted, namely:—

“(i) he has not complied with the provisions of sub-section (1) of section 165.”.

### 21. Penalty for holding directorship exceeding the number as prescribed under the Act

In section 165 of the principal Act, in sub-section (6), for the portion beginning with “punishable with fine” and ending with “contravention continues”, the words “liable to a penalty of five

thousand rupees for each day after the first during which such contravention continues” shall be substituted.

## 22. Penalty for not complying with the provisions relating to the payment to director for loss of office or in connection with transfer of undertaking, property or share

In section 191 of the principal Act, for sub-section (5), the following sub-section shall be substituted, namely:—

“(5) If a director of the company makes any default in complying with the provisions of this section, such director shall be liable to a penalty of one lakh rupees.”.

## 23. Penalty for default in complying with the provisions relating to the overall maximum managerial remuneration and managerial remuneration in case of absence or inadequacy of profits

In section 197 of the principal Act,—

(a) sub-section (7) shall be omitted;

(b) for sub-section (15), the following sub-section shall be substituted, namely:—

“(15) If any person makes any default in complying with the provisions of this section, he shall be liable to a penalty of one lakh rupees and where any default has been made by a company, the company shall be liable to a penalty of five lakh rupees.”.

## 24. Default in complying with the provisions relating to the appointment of key managerial personnel



In section 203 of the principal Act, for sub-section (5), the following sub-section shall be substituted, namely:—

“(5) If any company makes any default in complying with the provisions of this section, such company shall be liable to a penalty of five lakh rupees and every director and key managerial personnel of the company who is in default shall be liable to a penalty of fifty thousand rupees and where the default is a continuing one, with a further penalty of one thousand rupees for each day after the first

during which such default continues but not exceeding five lakh rupees.”.

## 25. Default in the provision relating to the registration of offer of schemes involving transfer of shares



In section 238 of the principal Act, in sub-section (3), for the words “punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees”, the words “liable to a penalty of one lakh rupees” shall be substituted

## 26. Removal of the name of the company from the register of companies

In section 248 of the principal Act, in sub-section (1), — Amendment of section 248.



(a) in clause (c), for the word and figures “section 455,” the words and figures “section 455; or” shall be substituted;

(b) after clause (c) and before the long line, the following clauses shall be inserted, namely:—

“(d) the subscribers to the memorandum have not paid the subscription which they had undertaken to pay at the time of incorporation of a company and a declaration to this effect has not been filed within one hundred and eighty days of its incorporation under subsection (1) of section 10A; or

(e) the company is not carrying on any business or operations, as revealed after the physical verification carried out under sub-section (9) of section 12.”.

## 27. Compounding of offences



In section 441 of the principal Act,—

(a) in sub-section (1), in clause (b), for the words “does not exceed five lakh rupees”, the words “does not exceed twenty-five lakh rupees” shall be substituted;

(b) for sub-section (6), the following sub-section shall be substituted, namely:—

“(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence which is punishable under this Act with imprisonment only or with imprisonment and also with fine shall not be compoundable.”.

## 28. Application of fines

In section 446B of the principal Act, for the portion beginning with “punishable with fine” and ending with “specified in such sections”, the words “liable to a penalty which shall not be more than one half of the penalty specified in such sections” shall be substituted.

## 29. Punishment for fraud



In section 447 of the principal Act, in the second proviso, for the words “twenty lakh rupees”, the words “fifty lakh rupees” shall be substituted.

## 30. Adjudication of penalties



In section 454 of the principal Act, —

(i) for sub-section (3), the following sub-section shall be substituted, namely: —

“(3) The adjudicating officer may, by an order

(a) impose the penalty on the company, the officer who is in default, or any other person, as the case may be, stating therein any non-compliance or default under the relevant provisions of this Act; and

(b) direct such company, or officer who is in default, or any other person, as the case may be, to rectify the default, wherever he considers fit.”;

(ii) in sub-section (8), —

(a) in clause (i), for the words “does not pay the penalty imposed by the adjudicating officer or the Regional Director”, the words, brackets and figures “fails to comply with the order made under sub-section (3) or sub-section (7), as the case may be,” shall be substituted;

(b) in clause (ii), for the words “does not pay the penalty”, the words, brackets and figures “fails to comply with the order made under sub-section (3) or sub-section (7), as the case may be,” shall be substituted.

### **31. Penalty for repeated default**

After section 454 of the principal Act, the following section shall be inserted, namely:—

Penalty for repeated default.

“454A. Where a company or an officer of a company or any other person having already been subjected to penalty for default under any provisions of this Act, again commits such default within a period of three years from the date of order imposing such penalty passed by the adjudicating officer or the Regional Director, as the case may be, it or he shall be liable for the second or subsequent defaults for an amount equal to twice the amount of penalty provided for such default under the relevant provisions of this Act.”

### **Acceptance of Probate of Will or Will for Transmission of Securities held in dematerialized mode**



The Securities and Exchange Board of India (SEBI) on January 04, 2019 has decided that transmission of securities held in dematerialized mode shall be dealt in line with Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Sixth Amendment) Regulations, 2018

In terms of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Sixth Amendment) Regulations, 2018, succession certificate or probate of will or will or letter of administration or court decree, as may be applicable in terms of Indian Succession Act, 1925 has been prescribed as documentary requirement for transmission of securities held in physical mode.

With regard to transmission of securities held in dematerialized mode, the same is dealt in terms of bye laws of the Depositories. In order to harmonize the procedures for transmission of securities in dematerialized mode with that of transmission of securities in physical mode, it has been decided that transmission of securities held in dematerialized mode shall be dealt in line with Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Sixth Amendment) Regulations, 2018.

Accordingly, the Depositories and Stock Exchanges are directed to:

- a) bring the provisions of this circular to the notice of their participants/ members, and also disseminate the same on their websites; and
- b) suitably amend their Bye Laws;

The provisions of the circular shall be applicable with immediate effect

**Disclosure regarding implementation of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal ) Act,2013**



Section 22 of the SH Act mandates submission the number of cases filed and their disposal under the SH Act within the organisation's Annual Report or where no such report is required to be prepared, intimate such number of cases to the District Officer. Recently, at the request of Ministry of Women and Child Development, the Ministry of Corporate Affairs has issued a notification dated 31st July, 2018 whereby it has amended the Company (Account) Rules, 2014 making the disclosure regarding the implementation of the SH Act mandatory in the Directors' Report of every company

# VERENDRA KALRA & CO

CHARTERED ACCOUNTANTS

## CONTACT DETAILS:

### Head Office

75/7 Rajpur Road, Dehradun

**T** +91.135.2743283, 2747084, 2742026

**F** +91.135.2740186

**E** info@vkalra.com

**W** www.vkalra.com

### Branch Office

80/28 Malviya Nagar, New Delhi

**E** info@vkalra.com

**W** www.vkalra.com



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