

Ordinance Summary

The Companies (Amendment) Ordinance, 2018

- The Companies (Amendment) Ordinance, 2018 was promulgated on November 2, 2018. It amends several provisions in the Companies Act, 2013 relating to penalties, among others.
- **Issue of shares at a discount:** The Act prohibits a company from issuing shares at a discount, except in certain cases. On failure to comply, the company is liable to pay a fine between one lakh rupees and five lakh rupees. Further, every officer in default may be punished with imprisonment up to six months or fine between one lakh rupees and five lakh rupees. The Ordinance changes this to remove imprisonment for officers as a punishment. Further, the company and every officer in default will be liable to pay a penalty equal to the amount raised by the issue of shares at a discount or five lakh rupees, whichever is lower. The company will also be liable to refund the money received with interest at 12% per annum from the date of issue of the shares.
- **Commencement of business:** The Ordinance states that a company may not commence business, unless it (i) files a declaration within 180 days of incorporation, confirming that every subscriber to the Memorandum of the company has paid the value of shares agreed to be taken by him, and (ii) files a verification of its registered office address with the Registrar of Companies within 30 days of incorporation. If a company fails to comply with these provisions and is found not to be carrying out any business, the name of the Company may be removed from the Register of Companies.
- **Registration of charges:** The Act requires companies to register charges (such as mortgages) on their property within 30 days of creation of charge. The Registrar may permit the registration within 300 days of creation. If the registration is not completed within 300 days, the company is required to seek extension of time from the central government.
- The Ordinance changes this to permit registration of charges: (i) within 300 days if the charge is created before the Ordinance, or (ii) within 60 days if the charge is created after the Ordinance. If the charge under the first category is not registered within 300 days, it must be completed within six months from the date of the Ordinance. If the charge under the second category is not registered within 60 days, the Registrar may grant another 60 days for registration. If a person wilfully furnishes false or incorrect information, or suppresses material information which is required to be registered under this provision, he will be liable for fraud under the Act.
- **Change in approving authority:** Under the Act, change in period of financial year for a company associated with a foreign company, has to be approved by the National Company Law Tribunal. Similarly, any alteration in the incorporation document of a public company which has the effect of converting it to a private company, has to be approved by the Tribunal. Under the Ordinance, these powers have been transferred to central government.
- **Declaration of beneficial ownership:** If a person holds beneficial interest of at least 25% shares in a company or exercises significant influence or control over the company, he is required to make a declaration of his interest. Under the Act, failure to declare this interest is punishable with a fine between one lakh rupees and ten lakh rupees, along with a continuing fine for every day of default. The Ordinance provides that such person may either be fined, or imprisoned for up to one year, or both.
- **Remuneration for independent directors:** The Act restricts an independent director from entitlement to stock options. It further states that he may receive sitting fees, commission, and reimbursement of expenses. The Ordinance removes this provision.
- **Disqualification of directorship:** Under the Act, a person cannot be a director in more than 20 companies. The Ordinance provides that contravening this provision will be a ground for disqualification from directorship.
- **Adjudication of penalties:** The Act allows the central government to appoint adjudicating officers to decide penalties under the Act. The Ordinance states that these officers, in addition to imposing penalties, may direct the defaulting entity to rectify the default.
- **Compounding:** Under the Act, a regional director can compound (settle) offences with a penalty of up to five lakh rupees. The Ordinance increases this ceiling to Rs 25 lakh.
- **Repeat defaulters:** Under the Ordinance, if a company, or an officer, or other person commits a default again within three years of the previous case, the entity will be liable to twice the penalty as provided for such default.

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