



The Companies (Amendment) Bill, 2018

February 2019



ASIA BRIEFING



DEZAN SHIRA & ASSOCIATES

Your Partner for Growth in Asia

This document is for research purposes only; it should not be used as an official document.

Be it enacted by parliament in the sixty-ninth year of the Republic of India as follows:

Short Title and Commencement

1.
 - (1) This Act may be called the Companies (Amendment) Act, 2018.
 - (2) It shall be deemed to have come into force on the 2nd day of November 2018.

Amendment of Section 2

2. 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) Act, 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.

Insertion of New Section 10a Commencement of Business, Etc

3. 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) Act, 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.

Amendment of Section 12

4. In section 12 of the principal Act, after sub-section (8), the following sub-section 30 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."

Amendment of Section 14

5. 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) Act, 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.

Amendment of Section 53

6. In section 53 of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely:

"(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."

Amendment of Section 64

7. 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."

Amendment of Section 77

8. 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) Act, 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) Act, 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) Act, 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 ad valorem fees as may be prescribed."

Amendment of Section 86

9. Section 86 of the principal Act shall be numbered as sub-section (1) thereof and after sub-section (1) as so numbered, the following sub-section shall be inserted, namely:

"(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."

Substitution of New Section for Section 87 Rectification by Central Government in Register of Charges

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

"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 5
- (b) the omission or mis-statement of any particulars, in any filing previously made to the Registrar with respect to any charge or modification thereof 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 it 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

mis-statement shall be rectified."

Amendment of Section 90

11. 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, without any restrictions, 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.

Amendment of Section 92

12. 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 a further penalty of one hundred rupees for each day during which such failure continues, subject to a maximum of five lakh rupees."

Amendment of Section 102

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

"(5) Without prejudice to the provisions of sub-section (4), 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."

Amendment of Section 105

14. 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.

Amendment of Section 117

15. 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 a 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 a 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."

Amendment of Section 121

16. In section 121 of the principal Act, for sub-section (3), 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 a 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 a 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."

Amendment of Section 137

17. 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 portion beginning with "punishable with imprisonment" and ending with "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 a 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.

Amendment of Section 140

18. 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 a 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."

Amendment of Section 157

19. 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 a 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 a 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."

Substitution of New Section for Section 159 Penalty for Default of Certain Provisions

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

"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."

Amendment of Section 164

21. 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."

Amendment of Section 165

22. 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.

Amendment of Section 191

23. 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."

Amendment of Section 197

24. 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."

Amendment of Section 203

25. 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."

Amendment of Section 238

26. 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.

Amendment of Section 248

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

Amendment of Section 441

28. 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."

Amendment of Section 446b.

29. 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.

Amendment of Section 447.

30. 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.

Amendment of Section 454.

31. 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 (4), for the words "such company and the officer who is in default", the words "such company, the officer who is in default or any other person" shall be substituted;
 - (iii) 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)—
 - (i) for the words "Where an officer of a company", the words "Where an officer of a company or any other person" shall be substituted;
 - (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.

Insertion of New Section 454A Penalty for Repeated Default

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

"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."

Ord 9 Of 2018
18 Of 2013
Repeal and Savings

- 33.
- (1) The Companies (Amendment) Ordinance, 2018 is hereby repealed.
 - (2) Notwithstanding such repeal, anything done, or any action taken under the Companies Act, 2013 as amended by the said Ordinance, shall be deemed to have been done or taken under the corresponding provisions of the said Act, as amended by the Companies (Amendment) Act, 2018.

Statement of Objects and Reasons

1. The Companies Act, 2013 (the Act) was enacted with a view to consolidate and amend the law relating to companies. The Act introduced significant changes relating to disclosures to stakeholders, accountability of directors, auditors and key managerial personnel, investor protection and corporate governance.
2. In order to review the existing framework dealing with offences under the Companies Act, 2013 and related matters and make recommendations to promote better corporate compliance, the Government of India constituted a Committee in July 2018 and the said Committee, after taking the views of several stakeholders, submitted its report in August 2018. The Committee recommended that the existing rigor of the law should continue for serious offences, whereas the lapses that are essentially technical or procedural in nature may be shifted to in-house adjudication process. The Committee observed that this would serve the twin purposes of promoting of ease of doing business and better corporate compliance. It would also reduce the

number of prosecutions filed in the Special Courts which would in turn facilitate speedier disposal of serious offences and the offenders shall be penalized. The liability under section 447 which deals with corporate fraud would continue to apply wherever fraud is noticed.

3. The recommendations made by the Committee were examined by the Government and it was noted that the changes in the Companies Act, 2013 suggested by the said Committee would fill critical gaps in the corporate governance and compliance framework as enshrined in the said Act while simultaneously extending greater ease of doing business to law abiding corporate.
4. As the Parliament was not in session and immediate action was required to be taken, the Companies (Amendment) Ordinance, 2018 was promulgated by the President on the 2nd day of November 2018.
5. The Companies (Amendment) Bill, 2018 which seeks to replace the aforesaid Ordinance, inter alia, provides—
 - (i) to amend clause (41) of section 2 of the Companies Act, 2013 so as to empower the Central Government to allow certain companies to have a different financial year instead of as determined by the Tribunal;
 - (ii) to amend section 12 of the Act empowering the Registrar to initiate action for the removal of name of the company from register of companies, if the company is not carrying on any business or operation in accordance with the provisions of the Act;
 - (iii) to amend sixteen sections of the Act so as to modify the punishment as provided in the said sections from fine to monetary penalties to lessen the burden upon the Special Courts; and
 - (iv) to amend section 441 of the Act so as to enhance the jurisdiction of the Regional Director for compounding of offences.
6. The Notes on Clauses explain in detail the various provisions of the Bill.
7. The Bill seeks to replace the aforesaid Ordinance.

Notes on Clauses

Clause 1 of the Bill provides for the short title and commencement of the proposed Legislation.

Clause 2 of the Bill seeks to amend clause (41) of section 2 of the Companies Act, 2013 (the Act) so as to enable the relevant companies to follow different financial year with the approval of the Central Government, instead of taking approval of the Tribunal.

Clause 3 of the Bill seeks to insert a new section 10A relating to commencement of business etc., to provide that a company having a share capital shall not commence business or exercise any borrowing powers unless a declaration is filed with the Registrar by a director that every subscriber to the memorandum has paid the value of shares and the company has filed with the Registrar the verification of its registered office. The said clause further provides that non-compliance with filing of declaration may result into action by Registrar under Chapter XVIII.

Clause 4 of the Bill seeks to insert a new sub-section (9) in section 12 of the Act to provide that the Registrar may cause a physical verification of the registered office of the company if he has reasonable cause to believe that company is not carrying on any business or operations as specified and to provide consequent action thereof.

Clause 5 of the Bill seeks to amend the second proviso to sub-section (1) of section 14 of the Act to provide 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. Earlier this approval was obtained from the Tribunal.

Clause 6 of the Bill seeks to amend sub-section (3) of section 53 of the Act to provide for monetary penalty and refund of monies in case of failure to comply provision of that section.

Clause 7 of the Bill seeks to amend sub-section (2) of section 64 of the Act to provide for monetary penalty for company and its officers in default in case of failure to comply with provision of such section.

Clause 8 of the Bill seeks to amend the first and second proviso of sub-section (1) of section 77 of the Act to provide that the Registrar may, on the application made by a company, allow registration of charge, in case of charges created before the commencement of the Companies (Amendment) Act, 2018, within a period of three hundred days or charges created after the commencement of the said Act within sixty days, on payment of additional fees. The additional period within which the charges required to be registered is also provided.

Clause 9 of the Bill seeks to insert sub-section (2) in section 86 of the Act to provide that any person who 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, shall be liable for action under section 447.

Clause 10 of the Bill seeks to substitute section 87 of the Act to empower the Central Government to extend time or allow rectification, if it is satisfied that omission to give intimation to the Registrar of the payment or satisfaction of a charge, within the time required under Chapter VI; or the omission or misstatement of any particulars, in any previous filing with respect to any such charge or modification thereof or with respect to any memorandum of satisfaction or other entry made in pursuance of section 82 or section 83 was accidental or was due to inadvertence.

Clause 11 of the Bill seeks to amend sub-section (9) of section 90 of the Act to provide that 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 and if no such application is filed, such shares shall be transferred without any restrictions to Investor Education and Protection Fund Authority. The clause also seeks to amend the penal provision under sub-section (10) of section 90 of the Act.

Clause 12 of the Bill seeks to amend sub-section (5) of section 92 of the Act to provide that 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 monetary penalty as specified in the provision.

Clause 13 of the Bill seeks to amend sub-section (5) of section 102 of the Act to provide that in case of any default made in complying with the provisions of such section, every promoter, director, manager or other key managerial personnel of the company who is in default shall be liable to monetary penalty as specified in the provision.

Clause 14 of the Bill seeks to amend sub-section (3) of section 105 of the Act to provide that for any default under sub-section (2) of said section, the officer in default shall be liable for monetary penalty as specified in sub-section (3).

Clause 15 of the Bill seeks to amend sub-section (2) of section 117 of the Act to provide that for failure in filing a copy of every resolution or an agreement as per sub-section (1) of said section, the company and its officer in default shall be liable for monetary penalty as specified in sub-section (2).

Clause 16 of the Bill seeks to amend sub-section (3) of section 121 of the Act to provide for liability to pay monetary penalty for not filing with the Registrar a copy of report within the stipulated period as per sub-section (2) of said section.

Clause 17 of the Bill seeks to amend sub-section (3) of section 137 of the Act to provide for payment of monetary penalty in case of failure to file a copy of financial statements with the Registrar.

Clause 18 of the Bill seeks to amend sub-section (3) of section 140 of the Act to provide for payment of monetary penalty of fifty thousand rupees or an amount equal to the remuneration whichever is less and further penalty for continuous failure, if the auditor does not comply with sub-section (2) of said section.

Clause 19 of the Bill seeks to amend sub-section (2) of section 157 of the Act to provide for payment of monetary penalty in case there is failure to furnish Director Identification Number pursuant to sub-section (1) of said section.

Clause 20 of the Bill seeks to amend section 159 of the Act to provide for payment of

monetary penalty if any individual or director of a company makes default in complying with sections 152, 155 and 156 of the Act.

Clause 21 of the Bill seeks to insert clause (i) in sub-section (1) of section 164 of the Act to provide disqualification to become a director if an individual has not complied with the provisions of sub-section (1) of section 165 of the Act.

Clause 22 of the Bill seeks to amend sub-section (6) of section 165 of the Act to provide for payment of monetary penalty in case a person accepts an appointment as a director in contravention of sub-section (1) of said section.

Clause 23 of the Bill seeks to amend sub-section (5) of section 191 of the Act to provide for payment of monetary penalty if a director makes default in complying with such section.

Clause 24 of the Bill seeks to omit sub-section (7) and to amend sub-section (15) of section 197 of the Act to provide for payment of monetary penalty by any person or the company in case of default.

Clause 25 of the Bill seeks to amend sub-section (5) of section 203 of the Act to provide for payment of monetary penalty by any company and director and key managerial personnel who is in default in complying with said section.

Clause 26 of the Bill seeks to amend sub-section (3) of section 238 of the Act to provide for payment of monetary penalty for the director who issues a circular which has not been presented for registration and registered as per sub-section (1) of said section.

Clause 27 of the Bill seeks to amend sub-section (1) of section 248 of the Act to insert new clauses (d) and (e) to provide that in case the subscribers to the memorandum have not paid the subscription which they had undertaken to pay and declaration under section 10A has not been filed or where the company is not carrying on any business or operation as revealed after the physical verification, the Registrar shall send notice to such companies and its directors informing them of his intention to remove the name of the company from the register of companies.

Clause 28 of the Bill seeks to amend clause (b) of sub-section (1) of section 441 of the Act to

increase the threshold of maximum amount of fine that does not exceed twenty-five lakh rupees for compounding by the Regional Directors.

Clause 29 of the Bill seeks to amend section 446B of the Act to provide for payment of reduced amount of monetary penalty in case of default by One Person Company or small companies.

Clause 30 of the Bill seeks to amend section 447 of the Act to enhance the amount of fine from "twenty lakh rupees" to "fifty lakh rupees".

Clause 31 of the Bill seeks to amend sub-sections (3) and (8) of section 454 of the Act to provide that adjudicating officer may also direct the company or officer in default or other person to rectify default, wherever he considers fit.

Clause 32 of the Bill seeks to insert a new section 454A relating to monetary penalty for repeated default, which is twice the amount of penalty provided for such defaults under the relevant provisions of this Act.

Clause 33 of the Bill seeks to repeal the Companies (Amendment) Ordinance, 2018 and to save the actions done during the course of the period of Ordinance.

Financial Memorandum

The provisions of the Companies (Amendment) Bill, 2018 will not involve any expenditure of recurring or non-recurring nature, on its enactment.

Memorandum Regarding Delegated Legislation

Sub-clause (a) of clause 2 of the Bill confers power upon the Central Government to prescribe, under first proviso to clause (41) of section 2 of the Act, the form and manner in which application shall be made by the relevant company or body corporate to the Central Government to allow any period as financial year.

Clause 3 empowers the Central Government to prescribe, under clause (a) of sub-section (1) of section 10 A, the form and manner in which a declaration is to be filed and verified by a director to the effect that every subscriber to the memorandum has paid the value of the shares agreed to be taken by him on the date of making such declaration.

Clause 4 empowers the Central Government to prescribe, under sub-section (9) of section 12 of the Act, the manner in which the Registrar may cause a physical verification of the registered office of the company if he has reasonable cause to believe that the company is not carrying on any business or operations.

Clause 5 empowers the Central Government to prescribe, under the second proviso to sub-section (1) of section 14 of the Act, the form and manner in which an application is to be made to the Central Government for seeking its approval for any alteration of articles having the effect of conversion of a public company into a private company.

Clause 8 empowers the Central Government to prescribe, under sub-section (1) of section 77 of the Act, (a) the additional fees which a company shall pay while making an application to the Registrar for registration of charge after the expiry of original period of filing; (b) additional fees and different fees for different class of companies; and the ad valorem fees.

Clause 11 empowers the Central Government, under proviso to sub-section (9) of section 90 of the Act, to prescribe the manner in which the shares shall be transferred to the authority constituted under sub-section (5) of section 125 of the Act, if no application has been filed within a period of one year from the date of the order referred to in sub-section (8).

The matters in respect of which the said rules may be made are matters of procedure and administrative detail, and as such, it is not practicable to provide for them in the proposed Bill itself. The delegation of legislative power is, therefore, of a normal character.

Annexure

Extracts from The Companies Act, 2013 (18 of 2013)

Definitions

2. In this Act, unless the context otherwise requires:

(41) "financial year", in relation to any company or body corporate, means the period ending on the 31st day of March every year, and where it has been incorporated on or after the 1st day of January of a year, the period ending on the 31st day of March of the following year, in respect whereof financial statement of the company or body corporate is made up:

Provided that on an application made by a company or body corporate, which is a holding company, or a subsidiary of a company incorporated outside India and is required to follow a different financial year for consolidation of its accounts outside India, the Tribunal may, if it is satisfied, allow any period as its financial year, whether or not that period is a year:

Provided further that a company or body corporate, existing on the commencement of this Act, shall, within a period of two years from such commencement, align its financial year as per the provisions of this clause;

Alteration of Articles

14.

(1) Subject to the provisions of this Act and the conditions contained in its memorandum, if any, a company may, by a special resolution, alter its articles including alterations having the effect of conversion of—

(a) a private company into a public company; or

(b) a public company into a private company:

Provided that where a company being a private company alters its articles in such a manner that they no longer include the restrictions and limitations which are required to be included in

the articles of a private company under this Act, the company shall, as from the date of such alteration, cease to be a private company:

Provided further that any alteration having the effect of conversion of a public company into a private company shall not take effect except with the approval of the Tribunal which shall make such order as it may deem fit.

(2) Every alteration of the articles under this section and a copy of the order of the Tribunal approving the alteration as per sub-section (1) shall be filed with the Registrar, together with a printed copy of the altered articles, within a period of fifteen days in such manner as may be prescribed, who shall register the same.

Prohibition on Issue of Shares at Discount

53.

(3) Where a company contravenes the provisions of this section, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every officer who is in default shall be 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.

Notice to Be Given to Registrar for Alteration of Share Capital

64.

(2) If a company and any officer of the company who is in default contravenes the provisions of sub-section (1), it or he shall be punishable with fine which may extend to one thousand rupees for each day during which such default continues, or five lakh rupees, whichever is less.

Chapter VI

Registration of Charges

Duty to Register Charges, Etc

77.

(1) It shall be the duty of every company creating a charge within or outside India, on its property or assets or any of its undertakings, whether tangible or otherwise, and situated in or outside India, to register the particulars of the charge signed by the company and the charge-holder together with the instruments, if any, creating such charge in such form, on payment of such fees and in such manner as may be prescribed, with the Registrar within thirty days of its creation:

Provided that the Registrar may, on an application by the company, allow such registration to be made within a period of three hundred days of such creation on payment of such additional fees as may be prescribed:

Provided further that if registration is not made within a period of three hundred days of such creation, the company shall seek extension of time in accordance with section 87:

Provided also that any subsequent registration of a charge shall not prejudice any right acquired in respect of any property before the charge is actually registered.

Punishment for Contravention

86. If any company contravenes any provision of this Chapter, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to ten lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both.

Rectification by Central Government in Register of Charges

87.

(1) The Central Government on being satisfied that—

- (i)
- (a) the omission to file with the Registrar the

particulars of any charge created by a company or any charge subject to which any property has been acquired by a company or any modification of such charge; or

- (b) the omission to register any charge within the time required under this Chapter or the omission to give intimation to the Registrar of the payment or the satisfaction of a charge, within the time required under this Chapter; or
- (c) the omission or mis-statement of any particular 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; or
- (ii) on any other grounds, it is just and equitable to grant relief,

it may on the application of the company or any person interested and on such terms and conditions as it may seem to the Central Government just and expedient, direct that the time for the filing of the particulars or for the registration of the charge or for the giving of intimation of payment or satisfaction shall be extended or, as the case may require, that the omission or mis-statement shall be rectified.

- (2) Where the Central Government extends the time for the registration of a charge, the order shall not prejudice any rights acquired in respect of the property concerned before the charge is actually registered.

Register of Significant Beneficial Owners in a Company

90.

- (1) 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).
- (2) If any person fails to make a declaration as required under sub-section (1), he shall be punishable with fine which shall

not be less than one lakh rupees, but which may extend to ten lakh rupees and where the failure is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the failure continues.

Annual Return

92.

- (5) If a company fails to file its annual return under sub-section (4), before the expiry of the period specified under section 403 with additional fee, the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakhs rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.

Statement to Be Annexed to Notice

102.

- (5) If any default is made in complying with the provisions of this section, every promoter, director, manager or other key managerial personnel who is in default shall be punishable with fine which may extend to 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 more.

Proxies

105.

- (5) If default is made in complying with sub-section (2), every officer of the company who is in default shall be punishable with fine which may extend to five thousand rupees.

Resolutions and Agreements to Be Filed

117.

- (2) If a company fails to file the resolution or the agreement under sub-section (1) before the expiry of the period specified

under section 403 with additional fee, the company shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default, including liquidator of the company, if any, shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

Copy of Financial Statement to Be Filed with Registrar

137.

- (3) If a company fails to file the copy of the financial statements under sub-section (1) or sub-section (2), as the case may be, before the expiry of the period specified in section 403, the company shall be punishable with fine of one thousand rupees for every day during which the failure continues but which shall not be more than ten lakh rupees, and the managing director and the Chief Financial Officer of the company, if any, and, in the absence of the managing director and the Chief Financial Officer, any other director who is charged by the Board with the responsibility of complying with the provisions of this section, and, in the absence of any such director, all the directors of the company, shall be 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.

Removal, Resignation of Auditor and Giving of Special Notice

140.

- (3) If the auditor does not comply with sub-section (2), he or it shall be punishable with fine which shall not be less than fifty thousand rupees, but which may extend to five lakh rupees.

Company to Inform Director Identification Number to Registrar

157.

- (2) If a company fails to furnish Director

Identification Number under sub-section (1), before the expiry of the period specified under section 403 with additional fee, the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.

Punishment for Contravention

159. If any individual or director of a company, contravenes any of the provisions of section 152, section 155 and section 156, such individual or director of the company shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to fifty thousand rupees and where the contravention is a continuing one, with a further fine which may extend to five hundred rupees for every day after the first during which the contravention continues.

Number of Directorships

165. (6) If a person accepts an appointment as a director in contravention of sub-section (1), he shall be punishable with fine which shall not be less than five thousand rupees, but which may extend to twenty-five thousand rupees for every day after the first during which the contravention continues.

Payment to Director for Loss of Office, Etc., in Connection with Transfer of Undertaking, Property or Shares

191. (5) If a director of the company contravenes the provisions of this section, such director shall be punishable with fine which shall not be less than twenty-five thousand rupees, but which may extend to one lakh rupees.

Overall Maximum Managerial Remuneration and Managerial Remuneration in Case of Absence or Inadequacy of Profits

197.

- (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.
- (15) If any person contravenes the provisions of this section, he shall be punishable with fine which shall not be less than one lakh rupees, but which may extend to five lakh rupees.

Appointment of Key Managerial Personnel

203.

- (5) If a company contravenes the provisions of this section, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every director and key managerial personnel of the company who is in default shall be punishable with fine which may extend to fifty thousand rupees and where the contravention is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the contravention continues.

Registration of Offer of Schemes Involving Transfer of Shares

238.

- (3) The director who issues a circular which has not been presented for registration and registered under clause (c) of sub-section (1), shall be punishable with fine which shall not be less than twenty-five thousand rupees, but which may extend to five lakh rupees.

Power of Registrar to Remove Name of Company from Register of Companies

248. (1)

- (c) a company is not carrying on any business or operation for a period of two immediately preceding financial years and has not made any application within such period for obtaining the status of a dormant company under section 455, he shall send a notice to the company and all the directors of the company, of his intention to remove the name of the company from the register of companies and requesting them to send their representations along with copies of the relevant documents, if any, within a period of thirty days from the date of the notice.

Compounding of Certain Offences

441. (1)

- (b) 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 authorized by the Central Government,

On payment or credit, by the company or, as the case may be, the officer, to the Central Government of such sum as that Tribunal or the Regional Director or any officer authorized by the Central Government, as the case may be, may specify:

Provided that the sum so specified shall not, in any case, exceed the maximum amount of the fine which may be imposed for the offence so compounded:

Provided further that in specifying the sum required to be paid or credited for the compounding of an offence under this sub-section, the sum, if any, paid by way of additional fee under sub-section (2) of section 403 shall be taken into account:

Provided also that any offence covered under this sub-section by any company or its officer shall not be compounded if the investigation against such company has been initiated or is pending under this Act.

- (6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, —

- (a) any offence which is punishable under this Act, with imprisonment or fine, or with imprisonment or fine or with both, shall be compoundable with the permission of the Special Court, in accordance with the procedure laid down in that Act for compounding of offences;
- (b) any offence which is punishable under this Act with imprisonment only or with imprisonment and also with fine shall not be compoundable.

Lesser Penalties for One Person Companies or Small Companies

446. (B) Notwithstanding anything contained in this Act, if a One Person Company or a small company fails to comply with the provisions of sub-section (5) of section 92, sub-section (2) of section 117 or sub-section (3) of section 137, such company and officer in default of such company shall be punishable with fine or imprisonment or fine and imprisonment, as the case may be, which shall not be more than one-half of the fine or imprisonment or fine and imprisonment, as the case may be, of the minimum or maximum fine or imprisonment or fine and imprisonment, as the case may be, specified in such sections."

Chapter XXIX Miscellaneous

Punishment for Fraud

447. "Provided further that where the fraud involves an amount less than ten lakh rupees or one per cent. of the turnover of the company, whichever is lower, and does not involve public interest, any person guilty of such fraud shall be punishable with imprisonment for a term which may extend to five years or with fine which may extend to twenty lakh rupees or with both."

Adjudication of Penalties

454.

- (3) The adjudicating officer may, by an order impose the penalty on the company and the officer who is in default stating any non-compliance or default under the relevant provision of the Act.
- (4) The adjudicating officer shall, before imposing any penalty, give a reasonable opportunity of being heard to such company and the officer who is in default.
- (8)
 - (i) Where company does not pay the penalty imposed by the adjudicating officer or the Regional Director within a period of ninety days from the date of the receipt of the copy of the order, the company shall be punishable with fine which shall not be less than twenty-five thousand rupees, but which may extend to five lakh rupees.
 - (ii) Where an officer of a company who is in default does not pay the penalty within a period of ninety days from the date of the receipt of the copy of the order, such officer shall be punishable with imprisonment which may extend to six months or with fine which shall not be less than twenty-five thousand rupees, but which may extend to one lakh rupees, or with both.