

The Companies Amendment Ordinance, 2018

written by Raghav Gaiind | February 6, 2019

Introduction

On October

02, 2016, the Ministry of Corporate Affairs ("MCA") transformed and streamlined the process of incorporation of new company by introducing Form INC-32 SPICe ("SPICe"). SPICe was introduced as a single master form for availing five services simultaneously which *inter alia* included application pertaining to the finalisation of the company name, incorporation of company, DIN of the directors, PAN of the company, TAN of the company.

It is

imperative here to understand that these reforms have brought in lucidity to the existing law thereby removing any scope of ambiguousness. Therefore, in order to simplify the process

of conducting business activities in India, the President in exercise of the powers conferred under Article 123(1) of the Constitution of India, had promulgated

the Companies (Amendment) Ordinance Bill, 2018 ("Ordinance") as explained in this article herein below. The purpose

of this Ordinance is to relook into the offences given under the Act and to bring insightful changes into the structure of the prosecution and the re-categorization of the offence as to de-burden the court from the offences which could be efficiently dealt with by the in-house adjudication because of the procedural and technical lapses involved in the court process.

In consonance with the powers conferred upon, the Ordinance brings upon the following changes in various provisions of the Companies Act, 2013 (hereinafter for the purpose of brevity be referred to as "Act"):

- Financial

Year of the Company:

According

to Section 2 (41) of the Act, every company whether public or private shall have a uniform financial year ending on 31st March of every financial year. 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.

According

to the first proviso, an application made by 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 Tribunal may, if it is satisfied, allow any period as its financial year, whether or not that period is a year.

It

further mentions 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; In pursuance of the provisions, the Ordinance has substituted first proviso to Section 2(41) of the Act.

Now

in pursuance of the provision as explained above, the Ordinance brought in the following amendment in the first proviso of Section 2 (41) of the Act. It states that if any holding company or subsidiary company or any associated company which is incorporated outside India and that the said company is required to follow different financial year as per the provisions of laws where

the said foreign company is incorporated, therefore, under such circumstances, the

domestic company shall file an application with the Central Government to allow

the company to follow different financial year for the consolidation of the accounts in such form and manner as may be prescribed whether or not that period is a financial year.

Therefore,

it is clearly evident from the amendment that instead of Tribunal, the application for change in the financial year shall be submitted to the Central

Government. It has been further clarified that for all the pending applications, disposal shall be made by the Tribunal as per the existing provisions

- Commencement

of the business:

This

Section has been inserted as a new Section after certain modifications in Section 11 of the Act which was omitted by Companies (Amendment) Act 2015. To provide clarification in relation to the time period for the disclosures to be

made and penalties due to non-compliance of section 10, the Ordinance has inserted

Section 10A which states that-

1. any company having share capital incorporated after the commencement of the Ordinance shall not commence any business or exercise any borrowing powers unless-
2. a declaration has been made by the director within 180 days from the date of the newly incorporated company. The declaration shall mention that every subscriber of the memorandum has paid the value of the shares agreed to be taken by him on the date of making such declaration.
3. Such declaration shall be made to the Registrar of the Companies.
4. If any default is made in complying with the

provisions as mentioned under Section 10A, then the company shall be liable with a penalty of INR 50,000/- and every officer in default shall be liable to a penalty of INR 1000/- for each day during which the default continues but not exceeding INR 1,00,000/-.

5. Further, it is imperative here to understand that if the Registrar of Companies has sufficient ground to believe that the declaration has been filed within a period of 180 days and the company is not carrying out its business, in such case the Registrar may initiate the proceedings of removing the name of the company from register of companies under Chapter XVIII.

- Conversion

of Public Company to Private Company:

Section

14 of the Act deals with the alteration of the articles of a company.

In

consonance with the provisions of the Act, the Ordinance has amended the second

proviso of Section 14 and categorically mentioned that such alteration in the articles shall be subject to the approval of the Central Government based upon

the application made by the company.

- Re-Categorisation

of Certain Offences:

Certain offences under the Act have been

re-categorised as defaults carrying civil liabilities to bring them under an in-house adjudication mechanism. Some of the key provisions amended are as follows:

- Issue

of shares at a discount;

- Non-filing

of annual return within the due date;

- Failure/delay

in filing financial statement;

- Contraventions

related to Director Identification Number;

- Failure/delay

in filing certain resolutions;

- Failure/

delay in filing statement by the auditor after resignation; and

- Managerial

remuneration.

Conclusion

We observe that the basic intention of the Government of India behind introducing such Ordinance was to provide ease of doing business in India and enhance the level of corporate governance in Indian corporate world. It is imperative here to understand that in the past years, Indian economy has been growing at a bullet rate and there has been an immense proliferation of foreign investment in Indian market. This Ordinance has increased the accountability of the companies or any officer of the company and has

provided relief to the companies and professionals. Further, the Government of India has introduced the Companies (Amendment) Ordinance Bill, 2019. The primarily focus of Companies (Amendment) Ordinance Bill, 2019 is on the current prosecution structure under the Act and re-categorization of offences which are technical defaults or procedural lapses as civil default and shift or transfer the proceedings of such case to in-house adjudication.

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