

The Companies (Amendment) Ordinance 2019 – A Snapshot

The Ordinance was promulgated by the President of India in order to further amend the Companies Act, 2013 and circumstances necessitated to take immediate action to improve the ease of doing business as well as ensure better compliance levels. The following are the amendments made in the Principal Act (2013) through this Ordinance (2019):

1. *Amendment of Section 2:* Where a company or body corporate which is a holding company or a subsidiary company 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 the application made by that company or body corporate allow any period as its financial year whether or not that period is a year.
2. *Insertion of new section 10A:* 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 power unless a declaration is filed by a director within a period 180 days, with the Registrar and the company has filed with the Registrar a verification of its registered office.
3. *Amendment of Section 12:* If the Registrar has reasonable cause to believe that the company is not carrying on any business or operation, he may cause a physical verification of the registered office of the company and initiate action for removal of the name of the company from the register of companies.
4. *Amendment of Section 14:* 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.
5. *Amendment of Section 53:* Failing to comply with the provisions relating to issue of shares at discount will invite the company and such officer who is in default a penalty which may extend to an amount equal to 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 12% per annum from the date of issue of such shares.
6. *Amendment of Section 64:* Any company failing to intimate within days regarding alteration of authorised capital will attract penalty ₹ 1000 every day or ₹ 5 lacs whichever is less.
7. *Amendment of Section 77:* Time limit for filing of creation of charge with the Registrar reduced from 300 days to 60 days.
8. *Amendment of Section 86:* If any person wilfully furnishes any false or incorrect information or knowingly suppresses any material information required to be registered with regard to filing of charges, forms with the Registrar shall be liable for action under section 447.
9. *Amendment of Section 87:* Further, if the Central Government is satisfied that the omission to give intimation to the Registrar regarding payment or satisfaction of charge within the time limit or omission or misstatement of any particulars with respect to any charge or modification or other entry was accidental or due to inadvertence and not in the nature to prejudice to the position of creditors or shareholders of the company, the Central Government deems it just and expedient it may direct for extension of time and for rectification.
10. *Amendment of Section 92:* Failure to file Annual Return will attract a penalty of ₹ 50,000 and in the case of continuing default with a further penalty of ₹ 100 for each day subject to a maximum of ₹ 5 lacs.
11. *Amendment of Section 102:* Default in complying with the provisions relating to Statement to be annexed to notice will attract a penalty of ₹ 50,000 or five times the benefit accrued for every promoter, director, manager, or other KMP of the company.

12. *Amendment of Section 105:* Failure to bring in the notice of the meeting with a reasonable prominence a statement relating to entitlement that a member can appoint a proxy is liable to a penalty of ₹ 5,000.
13. *Amendment of section 117:* Failure to file resolutions with the Registrar before the expiry of the specified period shall be liable to a penalty of ₹ 1,00,000 and in the case of continuing default with further penalty of ₹ 500 for each day subject to a maximum of ₹ 5 lacs.
14. *Amendment of Section 121:* If the company fails to file the annual report 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.
15. *Amendment of Section 137:* Failure to file copy of the financial statement with the Registrar 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.
16. *Amendment of Section 140:* If the auditor fails to give notice to the Registrar of his resignation within 30 days from the date of his resignation in the prescribed form 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.
17. *Amendment of section 157:* If any company fails to furnish the Director Identification Number, 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.
18. **Substitution of new section for section 159 (Penalty for default of certain provisions):** 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.
19. *Amendment of section 203:* If any company makes any default in complying with the provisions of section 203 (appointment of key managerial personnel), 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.
20. *Amendment of section 248:* If the Registrar has reasonable cause to believe that 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, the Registrar has power to remove the name of the company from the Register of Members.

For more details on the Companies (Amendment) Ordinance, 2019, please visit the following link http://www.mca.gov.in/Ministry/pdf/NotificationCAO2019_15012019.pdf