



The Companies Act 2013

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E-newsletter

JANUARY, 2019

About the E-newsletter

Dear Users,

To keep you updated about the latest notifications, circulars & orders issued during the month, thecompaniesact2013.com present herewith its monthly e-newsletter. This is the issue of the January month comprising contemporary articles & monthly amendments.

The notion is to render all the updates in a compiled format and serve a better pavement for easy accessibility.

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ARTICLE

RECENT AMENDMENTS IN COMPANIES ACT AND RULES.

❖ THE COMPANIES (AMENDMENT) ORDINANCE, 2019

SECTION	HEADING	PARTICULARS	AMENDMENT & IMPACT
Section 2(41)	Definitions	Financial Year	The application for adopting a different financial year was to be made to "Tribunal" which shall henceforth be made to the "Central Government".
Section 10A	Commencement of business etc	(New Section Inserted)	Any company incorporated after the commencement of this ordinance shall not commence any business unless the director within 180 days makes a declaration which will be verified by the registrar that every subscriber to the memorandum has paid the value of shares agreed to be taken by him. Contravention: Fine of Rs. 50,000/- to be paid by company.
Section 12(9)	Registered Office of Company	(New Sub-section Inserted)	If the Registrar has enough reason to believe that a company is not carrying on business then he, after a physical verification of the registered office, can remove the company's name from the register of companies.
Section 14 (1)	Alteration of Articles	Conversion of a Public Company to a Private Company	Any conversion of a Public Company to a Private Company will not be valid unless approved by an order of the Central Government. Previously, the power to issue such an order was with the Tribunal.
Section 53	Prohibition on Issue of Shares at Discount	Sub-section (3) substituted.	Penalty equal to the amount raised by issuing shares at a discount or five lakh rupees, whichever is less. The company will also be liable to refund the amount with 12% interest.
Section 64	Notice to be Given to Registrar for Alteration of Share Capital	Sub-section (2) substituted.	Default – penalty 1000 every day or 5 Lac whichever is less.

Section 77	Duty to Register Charges, etc	In sub- section (1), proviso first and second are substituted.	<p>a) Charges created before commencement of Ordinance- RoC to register charges within 300 days of such creation; In case the charge is not registered within this time, then the charge shall be made registered within 6 months from the date of commencement of Ordinance on payment of additional fees.</p> <p>b) Charges created after commencement of Ordinance- RoC to register charges within 60 days of such creation. In case the charge is not registered within this time, then RoC may on application, allow the registration of the charge within a period of further 60 days on payment of advalorem fees.</p>
Section 86	Punishment for Contravention	(New Sub-section Inserted)	If any person willfully 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
Section 87	Rectification by Central Government in register of charges	Section substituted.	The Section has been re-drafted and merely a straightening of the language
Section 90	Register of significant beneficial owners in a company	Amendment in Sub-section (9) & (10)	<p>The limitation period of 1 year has been prescribed for the aggrieved party to make an application to the Tribunal restricting the rights attached to the relevant shares to relax or lift of such restrictions.</p> <p>In case of failure to file the application within such timeline, then such shares shall mandatorily be transferred to IEPF.</p>
Section 92	Annual Return	Non-filing of Annual Return (MGT-7)	<p>Annual Returns should be filed within 60 days from Annual General Meeting.</p> <p>Failure to this, penalty of 100 per day to Company and director upto 5 Lakh apart from additional fees of Rs.100/- per day payable on delay in filing the forms with MCA with no upper limit.</p>
Section 102	Statement to be annexed to the Notice	Mis-statement in Explanatory statement	Every promoter, director, manager or other KMP who is in default shall be punishable with Penalty which may extend to Rs. 50,000 or 5 times the amount of benefit accruing to the promoter, director, manager or other key managerial personnel or any of his relatives, whichever is more.
Section 105	Proxies	Notice of General Meeting to contain clause for proxies	On Company and Officer in Default- Penalty of Rs. 5000

Section 117	Resolutions and agreements to be filed	Non-filing of MGT-14	<ul style="list-style-type: none"> On Company- Minimum Penalty of Rs. 1 Lakh, Maximum Penalty of Rs. 25 Lakh & Further Penalty of Rs. 500 everyday. On Officer in default- Minimum Penalty of Rs. 50,000, Maximum Penalty of Rs. 5 Lakh & Further Penalty of Rs. 500 per day.
Section 121	Report on Annual General Meeting	Non-filing of MGT-15	<ul style="list-style-type: none"> On Company- Minimum Penalty of Rs. 1 Lakh, Maximum Penalty of Rs. 5 Lakh & Further Penalty of Rs. 500 everyday. On Officer in default- Minimum Penalty of Rs. 25,000, Maximum Penalty of Rs. 1 Lakh & Further Penalty of Rs. 500 per day.
Section-137	Filing of Financial Statements	Failure in filing financial statements with the Registrar	<ul style="list-style-type: none"> On Company- Maximum Penalty of Rs. 10Lakh & Penalty of Rs. 1000 everyday. On Officer in default- Minimum Penalty of Rs. 1 Lakh, Maximum Penalty of Rs. 5 Lakh & Further Penalty of Rs. 100 per day. <p>Apart from above additional fees of Rs.100/- per day shall also be payable on delay in filing the form with MCA with no upper limit.</p>
Section- 140	Resignation of Auditor	Non-filing of e-Form ADT-3	<ul style="list-style-type: none"> On Auditor: Minimum Penalty of Rs. 50,000 or amount equal to remuneration Maximum Penalty of Rs. 5 Lakh & Further penalty of Rs. 500 every day
Section 157(2)	Intimation of DIN	Failure to intimate DIN of directors to the Registrar	<ul style="list-style-type: none"> On Company- Minimum Penalty of Rs. 25,000, Maximum Penalty of Rs. 1 Lakh & Further Penalty of Rs. 100 per day. On Officer in default- Minimum Penalty of Rs. 25,000, & Maximum Penalty of Rs. 1 Lakh
Section 159	Punishment for contravention of sections 152, 155, and 156	<ul style="list-style-type: none"> 152: Appointment of Directors 155: Prohibition to Obtain More than One Director Identification Number. 	<ul style="list-style-type: none"> Individual or Director: Minimum Penalty of Rs. 50,000 Further Penalty of Rs. 500 per day.

		<ul style="list-style-type: none"> • 156: Director to Intimate Director Identification Number 	
Section 164	Disqualifications of director	In sub-section (1) clause (h) inserted.	No person shall hold office as a director in more than 20 companies, now if breach in maximum number of directorship occurs then its leads to automatic vacation of office from all Companies.
Section 165	Number of directorships	Non-compliance of permissible number of directorship by director	Penalty on Director will be Rs. 5000 per day.
Section 191	Payment to Director for loss of office	Contravention of the section	<ul style="list-style-type: none"> • Penalty on Director- Rs. 1 Lakh
Section 197	Overall maximum managerial remuneration in case of inadequacy of profits	Non-compliance of the provisions of the section	<ul style="list-style-type: none"> • Penalty: Minimum of Rs. 1 Lakh Maximum of Rs. 5 Lakh
Section 203	Appointment of KMP	Default in appointment of Key Managerial Personnel	<ul style="list-style-type: none"> • On Company- Penalty of Rs. 5 Lakh. • On Director/KMP/Officer in default- Minimum Penalty of Rs. 50,000, & Maximum Penalty of Rs. 1 Lakh Further Penalty of Rs. 1000 everyday
Section 238	Registration of offer of schemes involving transfer of shares	Contravention of the section	<ul style="list-style-type: none"> • Penalty on Director- Rs. 1 Lakh
Section 248	Power of the Registrar to remove the name of the company		In view of the newly inserted provisions of Section 10A and 12(9) as discussed aforesaid, the relevant amendments have been made in Section 248 of the Act in order to provide a reference to the aforesaid new Sections.
Section 441	Compounding of offences		The Ordinance has increased the limit of offence for compounding before the Regional Director from 5 Lakhs to 25 Lakhs.
Section 446B	Application of Fines	Default in filing annual return by OPC and small company	½ of penalty as may be specified in section 92(5) of the Act
Section 447	Punishment for fraud	Penal provisions for fraud involving Rs. 10 lakh or 1% of turnover and does not involve public interest	On any person guilty- Imprisonment of 5 years OR Fine of Rs. 50 Lakhs

Section 454	Adjudication of penalties		The existing section empowered the adjudicating officer to impose penalty, by an order, on the company and the officer who is in default in case of any non-compliance or default of the provisions of the Act. Such an order may henceforth be included any other person too, hence the same expands the power of the adjudicating officer. Further, the order of the adjudicating officer may also provide for rectification of the default by the concerned person.
Section 454A	Penalty for repeated default		Penalty of twice the amount of penalty in case of repeated defaults (within a period of 3 years) by companies or any person who had already been subjected to penalty under the Act.

❖ **Specified Companies (Furnishing of information about payment to micro and small enterprise suppliers) Order, 2019**

Pursuant to provisions of Section 405 of the Companies Act, 2013 MCA vide Order dated 22.01.2019 has mandated every specified company to file details of all outstanding dues to Micro or Small Enterprises Suppliers existing on 22/01/2019 in MSME Form I on or before 21/02/2019

Further after this one time return all such companies are required to submit half yearly return on or before 30th October and 30th April to report outstanding dues to Micro or Small Enterprises Suppliers as on 30th September and 31st March

• **Definition of Specified Company**

All companies, who get supplies of goods or services from micro and small enterprises and whose payments to micro and small enterprise suppliers exceed forty five days from the date of acceptance or the date of deemed acceptance of the goods or services are referred to as "Specified Companies"

(i) "the day of acceptance" means,— (a) the day of the actual delivery of goods or the rendering of services; or (b) where any objection is made in writing by the buyer regarding acceptance of goods or services within fifteen days from the day of the delivery of goods or the rendering of services, the day on which such objection is removed by the supplier;

(ii) "the day of deemed acceptance" means, where no objection is made in writing by the buyer regarding acceptance of goods or services within fifteen days from the day of the delivery of goods or the rendering of services, the day of the actual delivery of goods or the rendering of services;

Penal Provision:

If any company fails to comply with the abovementioned order or knowingly furnishes any information or statistics which is incorrect or incomplete in any material respect, the company shall be punishable with fine which may extend to **twenty-five thousand 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 **three lakh rupees**, or with both. (Section 405(4))

- **Relevant provisions of The Micro, Small And Medium Enterprises Development Act, 2006**

All organizations procuring any goods or service from any Supplier is required to make payment of such supplies within 45 days or such time period as agreed by supplier from the date of supply, whichever is earlier. In case of delay in payment, such organization is required to pay compound interest with monthly rests to the supplier on that amount from the appointed day or, as the case may be, from the date immediately following the date agreed upon, at three times of the bank rate notified by the Reserve Bank of India.

- **Supplier (Section 2(n))**

“supplier” means a micro or small enterprise, which has filed a memorandum with the authority referred to in sub-section (1) of section 8, and includes,—

(i) The National Small Industries Corporation, being a company, registered under the Companies Act, 1956 (1 of 1956);

(ii) the Small Industries Development Corporation of a State or a Union territory, by whatever name called, being a company registered under the Companies Act, 1956 (1 of 1956);

(iii) any company, co-operative society, trust or a body, by whatever name called, registered or constituted under any law for the time being in force and engaged in selling goods produced by micro or small enterprises and rendering services which are provided by such enterprises;

- **Micro or Small Enterprise**

“enterprise” means an industrial undertaking or a business concern or any other establishment, by whatever name called, engaged in the manufacture or production of goods, in any manner, pertaining to any industry specified in the First Schedule to the Industries (Development and Regulation) Act, 1951 (55 of 1951) or engaged in providing or rendering of any service or services.

An enterprise will be classified as Micro, Small or medium Scale Enterprise on the basis of following criteria.

Type of Enterprise	Manufacturing Industry – Investment in Plant & Machinery	Service Industry Investment in equipments
Micro Enterprise	Not exceeding Rs. 25 lakhs	Not exceeding Rs. 10 lakhs
Small Enterprise	More than Rs. 25 lakhs up to Rs.5 crores	More than Rs. 10 lakhs upto Rs. 2 crores.
Medium Enterprise	More than Rs.5 crores up to Rs.10 crores	More than Rs. 2 crores upto Rs. 5 crores.

Disclosure in Financial Statements (Notification G.S.R. 679(E).— [F. No. 1/19/2013/CL.V] Dt.04.09.2015): As per the said notification every Company is required to make following disclosures in its Financial Statements :-

Trade Payable to be bifurcated as follows

- **Trade Payables:-**

(A) Total outstanding dues of micro enterprises and small enterprises; and

(B) Total outstanding dues of creditors other than micro enterprises and small enterprises.

- Under the heading “**Notes to Financial Statements**”: The following details relating to Micro, Small and Medium Enterprises shall be disclosed:-

(a) The principal amount and the interest due thereon (to be shown separately) remaining unpaid to any supplier at the end of each accounting year;

(b) the amount of interest paid by the buyer in terms of section 16 of the Micro, Small and Medium Enterprises Development Act, 2006, along with the amount of the payment made to the supplier beyond the appointed day during each accounting year;

(c) the amount of interest due and payable for the period of delay in making payment (which have been paid but beyond the appointed day during the year) but without adding the interest specified under the Micro, Small and Medium Enterprises Development Act, 2006;

(d) the amount of interest accrued and remaining unpaid at the end of each accounting year; and

(e) the amount of further interest remaining due and payable even in the succeeding years, until such date when the interest dues above are actually paid to the small enterprise, for the purpose of disallowance of a deductible expenditure under section 23 of the Micro, Small and Medium Enterprises Development Act, 2006.

Explanation.-The terms 'appointed day', 'buyer', 'enterprise', 'micro enterprise', 'small enterprise' and 'supplier', shall have the same meaning assigned to those under clauses (b), (d), (e), (h), (m) and (n) respectively of section 2 of the Micro, Small and Medium Enterprises Development Act, 2006."

- For getting necessary information for complying with the aforesaid provision a company has to take the following **steps**:
 1. Obtain information from all existing suppliers regarding status of their registration under MSME Development Act, 2006 and update the same in records.
 - a. Obtain Registration Certificate of Registered Suppliers
 - b. Obtain declaration as per format given below from the unregistered suppliers
 2. For every new vendor repeat the process mentioned at point 1 above
 3. Manage the account group in accounting software as per registration
 4. Use bill to bill payment system in accounting software to work out payment/delay details and interest calculation.
 5. Ensure to make payment of registered suppliers within 45 days from the date of supply/deemed supply
 6. In case of delay record reason for delay and make payment of Interest at appropriate rate.
 7. Share this data periodically with your consultant authorized to file Form MSME 1 with MCA.

❖ Companies (Acceptance of Deposits) Amendment Rules, 2019

- **Companies covered:** All Companies (Whether, Small, Non Small, Private, Public, OPC etc.)
- **Compliance:** File DPT-3 after publication of these rules i.e. 22nd January, 2019. Every Company have to file DPT-3 every year after end of financial year before 30th June. Therefore, after 22nd January, 2019 every loan shall be reported to ROC in e-form DPT-3 every year before 30th June.
- **One time Compliance:** File DPT-3 Within 90 days of publication of Rules i.e. 22nd April, 2019.
- **Coverage:**
 - a) Outstanding Loan in Company as on 22nd January, 2019
 - b) Outstanding receipt of money in Company as on 22nd January, 2019.However, any loan received which falls under definition of deposit not required to mention while filing e-form DPT-3.

NOTE: We have tried to cover all the recent amendments in the Companies Act & Rules and their impact thereof, there may be few other amendments which may came but there impact was minor in nature.

NOTIFICATIONS

A. S.O.(E) The Companies (Amendment) Ordinance, 2019 dated 12.01.2019

B. G.S.R.(E) National Company Law Tribunal (Amendment) Rules.2019 dated 15.01.2019

In exercise of the powers conferred by sub-section (1) and sub-section (2) of section 469 of the Companies Act, 2013(18 of 2013), the Central Government hereby makes the following rules further to amend the National Company Law Tribunal Rules, 2016, namely :-

1. (1) These rules may be called the National Company Law Tribunal (Amendment) Rules, 2019.
(2) They shall come into force on the date of their publication in the official Gazette.
2. In the National Company Law Tribunal Rules, 2016, in rule 71:-
 - (i) In sub-rule (3), in clause (b) for the words "Central Government" the words "Regional Director" shall be substituted.
 - (ii) In sub-rule (4), for the words "Central Government" the words "Regional Director" shall be substituted.

C. S.O. 368(E) The Specified Companies (Furnishing of information about payment to micro and small enterprise suppliers) Order, 2019 dated 22.01.2019

D. G.S.R.(E) Companies (Acceptance of Deposits) Amendment Rules, 2019 dated 22.01.2019

E. G.S.R. 43(E) The Companies (Prospectus and Allotment of Securities) Amendment Rules, 2019 dated 22.01.2019

In exercise of the powers conferred by section 26, sub-section (1) of section 27, section 28, section 29, sub-section (2) of section 31, sub-sections (3) and (4) of section 39, sub-section (6) of section 40 and section 42 read with section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Prospectus and Allotment of Securities) Rules, 2014, namely:—

1. Short title and commencement.—(1) These rules may be called the Companies (Prospectus and Allotment of Securities) Amendment Rules, 2019.

(2) They shall come into force on the date of their notification in the Official Gazette.

2. In the Companies (Prospectus and Allotment of Securities) Rules, 2014, in rule 9A, after sub-rule (10), the following shall be inserted, namely:—

“(11) This rule shall not apply to an unlisted public company which is:—

- (a) a Nidhi;
- (b) a Government company or
- (c) a wholly owned subsidiary.”

F. S.O.(E) Notification under section 465 of Companies Act 2013 dated 30.01.2019

In exercise of the powers conferred by sub-section (3) of section 1 of the Companies Act, 2013 (18 of 2013), the Central Government hereby appoints the 30th January 2019 as the date on which the provisions of section 455 of the said Act in so far as they relate to the repeal of the Companies Act, 1956 (1 of 1956) [that in except in so far as they relate to the repeal of the Registration of Companies (Sikkim) Act, 1961 (Sikkim Act 8 of 1961)] shall come into force.

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