

Bill No. 189 of 2019

THE COMPANIES (AMENDMENT) BILL, 2019

A

BILL

further to amend the Companies Act, 2013.

BE it enacted by Parliament in the Seventieth Year of the Republic of India as follows:—

1. (1) This Act may be called the Companies (Amendment) Act, 2019.

Short title and
commencement.

(2) The provisions of this Act, except sections 6, 7 and 8, clauses (i), (iii) and clause (iv) of section 14, sections 20 and 21, section 31, sections 33, 34 and 35, sections 37 and 38 shall be deemed to have come into force on the 2nd day of November, 2018.

(3) The provisions of sections 6, 7 and 8, clauses (i), (iii) and clause (iv) of section 14, sections 20 and 21, section 31, sections 33, 34 and 35, sections 37 and 38 shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint

and different dates may be appointed for these provisions and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

Amendment of section 2. **2.** In section 2 of the Companies Act, 2013 (hereinafter referred to as the principal Act), in clause (41),— 18 of 2013.
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(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: 10

Provided further that any application pending before the Tribunal as on the date of commencement of the Companies (Amendment) Act, 2019, shall be disposed of by the Tribunal in accordance with the provisions applicable to it before such commencement.”; 15

(b) in the second proviso, for the words “Provided further that”, the words “Provided also that” shall be substituted.

Insertion of new section 10A. **3.** After section 10 of the principal Act, the following section shall be inserted, namely:— 20

Commencement of business, etc.

“10A. (1) A company incorporated after the commencement of the Companies (Amendment) Act, 2019 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 25

(b) the company has filed with the Registrar a verification of its registered office as provided in sub-section (2) of section 12. 30

(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. 35

(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.”. 40

Amendment of section 12. **4.** In section 12 of the principal Act, after sub-section (8), the following sub-section 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.”. 45
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5. In section 14 of the principal Act,—

Amendment of
section 14.

(i) in sub-section (1), for the second proviso, the following provisos shall be substituted, namely:—

5 “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:

10 Provided also that any application pending before the Tribunal, as on the date of commencement of the Companies (Amendment) Act, 2019, 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.

6. In section 26 of the principal Act,—

Amendment
of section 26.

15 (i) in sub-sections (4), (5) and (6), for the word “registration”, the word “filing” shall be substituted;

(ii) after sub-section (1), sub-section (7) shall be omitted.

7. In section 29 of the principal Act,—

Amendment
of section 29.

20 (i) in sub-section (1), in clause (b), the word “public” shall be omitted;

(ii) after sub-section (1), the following sub-section shall be inserted, namely:—

22 of 1996.

“(1A) In case of such class or classes of unlisted companies as may be prescribed, the securities shall be held or transferred only in dematerialised form in the manner laid down in the Depositories Act, 1996 and the regulations made thereunder.”.

25 **8.** In section 35 of the principal Act, in sub-section (2), in clause (c), for the words “delivery of a copy of the prospectus for registration”, the words “filing of a copy of the prospectus with the Registrar” shall be substituted.

Amendment of
section 35.

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

Amendment
of section 53.

30 “(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.”.

10. In section 64 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:—

Amendment of
section 64.

40 “(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.”.

11. In section 77 of the principal Act, in sub-section (1), for the first and second provisos, the following provisos shall be substituted, namely:—

Amendment
of section 77.

45 “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, 2019, 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, 2019, 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, 2019, 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.

12. Section 86 of the principal Act shall be numbered as sub-section (I) thereof and after sub-section (I) 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.

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

Rectification
by Central
Government
in Register of
charges.

“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

(b) the omission or misstatement 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 misstatement shall be rectified.”.

Amendment
of section 90.

14. In section 90 of the principal Act,—

(i) after sub-section (4), the following sub-section shall be inserted, namely:—

“(4A) Every company shall take necessary steps to identify an individual who is a significant beneficial owner in relation to the company and require him to comply with the provisions of this section.”;

(ii) 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.”;

(iii) after sub-section (9), as so substituted, the following sub-section shall be inserted, namely:—

5 “(9A) The Central Government may make rules for the purposes of this section.”;

(iv) in sub-section (11), after the word, brackets and figure “sub-section (4)”, the words, brackets, figure and letter “or required to take necessary steps under sub-section (4A)” shall be inserted.

10 **15.** In section 92 of the principal Act, for sub-section (5), the following sub-section shall be substituted, namely:— Amendment of section 92.

15 “(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 after the first during which such failure continues, subject to a maximum of five lakh rupees.”.

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

20 “(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.”.

25 **17.** 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 105.

18. In section 117 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:— Amendment of section 117.

30 “(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.”.

40 **19.** In section 121 of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely:— Amendment of section 121.

45 “(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
132.

20. In section 132 of the principal Act,—

(a) after sub-section (1), the following sub-section shall be inserted, namely:—

“(1A) The National Financial Reporting Authority shall perform its functions through such divisions as may be prescribed.”;

(b) after sub-section (3), the following sub-sections shall be inserted, namely:— 5

“(3A) Each division of the National Financial Reporting Authority shall be presided over by the Chairperson or a full-time Member authorised by the Chairperson.

(3B) There shall be an executive body of the National Financial Reporting Authority consisting of the Chairperson and full-time Members of such Authority for efficient discharge of its functions under sub-section (2) [other than clause (a)] and sub-section (4).” 10

(c) in sub-section (4), in clause (c), for sub-clause (B), the following sub-clause shall be substituted, namely:—

“(B) debarring the member or the firm from— 15

I. being appointed as an auditor or internal auditor or undertaking any audit in respect of financial statements or internal audit of the functions and activities of any company or body corporate; or

II. performing any valuation as provided under section 247,

for a minimum period of six months or such higher period not exceeding ten years as may be determined by the National Financial Reporting Authority.” 20

Amendment
of section
135.

21. In section 135 of the principal Act,—

(a) in sub-section (5), —

(i) after the words “three immediately preceding financial years,” the words “or where the company has not completed the period of three financial years since its incorporation, during such immediately preceding financial years,” shall be inserted; 25

(ii) in the second proviso, after the words, “reasons for not spending the amount” occurring at the end, the words, brackets, figure and letters “and, unless the unspent amount relates to any ongoing project referred to in sub-section (6), transfer such unspent amount to a Fund specified in Schedule VII, within a period of six months of the expiry of the financial year” shall be inserted; 30

(b) after sub-section (5), the following sub-sections shall be inserted, namely:—

“(6) Any amount remaining unspent under sub-section (5), pursuant to any ongoing project fulfilling such conditions as may be prescribed, undertaken by a company in pursuance of its Corporate Social Responsibility Policy, shall be transferred by the company within a period of thirty days from the end of the financial year to a special account to be opened by the company in that behalf for that financial year in any scheduled bank to be called the Unspent Corporate Social Responsibility Account, and such amount shall be spent by the company in pursuance of its obligation towards the Corporate Social Responsibility Policy within a period of three financial years from the date of such transfer, failing which, the company shall transfer the same to a Fund specified in Schedule VII, within a period of thirty days from the date of completion of the third financial year. 35 40 45

(7) If a company contravenes the provisions of sub-section (5) or sub-section (6), the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to twenty-five lakh rupees

and every officer of such company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.

5 (8) The Central Government may give such general or special directions to a company or class of companies as it considers necessary to ensure compliance of provisions of this section and such company or class of companies shall comply with such directions.”.

22. In section 137 of the principal Act, in sub-section (3),—

Amendment
of section
137.

10 (a) for the words “punishable with fine”, the words “liable to a penalty” shall be substituted;

15 (b) for the portion beginning with the words “punishable with imprisonment”, and ending with the words “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.

23. In section 140 of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely:—

Amendment
of section
140.

20 “(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.”.

25 24. In section 157 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:—

Amendment
of section
157.

30 “(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.”.

35 25. For section 159 of the principal Act, the following section shall be substituted, namely:—

Substitution of
new section for
section 159.

40 “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.”.

Penalty for
default of
certain
provisions.

26. In section 164 of the principal Act, in sub-section (1), after clause (h), the following clause shall be inserted, namely:—

Amendment
of section
164.

“(i) he has not complied with the provisions of sub-section (1) of section 165.”.

45 27. In section 165 of the principal Act, in sub-section (6), for the portion beginning with the words “punishable with fine” and ending with the words “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
165.

Amendment of section 191.	28. 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.	29. In section 197 of the principal Act,—	5
	(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.”.	10
Amendment of section 203.	30. 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.”.	15
Amendment of section 212.	31. In section 212 of the principal Act,—	20
	(a) in sub-section (8), for the words “If the Director, Additional Director or Assistant Director”, the words “If any officer not below the rank of Assistant Director” shall be substituted;	
	(b) in sub-section (9), for the portion beginning with the words “The Director” and ending with the word, brackets and figure “sub-section (8)”, the words, brackets and figure “The officer authorised under sub-section (8) shall, immediately after arrest of such person under such sub-section” shall be substituted;	25
	(c) in sub-section (10)—	
	(i) for the words “Judicial Magistrate”, the words “Special Court or Judicial Magistrate” shall be substituted;	30
	(ii) in the proviso, for the words “Magistrate’s court”, the words “Special Court or Magistrate’s court” shall be substituted;	
	(d) after sub-section (14), the following sub-section shall be inserted, namely:—	
	“(14A) Where the report under sub-section (11) or sub-section (12) states that fraud has taken place in a company and due to such fraud any director, key managerial personnel, other officer of the company or any other person or entity, has taken undue advantage or benefit, whether in the form of any asset, property or cash or in any other manner, the Central Government may file an application before the Tribunal for appropriate orders with regard to disgorgement of such asset, property or cash and also for holding such director, key managerial personnel, other officer or any other person liable personally without any limitation of liability.”.	35 40
Amendment of section 238.	32. 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.	45

33. In section 241 of the principal Act,—

Amendment
of section
241.

(a) in sub-section (2), the following proviso shall be inserted, namely:—

5 “Provided that the applications under this sub-section, in respect of such company or class of companies, as may be prescribed, shall be made before the Principal Bench of the Tribunal which shall be dealt with by such Bench.”;

(b) after sub-section (2), the following sub-sections shall be inserted, namely:—

“(3) Where in the opinion of the Central Government there exist circumstances suggesting that—

10 (a) any person concerned in the conduct and management of the affairs of a company is or has been in connection therewith guilty of fraud, misfeasance, persistent negligence or default in carrying out his obligations and functions under the law or of breach of trust;

15 (b) the business of a company is not or has not been conducted and managed by such person in accordance with sound business principles or prudent commercial practices;

(c) a company is or has been conducted and managed by such person in a manner which is likely to cause, or has caused, serious injury or damage to the interest of the trade, industry or business to which such company pertains; or

20 (d) the business of a company is or has been conducted and managed by such person with intent to defraud its creditors, members or any other person or otherwise for a fraudulent or unlawful purpose or in a manner prejudicial to public interest,

25 the Central Government may initiate a case against such person and refer the same to the Tribunal with a request that the Tribunal may inquire into the case and record a decision as to whether or not such person is a fit and proper person to hold the office of director or any other office connected with the conduct and management of any company.

30 (4) The person against whom a case is referred to the Tribunal under sub-section (3), shall be joined as a respondent to the application.

(5) Every application under sub-section (3)—

(a) shall contain a concise statement of such circumstances and materials as the Central Government may consider necessary for the purposes of the inquiry; and

35 5 of 1908. (b) shall be signed and verified in the manner laid down in the Code of Civil Procedure, 1908, for the signature and verification of a plaint in a suit by the Central Government.”.

34. In section 242 of the principal Act, after sub-section (4), the following sub-section shall be inserted, namely:—

Amendment
of section
242.

40 “(4A) At the conclusion of the hearing of the case in respect of sub-section (3) of section 241, the Tribunal shall record its decision stating therein specifically as to whether or not the respondent is a fit and proper person to hold the office of director or any other office connected with the conduct and management of any company.”.

- Amendment of section 243. **35.** In section 243 of the principal Act,—
- (a) after sub-section (1), the following sub-sections shall be inserted, namely:—
- “(1A) The person who is not a fit and proper person pursuant to sub-section (4A) of section 242 shall not hold the office of a director or any other office connected with the conduct and management of the affairs of any company for a period of five years from the date of the said decision: 5
- Provided that the Central Government may, with the leave of the Tribunal, permit such person to hold any such office before the expiry of the said period of five years.
- (1B) Notwithstanding anything contained in any other provision of this Act, or any other law for the time being in force or any contract, memorandum or articles, on the removal of a person from the office of a director or any other office connected with the conduct and management of the affairs of the company, that person shall not be entitled to, or be paid, any compensation for the loss or termination of office.”; 10 15
- (b) in sub-section (2), after the word, brackets and figure “sub-section (1)”, the words, brackets, figure and letter “or sub-section (1A)” shall be inserted.
- Amendment of section 248. **36.** 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; 20
- (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 25
- (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 272. **37.** In section 272 of the principal Act, in sub-section (3), for the words, brackets and letter “or clause (e) of that sub-section”, the words “of that section” shall be substituted. 30
- Amendment of section 398. **38.** In section 398 of the principal Act, in sub-section (1), in clause (f), the word “prospectus,” shall be omitted.
- Amendment of section 441. **39.** 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; 35
- (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.”. 2 of 1974. 40
- Amendment of section 446B. **40.** In section 446B of the principal Act, for the portion beginning with the words “punishable with fine” and ending with the words “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. **41.** 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. 45

42. In section 454 of the principal Act,—

Amendment
of section
454.

(i) for sub-section (3), the following sub-section shall be substituted, namely:—

“(3) The adjudicating officer may, by an order—

5 (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),—

15 (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)—

20 (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.

25 43. After section 454 of the principal Act, the following section shall be inserted, namely:—

Insertion of
new section
454A.

30 “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.”.

Penalty for
repeated
default.

Ord. 6 of 2019.

44. (1) The Companies (Amendment) Second Ordinance, 2019 is hereby repealed.

Repeal and
savings.

35 (2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under this Act.

STATEMENT OF OBJECTS AND REASONS

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 provisions of the Act dealing with the offences and to 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 rigour 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.

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 corporates. Accordingly, it was proposed to amend certain provisions of the Companies Act, 2013. However, in view of the urgency, the Companies (Amendment) Ordinance, 2018 was promulgated on 2nd day of November, 2018. To replace the aforesaid Ordinance, a Bill, namely, the Companies (Amendment) Bill, 2018 was introduced in the Lok Sabha and passed in the said House on the 4th day of January, 2019. However, the said Bill could not be taken up for consideration in the Rajya Sabha.

4. In order to give continued effect to the Companies (Amendment) Ordinance, 2018, the President promulgated the Companies (Amendment) Ordinance, 2019 and the Companies (Amendment) Second Ordinance, 2019 on the 12th day of January, 2019 and the 21st day of February, 2019 respectively. It is now proposed to bring the Companies (Amendment) Bill, 2019 to replace the Companies (Amendment) Second Ordinance, 2019 with certain other amendments which are considered necessary to ensure more accountability and better enforcement to strengthen the corporate governance norms and compliance management in corporate sector.

5. The Companies (Amendment) Bill, 2019 which seeks to replace the Companies (Amendment) Second Ordinance, 2019 with certain additional amendments, *inter alia*, provides for the following, namely:—

(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;

(iv) to amend section 132 of the Act to enable the National Financial Reporting Authority to perform its functions through divisions and the Executive Body;

(v) to amend section 135 of the Act so as to bring clarity to—

(a) carry forward the unspent corporate social responsibility amount, to a special account to be spent within three financial years and transfer thereafter to the Fund specified in Schedule VII, in case of an ongoing project; and

(b) transfer the unspent amount to the Fund specified under Schedule VII, in other cases;

(vi) to amend sections 241, 242 and 243 of the Act so as to empower the Central Government to approach Tribunal to issue an order against the persons who are connected with the conduct and management of the company as not fit and proper persons for the acts committed by them which amount to mismanagement; and

(vii) to amend section 441 of the Act so as to enhance the jurisdiction of the Regional Director for compounding the offences.

6. As the Parliament was not in session and immediate action was required to be taken, the Companies (Amendment) Second Ordinance, 2019 was promulgated by the President on the 21st day of February, 2019.

7. The Notes on Clauses explain in detail the various provisions of the Bill.

8. The Bill seeks to replace the aforesaid Ordinance.

NEW DELHI;
The 19th July, 2019.

NIRMALA SITHARAMAN.

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-sections (4), (5) and (6) of section 26 of the Act so as to substitute the requirement of registration of prospectus with filing of prospectus with the Registrar.

Clause 7 of the Bill seeks to amend sub-section (1) of section 29 of the Act and to insert sub-section (1A) therein to provide for the requirement of issuance, holding or transferring of securities in dematerialised form for any class of unlisted companies, as may be prescribed by the Central Government.

Clause 8 of the Bill seeks to amend clause (c) in sub-section (2) of section 35 of the Act to provide that the copy of the prospectus shall be filed with the Registrar instead of delivery for registration.

Clause 9 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 with the provision of the said section.

Clause 10 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 the said section.

Clause 11 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, 2019, within a period of three hundred days or in case of charges created after the commencement of the said Act within sixty days, on payment of

additional fees. The additional period within which the charges are required to be registered is also provided.

Clause 12 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 13 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 14 of the Bill seeks to amend section 90 of the Act by inserting sub-section (4A) to provide that the company shall take necessary steps to identify an individual who is a significant beneficial owner. Failure to take necessary steps shall lead to action under sub-section (11). It also 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. It also seeks to insert sub-section (9A) to provide the power to the Central Government to make rules for the purposes of this section.

Clause 15 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 16 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 17 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 18 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 19 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 20 of the Bill seeks to amend section 132 of the Act to provide that the National Financial Reporting Authority shall perform its functions through such divisions as may be prescribed by the Central Government. It also seeks to provide that there shall be an executive body of the National Financial Reporting Authority consisting of the Chairperson and full-time Members for efficient discharge of its certain functions. The clause also seeks to amend sub-clause (B) of clause (c) of sub-section (4) of section 132 with respect to the extent of debarring of the member or firm by National Financial Reporting Authority in case professional or other misconduct is proved.

Clause 21 of the Bill seeks to amend sub-section (5) of section 135 and insert sub-sections (6), (7) and (8) in the said section of the Act to provide, *inter alia* for (a) carrying forward the unspent amounts, to a special account to be spent within three financial years and transfer thereafter to the Fund specified in Schedule VII, in case of an ongoing project; and (b) transferring the unspent amounts to the Fund specified under Schedule VII, in other cases.

Clause 22 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 23 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 of the auditor whichever is less and further penalty for continuous failure, if the auditor does not comply with sub-section (2) of the said section.

Clause 24 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 the said section.

Clause 25 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 26 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 27 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 the said section.

Clause 28 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 the said section.

Clause 29 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 30 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 the said section.

Clause 31 of the Bill seeks to amend section 212 of the Act to provide that any officer not below the rank of Assistant Director of Serious Fraud Investigation Office (SFIO), if so authorised, may arrest any person in accordance with the provisions of this section. It also seeks to provide that the person so arrested may be taken to a Special Court or Judicial Magistrate or Metropolitan Magistrate within twenty four hours of his arrest. Further, the clause also seeks to provide that where an investigation report submitted by SFIO states that a fraud has taken place and any director, key managerial personnel or officer has taken undue advantage or benefit, then the Central Government may file an application before Tribunal with regard to disgorgement and such director, key managerial personnel or officer may be held personally liable without any limitation of liability.

Clause 32 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 the said section.

Clause 33 of the Bill seeks to amend sub-section (2) of section 241 of the Act by inserting a proviso to empower the Central Government to prescribe such company or class of companies in respect of which, applications under such sub-section, shall be made before the Principal Bench of the Tribunal and shall be dealt with by such Bench. It also seeks to provide that in certain circumstances, the Central Government may refer the matter and request to the Tribunal to inquire into the case and record a decision about whether the person is a fit and proper person to hold the office of director or any other office connected with the conduct and management of any company.

Clause 34 of the Bill seeks to amend section 242 of the Act to provide that at the conclusion of the hearing of the case in respect of section 241, the Tribunal shall record its decision stating specifically as to whether or not the respondent is a fit and proper person to hold the office of director or any other office connected with the conduct and management of any company.

Clause 35 of the Bill seeks to amend section 243 of the Act to provide that the person who is not a fit and proper person pursuant to section 242 shall not hold the office of a director or any other office connected with the conduct and management of the affairs of any company for a period of five years from the date of the relevant decision of the Tribunal. It also seeks to provide that the Central Government may, with the leave of the Tribunal, permit such person to hold any such office before the expiry of the said period of five years. The clause also seeks to provide that the person so removed from the office of a director or any other office connected with the conduct and management of the affairs of the company shall not be entitled to, or be paid, any compensation for the loss or termination of office.

Clause 36 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 37 of the Bill seeks to amend sub-section (3) of section 272 of the Act to allow the Registrar to present a petition of winding up on the ground that it is just and equitable to do so under clause (e) of section 271.

Clause 38 of the Bill seeks to amend clause (f) of sub-section (1) of section 398 of the Act by omitting the word "prospectus" as it would not be required to be registered by the Registrar.

Clause 39 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 40 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 Companies or small companies.

Clause 41 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 42 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 43 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 44 of the Bill seeks to repeal the Companies (Amendment) Second Ordinance, 2019 and to save the actions done during the course of the period of Ordinance.

FINANCIAL MEMORANDUM

The provisions of the Companies (Amendment) Bill, 2019 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 10A, 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 7 empowers the Central Government to prescribe, under sub-section (1A) of section 29, the class or classes of unlisted companies where securities shall be held or transferred only in dematerialised form.

Clause 11 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 14 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 clause also seeks to insert a new sub-section (9A) to empower the Central Government to prescribe rules for the purpose of section 90 of the Act.

Clause 20 empowers the Central Government to prescribe, under sub-section (1A) of section 132, such divisions through which National Financial Reporting Authority shall perform its functions.

Clause 21 empowers the Central Government to prescribe, under sub-section (6) of section 135, the conditions which need to be fulfilled w.r.t. the ongoing project in respect of which unspent CSR amounts may be transferred to the special account.

Clause 33 empowers the Central Government to prescribe, under proviso to sub-section (2) of section 241, such company or class of companies in respect of which applications shall be made before the Principal Bench of the Tribunal.

2. 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)

* * * * *

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

Definitions.

* * * * *

(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;

* * * * *

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—

Alteration of articles.

(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.

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26. (1)*

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Matters to be stated in prospectus.

(4) No prospectus shall be issued by or on behalf of a company or in relation to an intended company unless on or before the date of its publication, there has been delivered

to the Registrar for registration, a copy thereof signed by every person who is named therein as a director or proposed director of the company or by his duly authorised attorney.

(5) A prospectus issued under sub-section (1) shall not include a statement purporting to be made by an expert unless the expert is a person who is not, and has not been, engaged or interested in the formation or promotion or management, of the company and has given his written consent to the issue of the prospectus and has not withdrawn such consent before the delivery of a copy of the prospectus to the Registrar for registration and a statement to that effect shall be included in the prospectus.

(6) Every prospectus issued under sub-section (1) shall, on the face of it,—

(a) state that a copy has been delivered for registration to the Registrar as required under sub-section (4); and

(b) specify any documents required by this section to be attached to the copy so delivered or refer to statements included in the prospectus which specify these documents.

(7) The Registrar shall not register a prospectus unless the requirements of this section with respect to its registration are complied with and the prospectus is accompanied by the consent in writing of all the persons named in the prospectus.

* * * * *

Public offer of securities to be in dematerialised form.

29. (1) Notwithstanding anything contained in any other provisions of this Act,—

* * * * *

(b) such other class or classes of public companies as may be prescribed,

shall issue the securities only in dematerialised form by complying with the provisions of the Depositories Act, 1996 and the regulations made thereunder.

22 of 1996.

* * * * *

Civil liability for misstatements in prospectus.

35. (1)* * * * *

(2) No person shall be liable under sub-section (1), if he proves—

* * * * *

“(c) that, as regards every misleading statement purported to be made by an expert or contained in what purports to be a copy of or an extract from a report or valuation of an expert, it was a correct and fair representation of the statement, or a correct copy of, or a correct and fair extract from, the report or valuation; and he had reasonable ground to believe and did up to the time of the issue of the prospectus believe, that the person making the statement was competent to make it and that the said person had given the consent required by sub-section (5) of section 26 to the issue of the prospectus and had not withdrawn that consent before delivery of a copy of the prospectus for registration or, to the defendant’s knowledge, before allotment thereunder.”.

* * * * *

Prohibition on issue of shares at discount.

53. (1)* * * * *

(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.

* * * * *

64. (1)* * * * * *

(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.

Notice to be given to Registrar for alteration of share capital.

* * * * *

CHAPTER VI

REGISTRATION OF CHARGES

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:

Duty to register charges, etc.

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:

* * * * *

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.

Punishment for contravention.

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.

Rectification by Central Government in register of charges.

(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)*	*	*	*	*
	(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).				
	(10) 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.				
	(11) If a company, required to maintain register under sub-section (2) and file the information under sub-section (4), fails to do so or denies inspection as provided therein, the company and every officer of the company who is in default shall be punishable with fine which shall not be less than ten lakh rupees but which may extend to fifty 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. (1)*	*	*	*	*
	(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. (1)*	*	*	*	*
	(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. (1)*	*	*	*	*
	(3) 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. (1)*	*	*	*	*
	(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.				
	*	*	*	*	*

121. (1)* * * * *

(3) If the company fails to file the report under sub-section (2) 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 one lakh rupees but which may extend to five 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.

Report on annual general meeting.

* * * *

132. (1)* * * * *

(4) Notwithstanding anything contained in any other law for the time being in force, the National Financial Reporting Authority shall—

Constitution of Natural Financial Reporting Authority.

* * * *

(c) where professional or other misconduct is proved, have the power to make order for—

* * * *

(B) debaring the member or the firm from engaging himself or itself from practice as member of the Institute of Chartered Accountant of India referred to in clause (e) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 for a minimum period of six months or for such higher period not exceeding ten years as may be decided by the National Financial Reporting Authority.

38 of 1949.

Explanation.—For the purposes of this sub-section, the expression "professional or other misconduct" shall have the same meaning assigned to it under section 22 of the Chartered Accountants Act, 1949.

38 of 1949.

* * * *

135. (1) * * * * *

(5) The Board of every company referred to in sub-section (1), shall ensure that the company spends, in every financial year, at least two per cent. of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy.

Corporate social responsibility.

Provided that the company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for Corporate Social Responsibility activities.

Provided further that if the company fails to spend such amount, the Board shall, in its report made under clause (o) of sub-section (3) of section 134, specify the reasons for not spending the amount.

Explanation.—For the purposes of this section "net profit" shall not include such sums as may be prescribed, and shall be calculated in accordance with the provisions of section 198.

137. (1)* * * * *

(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.

Copy of financial statement to be filed with Registrar.

* * * *

140. (1)* * * * *

(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.

Removal, resignation of auditor and giving of special notice.

	*	*	*	*	*
Company to inform Director Identification Number to Registrar.	157. (1)*	*	*	*	*
	(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. (1)*	*	*	*	*
	(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. (1)*	*	*	*	*
	(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. (1)*	*	*	*	*
	(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. (1)*	*	*	*	*
	(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.

* * * * *

212. (1)* * * * *

(8) If the Director, Additional Director or Assistant Director of Serious Fraud Investigation Office authorised in this behalf by the Central Government by general or special order, has on the basis of material in his possession reason to believe (the reason for such belief to be recorded in writing) that any person has been guilty of any offence punishable under sections referred to in sub-section (6), he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.

Investigation into affairs of Company by Serious Fraud Investigation Office.

(9) The Director, Additional Director or Assistant Director of Serious Fraud Investigation Office shall, immediately after arrest of such person under sub-section (8), forward a copy of the order, along with the material in his possession, referred to in that sub-section, to the Serious Fraud Investigation Office in a sealed envelope, in such manner as may be prescribed and the Serious Fraud Investigation Office shall keep such order and material for such period as may be prescribed.

(10) Every person arrested under sub-section (8) shall within twenty-four hours, be taken to a Judicial Magistrate or a Metropolitan Magistrate, as the case may be, having jurisdiction:

Provided that the period of twenty-four hours shall exclude the time necessary for the journey from the place of arrest to the Magistrate's court.

* * * * *

238. (1)* * * * *

(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.

Registration of offer of schemes involving transfer of shares.

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243. (1)* * * * *

(2) Any person who knowingly acts as a managing director or other director or manager of a company in contravention of clause (b) of sub-section (1), and every other director of the company who is knowingly a party to such contravention, shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to five lakh rupees, or with both.

Consequence of termination or modification of certain agreements.

* * * * *

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,

Power of Registrar to remove name of company from register of companies.

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.

* * * * *

Petition for winding up. **272. (1)*** * * * *

(3) The Registrar shall be entitled to present a petition for winding up under section 271, except on the grounds specified in clause (a) or clause (e) of that sub-section:

Provided that the Registrar shall obtain the previous sanction of the Central Government to the presentation of a petition:

Provided further that the Central Government shall not accord its sanction unless the company has been given a reasonable opportunity of making representations.

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Provisions relating to filing of applications, documents, inspection, etc., in electronic form. **398. (1)*** * * * *

(f) the Registrar shall register change of registered office, alteration of memorandum or articles, prospectus, issue certificate of incorporation, register such document, issue such certificate, record the notice, receive such communication as may be required to be registered or issued or recorded or received, as the case may be, under this Act or the rules made thereunder or perform duties or discharge functions or exercise powers under this Act or the rules made thereunder or do any act which is by this Act directed to be performed or discharged or exercised or done by the Registrar in the electronic form in such manner as may be prescribed.

Explanation.—For the removal of doubts, it is hereby clarified that the rules made under this section shall not relate to imposition of fines or other pecuniary penalties or demand or payment of fees or contravention of any of the provisions of this Act or punishment therefor.

* * * * *

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 authorised 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 authorised 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,— 2 of 1974.

(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.

* * * * *

446B. 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.”.

Lesser penalties for One Person Companies or small companies.

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CHAPTER XXIX

MISCELLANEOUS

447. (1)* * * * * * Punishment for fraud.

“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.”.

454. (1)* * * * * * Adjudication of penalties.

(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.

* * * * *

LOK SABHA

A

BILL

further to amend the Companies Act, 2013.

(Smt. Nirmala Sitharaman, Minister of Finance and Corporate Affairs)

LOK SABHA

CORRIGENDUM

to

THE COMPANIES (AMENDMENT) BILL, 2019

[To be/As introduced in Lok Sabha]

Page 6, line 28,-

for “second proviso,”

read “second proviso,”

NEW DELHI;

July 24, 2019
Shravana 2, 1941 (Saka)