

Ordinance Summary

The Companies (Second Amendment) Ordinance, 2019

- The Companies (Second Amendment) Ordinance, 2019 was promulgated on February 21, 2019. It amends several provisions in the Companies Act, 2013 relating to penalties, among others. Note that two similar Ordinances had been promulgated in November 2018 and January 2019. This Ordinance is effective from the date of the first Ordinance, i.e. November 2, 2018.
- **Re-categorisation of certain Offences:** The 2013 Act contains 81 compoundable offences punishable with fine or fine or imprisonment, or both. These offences are heard by courts. The Ordinance re-categorizes 16 of these offences as civil defaults, where adjudicating officers (appointed by the central government) may now levy penalties instead. These offences include: (i) issuance of shares at a discount, and, (ii) failure to file annual return.
- **Issue of shares at a discount:** The Act prohibits a company from issuing shares at a discount, except in certain cases. On failure to comply, the company is liable to pay a fine between one lakh rupees and five lakh rupees. Further, every officer in default may be punished with imprisonment up to six months or fine between one lakh rupees and five lakh rupees. The Ordinance changes this to remove imprisonment for officers as a punishment.
- Further, the company and every officer in default will be liable to pay a penalty equal to the amount raised by the issue of shares at a discount or five lakh rupees, whichever is lower. The company will also be liable to refund the money received with interest at 12% per annum from the date of issue of the shares.
- **Commencement of business:** The Ordinance states that a company may not commence business, unless it (i) files a declaration within 180 days of incorporation, confirming that every subscriber to the Memorandum of the company has paid the value of shares agreed to be taken by him, and (ii) files a verification of its registered office address with the Registrar of Companies within 30 days of incorporation. If a company fails to comply with these provisions and is found not to be carrying out any business, the name of the Company may be removed from the Register of Companies.
- **Registration of charges:** The Act requires companies to register charges (such as mortgages) on their property within 30 days of creation of charge. The Registrar may permit the registration within 300 days of creation. If the registration is not completed within 300 days, the company is required to seek extension of time from the central government.
- The Ordinance changes this to permit registration of charges: (i) within 300 days if the charge is created before the Ordinance, or (ii) within 60 days if the charge is created after the Ordinance. If the charge under the first category is not registered within 300 days, it must be completed within six months from the date of the Ordinance. If the charge under the second category is not registered within 60 days, the Registrar may grant another 60 days for registration.
- **Change in approving authority:** Under the Act, change in period of financial year for a company associated with a foreign company, has to be approved by the National Company Law Tribunal. Similarly, any alteration in the incorporation document of a public company which has the effect of converting it to a private company, has to be approved by the Tribunal. Under the Ordinance, these powers have been transferred to central government.
- **Declaration of beneficial ownership:** If a person holds beneficial interest of at least 25% shares in a company or exercises significant influence or control over the company, he is required to make a declaration of his interest. Under the Act, failure to declare this interest is punishable with a fine between one lakh rupees and ten lakh rupees, along with a continuing fine for every day of default. The Ordinance provides that such person may either be fined, or imprisoned for up to one year, or both.
- **Compounding:** Under the Act, a regional director can compound (settle) offences with a penalty of up to five lakh rupees. The Ordinance increases this ceiling to Rs 25 lakh.

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