



# Companies (Amendment) Ordinance, 2018

Applicable from November 2, 2018

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Comparative analysis of provisions amended by Companies (Amendment) Ordinance, 2018 along providing impact of amended provisions

# Comparative analysis

S. No.	Reference of Act	Earlier Provisions	Amended Provisions
1	Section 2(41) <b>Different Financial year</b>	To follow different financial year for the purpose of consolidation of accounts with body corporate incorporated outside India, <u>approval of tribunal</u> is required	To follow different financial year, <u>approval of Central government</u> in a form & manner to be prescribed. The pending cases with Tribunal will be dealt as per the earlier provisions.
2	Section 10A- New section <b>Commencement of business, etc.</b>	Section 11 of act dealt with this provision which was omitted by amendment act dated May 29, 2015	Companies incorporated post notification of Ordinance, need to file: <ul style="list-style-type: none"> <li>• Declaration for commencement of business will be filed within 180 days of incorporation in a form to be prescribed; and</li> <li>• Form INC-22 will be filed within 30 days of incorporation.</li> </ul>
3	Section 12(9) <b>Physical Verification of RO of company by ROC (Registrar)</b>	New sub-section	ROC can make physical verification of the registered office (RO) of the company, if he believes that the company is not carrying on any business or operations, & on default, he may, in addition to the fine as per sub-section (8), initiate action for the <u>removal of the name of the company</u> .
4	Section 14 <b>Alteration of Articles in case of conversion of public to private</b>	For conversion of public company into private company, <u>approval of tribunal</u> is required	For conversion of public company into private company, <u>approval of Central Government</u> is required in form to be prescribed. Existing cases of alteration will be dealt by tribunal as per earlier provisions.

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5	Section 53 <b>Penal provision of Issue of Shares at Discount</b>	<ul style="list-style-type: none"> <li>• Company: Fine of Rs. 1 Lakh to Rs. 5 Lakh</li> <li>• Officer in default: <ul style="list-style-type: none"> <li>○ Imprisonment for a term upto 6 months; <b>or</b></li> <li>○ Fine of Rs. 1 Lakh to Rs. 5 Lakh, <b>or</b></li> <li>○ with both.</li> </ul> </li> </ul>	<p>Company &amp; every officer in default:</p> <ul style="list-style-type: none"> <li>○ Penalty which may extend to an amount equal to the amount raised through the issue of shares at a discount or Rs. 5 Lakhs, whichever is less, <b>and</b></li> <li>○ Refund all monies received with 12% pa interest from the date of issue of such shares</li> </ul>
6	Section 64 <b>Contravention in Filing Form SH-7</b>	<p>Company and every officer in default:</p> <ul style="list-style-type: none"> <li>○ Fine which may extend to Rs. 1,000/- subject to maximum of Rs. 5 Lakh.</li> </ul>	<ul style="list-style-type: none"> <li>• Company and every officer who is in default:</li> <li>• Penalty of Rs. 1,000/- per day subject to maximum of Rs. 5 Lakh.</li> </ul>
7	Section 77 <b>Duty to Register Charges, etc.</b>	<ul style="list-style-type: none"> <li>• ROC allows to register charge within 300 days of creation of charge on payment of prescribed additional fee.</li> <li>• And beyond 300 days, delay will be condoned as per section 87.</li> </ul>	<ul style="list-style-type: none"> <li>• Charges created <u>after</u> November 2, 2018- The time period of 300 days has been changed to 60 days and beyond 60 days, further 60 days will be provided if the Registrar on application allow such registration after payment of <i>advalorem</i> fees as may be prescribed.</li> <li>• Charges created <u>before</u> November 2, 2018 Earlier provision of 300 days will be followed. However, beyond 300 days , further period of 6 months from November 2, 2018 are available to register charge</li> </ul>
8	Section 86 <b>Punishment of contravention of chapter 6 (Charges)</b>	<ul style="list-style-type: none"> <li>• Company: Fine of Rs. 1 Lakh to Rs. 10 Lakh</li> <li>• Officer in default: <ul style="list-style-type: none"> <li>○ Imprisonment for a term upto 6 months; <b>or</b></li> <li>○ Fine of Rs. 25,000 to Rs. 1 Lakh, <b>or</b></li> <li>○ with both.</li> </ul> </li> </ul>	<p>Penal Provision has been extended to include applicability of action under section 447, i.e. punishment of fraud for any false/incorrect information</p>

S. No.	Reference of Act	Earlier Provisions	Amended Provisions
9	Section 87 <b>Grounds for rectification in Register of Charges</b>	The rectification was provided on following accidental or inadvertent grounds: a) the omission to file Form CH-1; or b) the omission to file CHG-1/CHG-4 within prescribed time; or c) the omission or mis-statement of any fact w.r.t charge or modification or memorandum of satisfaction or other entry made in pursuance of section 82 or section 83.	The grounds has been revised and creation of charge (CHG-1) has been excluded from it. Now, only omission related to modification or satisfaction of charge will be governed here.
10	Section 90 <b>Punishment of contravention of filing BEN-1</b>	<ul style="list-style-type: none"> <li>If a company or person is aggrieved by the order given by tribunal, they can make an application for relaxation or lifting of the restrictions of the rights attached with the shares placed under sub-section (8).</li> <li>Fine of non-submission of Form BEN-1 by the person with the Company: Rs. 1 Lakh to Rs. 10 Lakh and further fine of Rs. 1,000/- every day, if failure continues.</li> </ul>	<ul style="list-style-type: none"> <li>Time period of one year from the date of order has been provided to company or aggrieved person for requesting relaxation or lifting of the restrictions.</li> <li>And, if no such application filed within such period, such shares shall be transferred to the IEPF authority.</li> <li>Company &amp; every officer in default: Fine of non-filing of Form BEN-1: Rs. 1 Lakh to Rs. 10 Lakh and if failure continues, further fine of Rs. 1,000/- every day <b>or</b> Imprisonment upto 1 year, <b>or</b> with both</li> </ul>
11	Section 92 <b>Punishment of contravention of Annual Return</b>	<ul style="list-style-type: none"> <li>Company: Fine of Rs. 50,000 to Rs. 5 Lakh</li> <li>Officer in default: <ul style="list-style-type: none"> <li>Imprisonment for a term upto 6 months; <b>or</b></li> <li>Fine of Rs. 50,000 to Rs. 1 Lakh, <b>or</b></li> <li>with both.</li> </ul> </li> </ul>	Company & every officer in default: <ul style="list-style-type: none"> <li>Penalty of Rs. 50,000, <b>and</b></li> <li>Further penalty of Rs. 100/- per day, if failure continue subject to maximum of Rs. 5 Lakh.</li> </ul>

S. No.	Reference of Act	Earlier Provisions	Amended Provisions
12	Section 102 <b>Contravention of Explanatory Notice</b>	Promoter, director, manager or other KMP in default: <ul style="list-style-type: none"> <li>○ Fine upto Rs. 50,000, <b>or</b></li> <li>○ five times the amount of benefit accruing to such officers or any of their relatives, whichever is more.</li> </ul>	Promoter, director, manager or other KMP in default: <ul style="list-style-type: none"> <li>○ Penalty of Rs. 50,000, <b>or</b></li> <li>○ five times the amount of benefit accruing to such officers or any of their relatives, whichever is more.</li> </ul>
13	Section 105 <b>Statement for Proxies to be given in notice</b>	Default in giving the statement will be liable for <u>fine upto Rs. 5,000/-</u>	Default in giving the statement will be liable for <u>penalty of Rs. 5,000/-</u>
14	Section 117 <b>Contravention in filing Form MGT-14</b>	<ul style="list-style-type: none"> <li>• Company: Fine of Rs. 1 Lakh to Rs. 25 Lakh</li> <li>• Officer in default, including liquidator of the company: Fine of Rs. 50,000 to Rs. 5 Lakhs.</li> </ul>	<ul style="list-style-type: none"> <li>• Company: <ul style="list-style-type: none"> <li>○ Penalty of Rs. 1 Lakh <b>and</b></li> <li>○ Further penalty of Rs. 500/- per day, if failure continues subject to maximum of Rs. 25 Lakh</li> </ul> </li> <li>• Officer in default, including liquidator of the company: <ul style="list-style-type: none"> <li>○ Penalty of Rs. 50,000 <b>and</b></li> <li>○ Further penalty of Rs. 500/- per day subject to maximum of Rs. 5 Lakhs.</li> </ul> </li> </ul>
15	Section 121 <b>Report on AGM</b>	<ul style="list-style-type: none"> <li>• Company: Fine of Rs. 1 lakh to Rs. 5 lakh</li> <li>• Officer in default: Fine of Rs. 25,000 to Rs. 1 Lakh.</li> </ul>	<ul style="list-style-type: none"> <li>• Company: <ul style="list-style-type: none"> <li>○ Penalty of Rs. 1 Lakh <b>and</b></li> <li>○ Further penalty of Rs. 500/- per day, if failure continues subject to maximum of Rs. 5 Lakh</li> </ul> </li> <li>• Officer in default: <ul style="list-style-type: none"> <li>○ Penalty of Rs. 25,000 <b>and</b></li> <li>○ Further penalty of Rs. 500/- per day subject to maximum of Rs. 1 Lakh.</li> </ul> </li> </ul>

S. No.	Reference of Act	Earlier Provisions	Amended Provisions
16	Section 137 <b>Contravention of non-filing of Form AOC-4/AOC-4CFS</b>	<ul style="list-style-type: none"> <li>Company: Fine of Rs. 1,000/- per day maximum of Rs. 10 Lakh, and</li> <li>MD &amp; CFO, if any, and, in the absence of the MD &amp; CFO, any other director with the responsibility and, in the absence of any such director, all the directors of the company: <ul style="list-style-type: none"> <li>Imprisonment upto 6 months <b>or</b></li> <li>Fine of Rs. 1 lakh to Rs. 5 lakh, <b>or</b></li> <li>Both</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Company: Penalty of Rs. 1,000/- per day maximum of Rs. 10 Lakh, and</li> <li>MD &amp; CFO, if any, and, in the absence of the MD &amp; CFO, any other director with the responsibility, and, in the absence of any such director, all the directors of the company: <ul style="list-style-type: none"> <li>Penalty of Rs. 1 lakh, <b>and</b></li> <li>Further penalty of Rs. 100/- per day, if failure continues subject to maximum to Rs. 5 lakh,</li> </ul> </li> </ul>
17	Section 140 <b>Contravention of non-filing Form ADT-3</b>	Auditor: Fine of Rs. 50,000 or the remuneration of the auditor, whichever is less, maximum of Rs. 5 Lakh.	<p>Auditor:</p> <ul style="list-style-type: none"> <li>Penalty of Rs. 50,000 or an amount equal to the remuneration of the auditor, whichever is less, <b>and</b></li> <li>Further, penalty of Rs. 500/- per day, if failure continues subject to maximum of Rs. 5 Lakh</li> </ul>
18	Section 157 <b>Company to Inform DIN to Registrar</b>	<ul style="list-style-type: none"> <li>Company: Fine of Rs. 25,000 to Rs. 1 Lakh</li> <li>Officer in default: Fine upto Rs. 25,000 to Rs. 1 Lakh</li> </ul>	<ul style="list-style-type: none"> <li>Company: <ul style="list-style-type: none"> <li>Penalty of Rs. 25,000</li> <li>Further penalty of Rs. 100/- per day subject to maximum of Rs. 1 Lakh</li> </ul> </li> <li>Officer in default: <ul style="list-style-type: none"> <li>Penalty upto Rs. 25,000</li> <li>Further penalty of Rs. 100/- per day, if failure continues subject to maximum of Rs. 1 Lakh</li> </ul> </li> </ul>
19	Section 159 <b>Contravention of section 152, 155 &amp; 156 (DIN)</b>	<p>Individual or director:</p> <ul style="list-style-type: none"> <li>Imprisonment upto 6 months <b>or</b></li> <li>Fine upto Rs. 50,000 <b>and</b></li> <li>Further fine upto Rs. 500/- per day, if failure continues.</li> </ul>	<p>Individual or director:</p> <ul style="list-style-type: none"> <li>Penalty upto Rs. 50,000 <b>and</b></li> <li>Further penalty upto Rs. 500/- per day, if failure continues.</li> </ul>

S. No.	Reference of Act	Earlier Provisions	Amended Provisions
20	Section 164 <b>Disqualifications for Appointment of Director</b>	Grounds for disqualification of director has been provided	One additional ground for disappointment has been provided which is that if a director has not complied with the provisions of sub-section (1) of section 165 (Maximum no. of companies)
21	Section 165 <b>Number of directorship</b>	Director: Fine of Rs. 5,000/-to Rs. 25,000/- per day	Director: Penalty of Rs. 5,000/-per day
22	Section 191 <b>Payment to Director for Loss of Office, etc.</b>	Director: Fine of Rs. 25,000/- to Rs. 1 Lakh	Director: Penalty of Rs. 1 Lakh
23	Section 197 <b>Maximum Managerial Remuneration</b>	<ul style="list-style-type: none"> <li>An independent director shall not be entitled to any stock option and may receive remuneration by way of fees, reimbursement of expenses for participation in the Board and other meetings and profit related commission as may be approved by the members</li> <li>Fine of Rs. 1 lakh to Rs. 5 lakh on person in default</li> </ul>	<ul style="list-style-type: none"> <li>This sub-section has been omitted means an independent director is now entitled:</li> <li>to stock option; and</li> <li>to receive remuneration by way of fees, reimbursement of expenses for participation in the Board and other meetings and profit related commission without approval by the members.</li> <li>Penalty of Rs. 1 Lakh on person in default</li> <li>Penalty of Rs. 5 Lakh on Company</li> </ul>
24	Section 203 <b>Contravention of Appointment of KMP</b>	<ul style="list-style-type: none"> <li>Company: Fine of Rs. 1 Lakh to Rs. 5 Lakh</li> <li>Every director &amp; KMP in default: <ul style="list-style-type: none"> <li>Fine upto Rs. 50,000, and</li> <li>Further fine upto Rs. 1,000/- per day, if failure continues</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Company: Penalty of Rs. 5 lakh</li> <li>Every director &amp; KMP in default <ul style="list-style-type: none"> <li>Penalty: Rs. 50 Thousand <b>and</b></li> <li>Further penalty: Rs. 1,000/- per day, if failure continues subject to Rs. 5 lakh</li> </ul> </li> </ul>



S. No.	Reference of Act	Earlier Provisions	Amended Provisions
25	Section 238 <b>Contravention of Registration of Offer of Schemes Involving Transfer of Shares</b>	Director: Fine of Rs. 25,000 to Rs. 5 Lakh	Director: Penalty of Rs. 1 Lakh
26	Section 248(1) <b>Power of Registrar to Remove Name of Company from Register of Companies</b>	Grounds has been provided where registrar, if satisfied, can send a notice to the company and all the directors of the company, regarding removal of name of the company from the register of companies	Additional 2 following grounds has been added under this section, where if registrar believe, can send notice to company for removal of name of company from register of companies: <ul style="list-style-type: none"> <li>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 has not submit declaration under section 10A; or</li> <li>the company is not carrying on any business or operations, as revealed after the physical verification under section 12(9)</li> </ul>
27	Section 441 <b>Compounding of Certain Offences</b>	<ul style="list-style-type: none"> <li>Where the maximum amount of fine does not exceed Rs. 5 Lakh, offence will be compounded by Regional Director, or officer authorised by Central Government</li> <li>Any offence which is punishable 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.</li> </ul>	<ul style="list-style-type: none"> <li>The limit has been changed to Rs. 25 Lakh</li> <li>This provision has been deleted as fix amount of penalties (to be imposed by adjudicating officers as defined in Section 454) instead of fines have been levied on these kind of offences and special court are made free for serious kind of offences.</li> </ul>

S. No.	Reference of Act	Earlier Provisions	Amended Provisions
28	Section 446B <b>Penalty for OPC and Small Company</b>	If a OPC 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, Company & officer in default: Fine or imprisonment or fine and imprisonment, as the case may be, not be more than 1/2 of the fine or imprisonment or fine and imprisonment, as specified in such sections.	If a OPC 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, Company and officer in default: Penalty shall not be more than 1/2 of the penalty specified in such sections
29	Section 447 <b>Punishment for Fraud</b>	Where fraud involves an amount less than Rs. 10 Lakh or 1% of the turnover of the company, whichever is lower, person guilty: <ul style="list-style-type: none"> <li>• imprisonment for a term upto 5 years <b>or</b></li> <li>• fine upto Rs. 20 lakh <b>or</b></li> <li>• with both.</li> </ul>	Where fraud involves an amount less than Rs. 10 Lakh or 1% of the turnover of the company, whichever is lower, person guilty: <ul style="list-style-type: none"> <li>• imprisonment for a term upto 5 years <b>or</b></li> <li>• fine upto Rs. 50 Lakh <b>or</b></li> <li>• with both.</li> </ul>
30	Section 454 <b>Adjudication of Penalties</b>	The adjudicating officer may, by an order impose the penalty on the company and the officer who is in default	The adjudicating officer may, by an order- (a) impose the penalty on the company, the officer who is in default, or <u>any other person</u> , <b>and</b> (b) direct such company, or officer who is in default, or any other person, <u>to rectify the default, wherever he considers fit.</u>
31	Section 454A <b>Penalty for repeated default</b>	New Section	Penalty for committing again the same default within 3 years of date of order of last default passed by AO or RD: an amount equal to twice the amount of penalty provided for such default as per act

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