

**IMPORTANT HIGHLIGHTS OF THE COMPANIES
(AMENDMENT) ORDINANCE, 2019 EFFECTIVE FROM
02.11.2018**

- One of the major highlights of the Companies Act, 2013 (amendment ordinance) is re-categorization of certain 'acts' punishable as compoundable offences to 'acts' carrying civil liabilities i.e. re-categorization from Fine to Penalty.
- There are 16 sections amended vide Ordinance, whereby the punishment for non-compliance to be levied under the Companies Act, 2013 is **re-categorized from FINE to PENALTY**.

Serial No.	Sections	Description of sections	Nature of default
1.	53(3)	Prohibition of Issue of shares at a discount	Issue of shares at discount is strictly prohibited
2.	64(2)	Notice to be given to Registrar for alteration of share capital	Failure/delay in filing notice for alteration of share capital
3.	92(5)	Annual Return	Failure/delay in filing annual return
4.	102(5)	Statement to be annexed to notice	Statement of special business in a notice calling for general meeting is not attached.
5.	105	Proxies	Default in providing a declaration regarding appointment of proxy in a notice calling for general meeting
6.	117(2)	Resolutions and Agreements to be filed	Failure/Delay in filing Certain resolutions
7.	121(3)	Report on Annual General Meeting	Failure/Delay in filing Report on AGM by public listed company
8.	137(3)	Copy of financial statements to be filed with Registrar	Failure/Delay in filing financial statements
9.	140(3)	Removal, resignation of auditor and giving of special notice	Failure/Delay in filing statement by auditor after resignation
10.	157(2)	Company to inform Director Identification Number to Registrar	Failure/Delay by company in informing DIN of director
11.	159	Punishment for Contravention – in respect of DIN	Any contravention in respect of DIN

Serial No.	Sections	Description of sections	Nature of default
12.	165(6)	Number of Directorships	Accepting directorships beyond specified limits
13.	191(5)	Payment to Director for Loss of Office	Any payment to Director not made for Loss of Office
14.	197(15)	Overall maximum managerial remuneration and managerial remuneration in case of absence or inadequacy of profits	Any contravention regarding the provisions of managerial remuneration.
15.	203(5)	Appointment of Key Managerial Personnel	Appointment of KMPs in certain class of companies
16.	238(3)	Registration of the offer of scheme involving transfer of shares	Any contravention regarding the Registration of offer of scheme involving transfer of shares.

➤ **Difference between Fine and Penalty;**

- Fine is the amount of the money that a court can order to pay for an offence after a successful prosecution in a subject matter.
 - Penalties do not require court's proceedings and are imposed consequent to a Non-compliance of any provision prescribed in the Act.
- In the context of Companies Act, 2013, with the re-categorization of Fine to Penalty, the Registrar of Companies or Ministry of Corporate Affairs or any other regulatory authority as may be prescribed; may start levying penalty directly on the defaulting companies instead of filing application with National Company Law Tribunal (NCLT) and obtaining an order for payment of fine.

EFFECT OF AMENDMENT

- This is a welcoming foot forwarded by the government with an aim to abbreviate the burden of NCLT.
- Consequent to the re-categorization from FINE to PENALTY, certain offenses will not be entertained by NCLT. Hence for compounding of various non-compliances made, the company need not go to NCLT with compounding applications.

However, prior to this amendment non-compliance were made good by going to NCLT and paying the fine either after the defaulting companies receives notice from the ROC/MCA or moving voluntarily to the NCLT.

- In a nut shell, consequent to re-categorization of fine to penalty, the adjudicating officers may start levying penalty immediately at the time of filing on MCA e- portal, which may be in addition to the additional fees, which Companies are liable to pay at the time of late filing.

- **Section 454 - Adjudication of penalties**

- Adjudicating officer can now impose penalty on company, officer in default, or any other person as deems to be fit.
- Adjudicating officer can provide any direction to the company or officer in default or any other person as deems to be fit, the erstwhile provisions only provided for officer in default.

We assume that introduction of the word ‘any other person’ will widen up the scope of power of the adjudicating officer.

- **Section 454A - Penalty for repeated default**

- New section inserted.
- For repeated default within **3 years double penalty shall be imposed.**

- **Section 10A- Insertion of a new section- Intimation of Commencement of Business**

A company having share capital incorporated after the commencement of the Companies (Amendment) Ordinance, 2018 Dated 02.11.2018, has to ensure the following before commencing its business or exercising borrowing powers;

- Director to file a declaration within a period of 180 days from the date of incorporation of the company in Form INC 20A that every subscriber to the memorandum has paid the value of the shares as agreed for.
- Failure to file the declaration shall give reasonable cause to ROC to remove the name of the company from register of companies.
- The company has verified its registered office in e-Form INC-22/SPICe 32.

- **Section 12- Registered office of company**

- Physical verification of the registered office may be done by the Registrar of Companies on reasonable cause to believe that no business or operations is being carried out by the company.
- In case of any default found, the ROC may remove name of the company from the register of companies.

- **Section 77- Duty to register charges, etc.**

- For the charges created before commencement of Companies (Amendment) Ordinance, 2019:- ROC shall register charges within 300 days of such creation;

In case the charge is not registered within the time specified, then the charge shall be made registered within 6 months from the date of commencement of Companies (Amendment) Ordinance, 2019 on payment of additional fees.

- For the charges created after commencement of the Companies (Amendment) Ordinance, 2019:- ROC to register charges within 60 days of such creation.

In case the charge is not registered within this time, then ROC may on application, allow the registration of the charge within a period of further 60 days on payment of ad valorem fees.

➤ **Section 164 – Disqualifications of Director**

- In sub-section (1) a new sub-clause (i) has been inserted.

If a director does not comply with the number of directorships i.e. maximum ten public companies and maximum twenty in other companies he/she shall be disqualified under section 164 of the Act.

➤ **Section 248 – Power of the Registrar to remove the name of the company**

- The erstwhile provisions of the Act provided the following situations in which the Registrar can remove the name of the Company from the register of companies:
 - ✓ It has failed to commence its business within one year of incorporation;
 - ✓ Is not carrying out any business or operations for a period of two years or more without obtaining the status of Dormant Company;
 - ✓ Is a dormant company under section 455.
- The Ordinance has introduced two new clauses in addition for removal of name of the Company:
 - ✓ If the subscribers to the memorandum have not paid the subscription undertaken to pay at the time of incorporation 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;
 - ✓ If the company is not carrying on any business or operations, as revealed after the physical verification carried out by the department.

➤ **Section 441- Compounding of offences**

- The pecuniary jurisdiction of Regional Director for compounding of offence under section 441(1)(b) has been **increased from `5 lakhs to ` 25 lakhs.**
- The Companies (Amendment) Ordinance, 2019 has provided clarification that offences which are punishable with imprisonment only or with imprisonment and fine are non-compoundable offences.

Hence, following offences are Compoundable Offences, namely:

- Offences punishable with fine only;
- Offences punishable with fine or imprisonment.

Further, following offences cannot be compounded under the Act:

- Offence punishable with imprisonment only.
- Offence punishable with both imprisonment and fine
