

MINISTRY OF CORPORATE AFFAIRS - YEAR ENDER - 2018¹

Companies (Amendment) Act, 2017 enacted; Out of total 93 Sections, 92 Sections brought into force along with relevant Rules

MCA proposes to introduce Companies (Amendment) Bill, 2018 to replace Companies (Amendment) Ordinance 2018 in the ongoing Winter Session of Parliament

Insolvency and Bankruptcy Code (Amendment) Act, 2018 & Insolvency and Bankruptcy Code (Second Amendment) Act, 2018 notified

NFRA established to enhance investor & public confidence in financial disclosures of companies

E-governance initiatives launched for streamlining various processes

In pursuance to objective of providing greater “Ease of Doing Business” to all stakeholders, bring about greater transparency in corporate structure and better Corporate compliance so as to enhance the efficiency of the processes under Companies Act, 2013, the Ministry of Corporate Affairs (MCA) has taken several landmark initiatives / decisions during last one year (January-November, 2018).

The important ones are Companies (Amendment) Act, 2017, Companies (Amendment) Ordinance 2018, establishment of National Financial Reporting Authority (NFRA), amendments in Insolvency and Bankruptcy Code, eKYC drive for Directors of all companies and speedier processing of incorporation related applications, uniformity in application of rules and eradicating discretion.

India has improved its ranking on the World Bank’s “Doing Business” 2019 report released on 31st October, 2018. As per the report, India has moved up 23 spots to 77th position as compared to 100th position in 2017 by improving its rank in six out of ten parameters relating to starting and doing business in India. Ministry of Corporate Affairs has contributed towards starting a business, insolvency resolution and protection of minority interests.

The details of Year-long achievements for Ministry of Corporate Affairs are as below:

COMPANIES ACT

COMPANIES ACT, 2013 :

Till date, all sections of the Companies Act, 2013 [CA-13] except one section viz. Section 465 have been notified. Part of section 2 [clause 67(ix)] and part of section 230 [sub-section (11) and (12)] are yet to be commenced.

COMPANIES (AMENDMENT) ACT, 2017:

Companies (Amendment) Bill, 2017 was assented by Honourable President of India on 3rd January, 2018 and got enacted as the Companies (Amendment) Act, 2017 [CAA-17]. The CAA-17 contains total 93 sections. Till date, out of total 93 sections of CAA-17, 92 sections have been brought into force alongwith relevant rules. Commencement of one section (section 81 - relating to Nidhis) and parts of section 23 and 80 of CAA-17 requires amendment in 3 sets of Rules and Forms notified under the Companies Act, 2013 which requires examination in the Ministry and is likely to take some more time.

¹ Available at: <http://pib.nic.in/PressReleaseDetail.aspx?PRID=1556738>

The Ministry proposes to notify section 81 of CAA-17 and part of section 23 of such Act along with relevant rules by 31st December 2018.

The Committee to review the existing framework dealing with offences under the Companies Act, 2013 and related matters submitted its report to the Union Minister for Finance & Corporate Affairs Shri Arun Jaitley. The Committee broke down all penal provisions into eight categories based on the nature of offences. The Committee recommended that the existing rigour of the law should continue for serious offences, covering six categories, whereas for lapses that are essentially technical or procedural in nature, mainly falling under two categories may be shifted to in-house adjudication process. This would serve the twin purposes promoting of Ease of Doing Business and better corporate compliance. It would also reduce the number of prosecutions filed in the Special Courts, which would, in turn, facilitate speedier disposal of serious offences and bring serious offenders to book. The cross-cutting liability under section 447, which deals with corporate fraud, would continue to apply wherever fraud is found. Most sections under review and recommendation have been notified for commencement. Based on the recommendations of the Committee and to achieve objectives of promotion of Ease of Doing Business and better Corporate Compliance the Government decided to promulgate an Ordinance. Accordingly the Companies (Amendment) Ordinance, 2018 was promulgated on 2.11.2018.

The MCA proposes to introduce a Replacement Bill (viz. Companies (Amendment) Bill, 2018) to replace the Companies (Amendment) Ordinance 2018 in the Winter Session (2018) of Parliament.

INSOLVENCY & BANKRUPTCY

In year 2018, the President gave assent to promulgate Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018.

Insolvency and Bankruptcy process has taken good shape since 2017 and is a fast evolving legislation. A major factor behind the effectiveness of the new Code has been the adjudication by the Judiciary. The Code provides strict time limits for various procedures under it. In this process a rich- case law has evolved reducing the scope of legal uncertainty.

The Insolvency and Bankruptcy Code (Amendment) Act, 2018 notified on 19.01.2018 replaced IBC (Amendment) Ordinance which further amended provisions relating to prohibition on certain persons from submitting a resolution plan, so as to provide more clarity. Further, Second amendment was also done by the way of Ordinance in August, 2018 on the recommendations of Insolvency Law Committee. The Ordinance was promulgated vide notification dated 06.06.2018 to amend the Code to balance the interests of various stakeholders in the Code, especially interests of home buyers and micro, small and medium enterprises, promoting resolution over liquidation of corporate debtor by lowering the voting threshold of committee of creditors and streamlining provisions relating to eligibility of resolution applicants. The Insolvency and Bankruptcy Code (Second Amendment) Act, 2018 notified on 17.08.2018 has replaced IBC (Amendment) Ordinance, 2018.

NATIONAL FINANCIAL REPORTING AUTHORITY

In the wake of accounting scams and frauds in the corporate sector, National Financial Reporting authority (NFRA) was notified as an independent regulator for auditing profession which is one of the key changes brought in by the Companies Act 2013. NFRA will review the quality of corporate financial reporting in certain classes and subclasses of companies and take disciplinary action against auditors/audit firms for not discharging their statutory duties with due diligence. The decision is expected to result in higher foreign/domestic investments, acceleration of economic growth while supporting greater globalization of business by conforming to international standards and assisting in the evolution of audit profession. The jurisdiction of NFRA for investigation of Chartered Accountants and their firms under section 132 of the Act would extend to listed companies and large unlisted public companies, the threshold for which shall be prescribed in the rules. The Government has constituted this Authority and has prescribed NFRA (Manner of Appointment and other Terms and Conditions of Service of Chairperson and Members) Rules, 2018 and NFRA Rules, 2018. Shri R. Sridharan and Dr. Prasenjit Mukherjee, have been appointed as Chairperson and Full time Member respectively of NFRA on 1st October, 2018.

Rules Under sub-section (2) and (4) of Section 132 of the Companies Act, 2013, the Ministry vide Notification GSR No. 1111(E) dated 13th November, 2018 notified the National Financial Reporting Authority Rules, 2018.

E-GOVERNANCE

To provide for faster and transparent processes, the MCA took the following major initiatives towards Ease of Doing Business and standardisation:

Introduction of "RUN – Reserve Unique Name" web service for name: Introduced a web base service name as "RUN – Reserve Unique Name" for making the "Name Reservation" process Speedy, Smooth, Simple and reducing the number of procedures with effective from 26th January 2018 for Companies and from 2nd October 2018 for LLPs (Limited Liability Partnership).

Re-engineering the process of allotment of DIN: Re-engineering the process of allotment of DIN by allotting it through the combined SPICe form only at the time of an individual's appointment as Director (in case he/she doesn't have a DIN).

Exemption of MCA fee for company incorporation: A Government process of Re-engineering has been implemented where zero fee for incorporation of all companies with authorized capital upto Rs10 lakh or those companies with no share capital but have upto 20 members.

Deployment of e-forms due to IFSC & exemption notifications, amendment to Companies Act, CRL-1, implementation of Condonation of Delay Scheme (CODS): 16 e-form changes were deployed on account of IFSC notification related changes, Exemption notification related changes, and Companies Act amendment along with deployment of CRL-01 (Information to the Registrar by company regarding the number of layers of subsidiaries) and CODS 2018 in the month of Feb-Mar '2018.

eKYC drive for directors of all companies: MCA has introduced a mandatory eform viz. DIR-3 KYC for all DIN holders who have been allotted DIN on or before 31st March 2018 and whose DIN is in approved status. This drive is aimed at verification of individual DIN holders and weed out non-existent/dummy DIN holders and ultimately to clean up the Directors' e-Registry. The KYC process is obtaining additional details such as AADHAAR, Passport, personal Mobile Number and personal E-mail ID. Further, for stakeholders who do not possess AADHAAR, an exception management is provided. There are around 33 Lakh DINs in the registry and around 15.88 Lakh DIN holders have filed DIR KYC as on 30th November, 2018. In this drive, MCA managed to seed 11 lakh Aadhar card holders. This is one of its kinds of drive carried out anywhere in India.

Integrated form for LLP (FiLLiP) incorporation: Introduction of a new integrated Form christened FiLLiP (Form for incorporation of Limited Liability Partnership) replacing the erstwhile Form 2 (Incorporation document and subscriber's statement) combining therein 3 services of name reservation, allotment of Designated Partner Identification Number (DPIN/DIN) and incorporation of the LLP.

Setting up Central Registration Centre (CRC) for "name reservation" and "incorporation" for LLPs: CRC for "Name Reservation" and "Incorporation" of Companies has been successfully implemented. As operation of CRC has been stabilised, since past two years, Ministry has taken up similar GPR exercise for "Name Reservation" and "Incorporation" for LLPs (Limited Liability Partnership) and brought under the operation of CRC. The Government Process Re-engineering (GPR) exercise is in pursuance of the ministry's objective of providing greater "Ease of Doing Business" to all stakeholders and has resulted in speedier processing of incorporation related applications, uniformity in application of rules, and eradicating discretion.

NATIONAL COMPANY LAW TRIBUNAL

To speed up matter related to resolution of bankruptcy and insolvency, MCA proposed setting up 8 special courts under the National Company Law Tribunal to deal with the insolvency cases. These courts are proposed to be set up in Mumbai, Delhi, Chennai, Kolkata and Hyderabad. The proposal aims to reduce the mounting burden on the tribunal despite it having 11 benches all over India. To facilitate timely resolution of IBC cases, it is envisaged to set up exclusive IBC Courts under the NCLT

benches of Delhi, Mumbai to start with and step up infrastructure of NCLT. The aim is also to strengthen the insolvency process for faster resolution of NPAs.

INDIAN ACCOUNTING STANDARDS

In order to bring more transparent accounting, MCA has notified Indian Accounting Standard (Ind AS) 115 which would be effective from 1st April 2018. Ind AS 115 is a new revenue recognition standard for customer contracts in line with the International Financial Reporting Standards which will help in more transparent accounting of revenues with an impact on companies operating in diverse sectors, including technology, real estate and telecom. Objective of Ind AS 115 is to establish the principles that should be applied when reporting useful information to users of financial statements. The standard requires an entity to recognize revenue “to depict the transfer of promised goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services”

DEMATERIALISATION OF SECURITIES OF UNLISTED PUBLIC COMPANIES

In order to bring about greater transparency in Corporate structure and in view of advantages of dematerialisation of securities, especially in terms of KYC and investor protection, the Government’s focus on “Digital India” and the enabling provisions available under section 29(1)(b) of the CA-13, the Ministry has amended the relevant rules to apply the dematerialisation requirements to unlisted public companies, in addition to listed companies. Consultation were held in this regard with all stakeholders and rules were amended on 10th September, 2018 to mandate, w.e.f. 2nd October, 2018, issue and transfer of securities by unlisted public companies in demat form only.

INVESTOR EDUCATION & PROTECTION FUND

The Investor Education & Protection Fund (IEPF) Authority unveiled its new logo in 2018 to provide for strong brand presence and recognition. The IEPF authority also signed a Memorandum of Understanding (MoU) with the CSC e-governance Services India, wherein the latter would identify village level entrepreneurs for investor awareness projects, among other activities. MCA is actively looking at further reforms in IEPF.

To review the existing claim settlement processes a committee of practicing company secretaries was constituted through the Institute of Company Secretaries of India (ICSI). The committee had reviewed the existing processes and have recommended that the entire process should be made online with e-verification of the claims by the companies, online PAN based verification of the claimant etc.

A new portal namely www.iepfportal.in has been developed for increasing the outreach of IAPs and monitoring the programmes conducted by the professional institutes, CSC e-governance and other partner institutions. The portal provides access to the partner institutions like ICAI, ICSI, ICoAI& IICA and CSC e-Governance for uploading the details of past & future programmes.

COMPETITION MATTERS:

To enlarge the scope of debate of competition in India and to bring the best practices from around the world on competition issues, Competition Commission of India (CCI) successfully hosted the 17th International Competition Network (ICN) Annual Conference in March 2018 in New Delhi. Around 500 professional attended the conference from 70 plus countries, which included heads of competition agencies, representatives and stakeholders consisting of legal and economic professionals, international organizations and academics.

The MCA constituted an Inter-Ministerial Committee for carrying out “Competition Assessment of existing policies” under the chairmanship of Shri. Ramesh Abhishek, Secretary, Department of Industrial Policy and Promotion with representation from seven other Ministries/Organizations on dated 1st June, 2018. The prime focus of the Committee was to conduct a review of select Acts/Rules/Policies/Regulations formulated in the recent past and some upcoming acts to look into issues of anti-competition aspects and to focus on any restrictions/provisions in laws that pose great threat to competition.

Further, in pursuance of its objective to ensure that legislation is in sync with the needs of strong economic fundamentals, the Government constituted a Competition Law Review Committee under Shri Injeti Srinivas, Secretary Corporate Affairs on dated 1st October, 2018. The Committee is mandated to review the Competition Act/Rules/Regulation, to look into international best practices and sectoral interfaces etc.

Competition Commission of India (CCI) has amended the Combination Regulations. The post amendment regulations among others includes permitting withdrawal of notice and refilling the same by parties, allowing submission of voluntary modifications in response to notice, appointing agencies to supervise implementation of modification etc.

As part of competition Advocacy initiative at national and state level, CCI organised Roadshows in Mumbai, Delhi and Ahmedabad, including a National Conference on “Public procurement and Competition Law.” Similar Roadshows with focus on competition matters are being held periodically and more are planned to be held in the coming months.

Team ICSI

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