



OVERHAUL OF THE COMPANIES (AMENDMENT) ORDINANCE, 2018

I. Introduction

With a view to further liberalise certain statutory and penal provisions of the Companies Act, 2013 (“Act”), the Ministry of Law and Justice has issued, the Companies (Amendment) Ordinance, 2018 with effect from 2nd November, 2018 (“Amendment”) by amending more than 30 Sections. Various penal provisions enshrined in the act have been restructured pursuant to the said ordinance.

Summary of the Amendments

Section 2 (sub-section 41) (Amendment)-Earlier the power to dispose off the applications for the change in the financial year was vested with the National Company Law Tribunal (“NCLT”). This power has now been shifted to the Central Government which may delegate its power to any other authority.

Section 10A (Insertion)- The new section deals with the commencement of business by a new company. A new company shall not commence its business or start borrowing unless: (a) within 180 days a declaration is filed with the Registrar of Companies (ROC) stating that the shares are fully paid up, (b) within 30 days the verification of the registered office has been filed with the Registrar of Companies (“RoC”). Moreover, in the event of default in complying with the requirements of this section, the company shall be liable to a penalty of Rs. 50,000/- and every officer who is in default shall be liable to a penalty of Rs. 1,000/- for each day during such default continues but not exceeding an amount of Rs. 1,00,000/-;

Section 12(Insertion) - The provision 12 (9) has been inserted which states that RoC may cause a physical verification of the registered office of the Company and the if the RoC has reason to believe that the Company is not carrying into business/ operation after physical verification,

he may initiate action to strike off the name of the Company.

Section 14 (Amendment)- The Amendment has transferred the *power of approval* for conversion of a public company to a private company from the NCLT to the Central Government. However, if an application is pending before the NCLT, then such application shall be disposed off by the NCLT.

Section 53 (Amendment)-The section prohibits a company to issue the shares at a discounted rate. Sub- section 3 of the section has been amended and a more stringent punishment of penalty up to Rs. 5,00,000/- has been imposed. Along with this a liability has been imposed to refund the subscription amount so received with an interest at the rate of 12% (Twelve percent).

Section 64 (Amendment) – The section states that notice is to be given to the Registrar for alteration of share capital within 30days of amending the share capital along with the amended Memorandum of Association (MOA). Sub-section 2 of the same has been duly amended whereby imposing a fine of Rs. 1000/- per day of default or Rs. 5,00,000/- whichever is lower.

Section 77 (Amendment) – The section imposes a duty on the Company to register the charges on its property with the RoC. Earlier the time period was 300 days, now it has been reduced to 60days with an additional condonation time period of 60 more days.

Additionally, Section 86 of the Act has been amended to provide for punishment for wilfully providing false or incorrect information and for suppression of material facts required with respect to Section 77 (*Registration of Charges*) of the Act.



Section 92 (Amendment)–The section deals with the provision of Annual Returns. Sub-section 5 has been amended wherein it is mentioned that non-compliance will attract a penalty of Rs. 50,000/- further in case of continuous default further penalty of Rs.100/- per day with an upper cap of Rs. 5,00,000/- .

Section 102 (Amendment)– The section deals with statements to be annexed to meetings. The Amendment imposes a penalty of Rs. 50,000/- or 5 times the benefit accruing to such promoter, director, manager or key managerial personnel, whichever is higher non-compliance with the provision.

Section 105 (Amendment) - The section deals with the attendance of proxies in the meetings of the company. In an event where the company fails to include the same in the notice calling a meeting of a company, the defaulting officer shall be punishable with a fine extending Rs.5000/- .

Section 117 (Amendment) – The section deals resolutions and the agreements which needs to be mandatorily filed with the RoC. Sub-section 2 has been amended wherein the Company will be liable to a penalty of Rs 1,00,000/- and in case of continuing offence, a further penalty of Rs. 500/- per day will be imposed, subject to a maximum of Rs. 25,00,000/- and the officer who is in default including a liquidator will be liable to a penalty of Rs. 50,000/-and in case of continuing offence, a penalty of Rs. 500/- per day will be imposed subject to a maximum of Rs. 5,00,000/-

Section 121 (Amendment) - The section deals with the mandate on part of the company to file the report of the Annual General Meeting (AGM). The penalty for non-compliance with the same has been modified by the Amendment, whereby that company will be liable to a penalty of Rs. 1,00,000/- and in case of continuing offence, a further penalty of Rs. 500/-per day will be imposed, subject to a maximum of Rs. 25,00,000/- and the officer who is in default will be liable to a penalty which shall not

be less than Rs. 25,000/- and in case of continuing failure, with further penalty of Rs. 50 per day will be imposed, subject to a maximum of Rs. 1,00,000/-.

Section 137 (Amendment) – The section mandates the company to file a copy of the financial statement with the RoC. The penalty for non-compliance with the same has been modified by the Amendment, whereby the Company shall be liable to a penalty of Rs. 1,000/- per day subject to a maximum of Rs. 10,00,000/- Moreover, in case of default, Managing Director and Chief Financial Officer or any other director of the company shall be liable to a penalty of Rs. 100/- per day if the failure continues, subject to a maximum of Rs. 5,00,000/- Furthermore, the prosecution provisions under section 137(3) have been repealed.

Section 140 (Amendment)–The Amendment to the section imposes penalty on the resigning auditor for non-compliance with the provision for filing a statement specifying the reason and other facts with respect to the resignation. The auditor in default shall be liable to a penalty of Rs. 50,000/- or an amount equal to the remuneration of the auditor, whichever is less, and in case of continuing failure, with further penalty of Rs. 500/- for each day after the first during which such failure continues, subject to a maximum of Rs. 5,00,000/-

Section 157 (Amendment) –The section imposes a duty on the company to inform to the RoC, the Director Identification Number within 15 days of the receipt of such intimation. Sub-section 2 deals with the penal provision on non-compliance..

Section 159 (Amendment)–The section deals with punishment for contravention of Sections 152, 155 and 156 (intimation w.r.t. DIN etc.). Section 159 has been now amended to remove penal penalties for such contravention.



Section 164 (Amendment) –The section deals with disqualifications for appointment as a director. The scope of disqualification has been enhanced with insertion of Sub-section (i) to section 164(1) wherein compliance of section 165(1) (i.e. to not hold directorships in more than 20 companies has been mandated as a requirement for a valid appointment as director.

Section 165 (Amendment)–The section imposes a bar on number of directorships that can be held by a person in a private and a public company. The punishment for violation of the same has been enhanced to Rs. 5,000/-for each day of such contravention.

Section 191 (Amendment) –Sub-section 5 of the section imposes liability on the director for payment for loss of office. Post amendment, a fixed penalty of Rs.1,00,000/- has been prescribed.

Section 197 (Amendment) –The section deals with the limits for managerial remuneration in the event of absence or inadquance of profits. Post the amendment, sub-section7, which further imposed restriction on stock-options, reimbursing of expenses of independent directors has been omitted.

Section 238 (Amendment) –The section deals with registration of offer of schemes involving transfer of shares. Sub-section 3 of the same imposes penalty for non-registration. After the amendment, the earlier fine ranging from Rs.25,000/- to Rs.5,00,000/-has been replaced with penalty of Rs.1,00,000/-

Section 248 (Amendment)– The section deals with the power of the registrar to strike off names from the register of companies. Two new sub-section (d) and (e) are added by the amendment when the subscribers to memorandum have not paid the full subscription and no declaration of

default has been filed within 180 days of Company incorporation or when on physical verification conducted by RoC, no business is found to be carried out by the Company at the registered office, the RoC shall be entitled to strike off names of such companies from the register of companies.

Section 441 (Amendment) –The section deals with the compounding of offences. After the amendment, under sub-section (b) the earlier maximum threshold limit of Rs.5,00,000/- has been increased to Rs.25,00,000 for eligibility for compounding.

Section 446B (Amendment) – This new section has been included to provide a leeway for Small or One-person companies in case of certain minor non-compliances, whereby, Small and One person companies shall only be liable to a penalty which shall not be more than one half of the penalty specified in such sections.

Section 447 (Amendment) –The section specifically deals with punishment for fraud. After the amendment, the earlier penalty of Rs.20,00,000 has been increased to Rs.50,00,000.

Section 454 Sub-section3 (Amendment) – This section deals with adjudication of penalties. Sub-section b has been inserted by which the power of adjudicating officer has been enhanced to not only impose penalty, but also to provide directions for rectification of default by the company.

Section 454A (Insertion) –The section imposes penalty for repeated defaults. New section 454A has been inserted providing for double penalty for repeated defaults under Companies Act 2013. *****



REQUIREMENTS FOR OPERATION OF CIVIL REMOTELY PILOTED AIRCRAFT SYSTEM (RPAS)

Coming into effect from December 1st, 2018, the policy for remotely piloted aircraft/drone also known as National Drone Policy, 2018 (“**Policy**”)¹, provides a regulatory framework aimed at regularising civil and commercial use of remotely piloted aircraft or drones. This new policy gives an insight to various classifications of remotely piloted aircrafts, requirements for issue of unmanned aircraft operator permit (“**UAOP**”), restrictions on remotely piloted aircraft and other operational requirements. This policy has succeeded two other draft regulations which were issued by DGCA in April 2016 and November 2017.

Definition

“Drone is an unmanned aircraft (which has no human pilot on board), which is piloted by a remote piloted station.”

Classification of Remotely Piloted Aircraft

For better understanding and clarity of the regulations, DGCA has come up with the classification of Remotely Piloted Aircraft (“**RPA**”). It has been classified into five categories depending upon the weights of drones. These categories are as follows-

- a) Nano: Less than or equal to 250 grams.
- b) Micro: From 250 grams to 2kg.
- c) Small: From 2kg to 25kg.
- d) Medium: From 25kg to 150kg.
- e) Large: Greater than 150kg.

Requirement for issue of UIN-

The RPAS (Remotely Piloted Aircraft System) are to be registered and issued with Unique Identification Number

(UIN). The DGCA has to grant UIN within 2 days of the receipt of a complete application

Exemptions- RPA in Nano category operating below 50 feet (15 m) AGL in uncontrolled airspace / enclosed premises and RPA owned and operated by the agencies like NTRO, ARC and Central Intelligence Agencies are exempted from obtaining such UIN.

Requirement for issue of UAOP

The civil RPA operators will be required to have UAOP in order to fly a drone. Further, permission has to be obtained through digital sky app before flying any drone.

Exceptions -Regulation 7.2 of the Policy specifies certain entities which do not require UAOP. These entities are as follows-

- a. Nano RPA operating below 50 feet (15 m) AGL in uncontrolled airspace / enclosed premises.
- b. Micro RPA operating below 200 feet (60m) AGL in uncontrolled airspace / enclosed premises. However, the user shall inform police before 24 hours prior to actual usage.
- c. RPA owned and operated by the agencies like NTRO, ARC and Central Intelligence Agencies. In this case as well, the agencies shall intimate about the usage to the local police.

The civil RPA operators shall file an application via Digital Sky Platform to DGCA at least 7 working days prior to such operations in order to get UAOP. Moreover, if the application is complete, DGCA shall issue UAOP within 7 working days to the operator. The validity of UAOP is 5 years.

Digital Sky Platform

¹<http://dgca.nic.in/cars/D3X-X1.pdf>



In order to get the permission for flying drones in India, DGCA has formed an online IT platform wherein the users of the drones are required to get themselves registered in. This platform has been developed for handling UIN, UAOP applications and permissions to fly drones. Through Digital Sky Platform, a software programme NPNT (‘No Permission – No Take-off’) have been enabled wherein all RPA (except one who falls in Nano category) have to take valid permissions before operating in India.

Limitations

The regulations also provide certain limitations/restrictions to the operations of RPA:

- ❖ All operations of drones are restricted to day time only (Between Sunrise and Sunset) and also within visual line of sight. Flying drone up to 400 ft. AGL and visual line of sight are allowed. In this regard, air space has been classified into three zones: -
 - a. **Red Zone**- This zone signifies “No Fly areas”. These are the areas which are usually close to airports or national borders or military bases.
 - b. **Yellow Zone**-This zone is “controlled airspace”. Prior permission of has to be taken before operating drones in this zone.
 - c. **Green Zone**- In this zone, there are no restrictions in operating Drones. Automatic permission is provided.
- ❖ All the operators except ones who fall in the category of Nano , intending to operate up to 50 ft (15 m) AGL in uncontrolled airspace/ enclosed premises, have to obtain permission before undertaking flight through Digital Sky Platform. Moreover, the flight plan has to be filed by all RPA operators except Nano and Micro category intending to operate up to 50 ft (15 m) AGL

and 200 ft (60 m) AGL respectively in uncontrolled airspace/ enclosed premises, at least 24 hours before such operations. In addition, the following are to be obtained before such operations: -

- a. Air Traffic Control (ATC) clearance from the nearest ATC unit.
 - b. Air Defence Clearance (ADC) from the nearest Indian Air force Unit (IAF).
 - c. Flight Information Centre Number from the concerned Flight Information Centre.
- ❖ If there is any cancellation in the flight plans, then it has to be mandatorily informed to the concerned authorities. The local police shall also be informed in writing before commencement of such operations (except Nano). Further, while pilot is flying any drone in controlled airspace, a continuous contact has to be made with the Air Traffic Control. Further, no person can act as a remote pilot for more than one RPA operation at a time. Also, RPA shall not be flown in a manner to cause danger to any person or property.

Enforcement Actions

- a. If any provisions of Drone Regulations are violated, then the UIN or UAOP issued by DGCA may be suspended or cancelled.
- b. Falsification of any documents/information and breach of compliance would attract penal provisions under Indian Penal Code.
- c. Actions may be taken under The Aircraft Act, 1934 and The Aircraft Rules, 1937.

Section 11 of the Aircraft Act, 1934 states that “*Whoever wilfully flies any aircraft in such a manner as to cause danger to any person or to any property on land or water or in the air shall be punishable with imprisonment for a*



term which may extend to two years or with fine which may extend to Rs.10,00,000, or with both.”

Section 11 A of the Aircraft Act, 1934 states that *“If any person wilfully fails to comply with any direction issued under section 5A, he shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to Rs.10,00,000, or with both”.*

Remark

The Government of India has taken a huge step by regularising the operation of civil RPAs. Earlier there were no regulations which governed the drones and their usage was very limited in the commercial sector. In order to get more clarity on regulations, DCGA has also released FAQ's which gives extensive information about these regulations.²Moreover, the online IT platform (Digital IT Platform) will provide an ease in regularising the drones. Every operation will be managed through this single platform and therefore we can say that it may as well be a boom for the technological sector of the country. However, there are a few drawbacks to the policy. There are certain regulations which may be considered as a set back to the growth of the sector. The regulation has imposed restrictions on foreigners from using drones directly in India or investing in them. Moreover, as of now these drones will not be allowed to deliver food items or other items. However, there may be amendments in future which may further liberalise the usage of drones in India.

²<http://dgca.nic.in/cars/RPS-FAQs.pdf>



GDPR AND THE PERSONAL DATA PROTECTION BILL, 2018

Introduction

In the 21st Century that we live in, the importance of Data Privacy has reached its pinnacle. With the Hon'ble Supreme Court's decision of *Justice K.S. Puttaswamy vs. Union of India*³, wherein the right to privacy has been declared as the part and parcel of the Fundamental Rights.

To enforce a proper code for data privacy in India, a high-level committee under the chairmanship of Justice B.N. Srikrishna was formulated. After a long wait, on July 27, 2018 Personal Data Protection Bill, 2018 ("**Indian Bill**") was released by the committee. This article is an attempt to compare and analyse the General Data Protection Regulations ("**GDPR**") implemented in the European Union and the Indian Personal Data Protection Bill, 2018.

Critical Analysis

Difference in Terminology– The term 'Data Subjects' signifies the citizens whose personal data is being processed in GDPR, while the term 'Data Principals' is used in the Indian Bill in the same context.

In the similar way the bodies dealing with the collected data are called 'Data Controllers' in GDPR and 'Data Fiduciaries', in the Indian Bill.

Wider in Scope - The Indian Bill has given a very broad definition of sensitive personal data which in addition to genetic data, health data, official identifier, also includes passwords and financial data as compared to the narrower definition in GDPR.

Data Sharing with the Data Principal– The GDPR, makes it compulsory to share the personal data with the Data

Principal. The Indian Bill, however does not cast such a mandate.

Applicability– The current data protection programme, which is regulated by the Information Technology Act, 2000 grants an exemption to all the government entities. No such exception is available under the GDPR.

Obligation to share the data–The GDPR provides a mandate on part of the Data Fiduciary to share with the Data Principal the time period as to how long the data will be stores. Such a rule has not been provided in the Indian Bill.

Obligation to share the source of data – An explicit requirement is provided in the GDPR regime to disclose the source of personal data to the Data Principal. The Indian Bill is relaxed on this point. The Data Fiduciary does not need to share the source of personal data.

Sharing the undergoing processing data – GDPR makes it compulsory to provide the Data Principal a copy of the data that is undergoing processing. The Indian Bill too provides such a rule to share the summary of data, but the contents of such a summary has not been mentioned.

Right to Erase the Data– This is so far the biggest difference between both the two sets of data regulations. In India, right to erase the data is not conferred on the citizen. The GDPR clearly gives this right to be forgotten to the citizens of the EU.

Breach of Data–If there is a breach of the stored data of a citizen in India, there is no requirement to share the same to the Data Principal. The Data Protection Authority shall determine whether the same shall be reported to the Data Principal or not. Whereas in GDPR, the breach is required to be mandatorily informed to the Data Principal.

³ Writ Petition (Civil) No. 494 of 2012



European Union. However, the Indian Bill is indeed a welcome step in the field of data protection in India

Conclusion

It would be appropriate to conclude that the Indian Bill is a more diluted version of the GDPR Laws passed by the

LEX REVISERS

NEW PAN CARD RULES, 2018

The new rules on pan card have become effective from 5th of December, 2018. The rules will be applicable only for entities or firms who have indulged in financial transactions worth Rs. 2,50,000/- or more in a given financial year. The new rules mandate (a) a managing director, director, partner, trustee, author, founder, karta, chief executive officer, principal officer or office bearer (or any such person who does not have PAN), to apply for getting a PAN Card on or before 31st May; (b) residents to obtain a PAN Card even in the scenario when the total sales, turnover or gross receipts are not likely to exceed Rs. 5,00,000/- in a financial year. Further, new rules provide that furnishing of father's name will not be compulsory for a person whose mother is a single parent.

[Read more at: https://www.incometaxindia.gov.in/communications/notification/notification82_2018.pdf]

GUIDELINES FOR ENHANCE DISCLOSURE BY CREDIT RATING AGENCY

In order to protect the interest of the investors in securities, SEBI has prescribed guidelines (“**Guidelines**”) to enhance the quality of the disclosures made by Credit Rating Agencies (“**CRAs**”). Some of the key guidelines are as hereunder: -

- a. A prescribed format for press release has been given, wherein if the rating factors are in support of an entity and there are chances of infusion of funds, then in such a scenario the name of the entity along with the reasoning must be provided. Moreover, for better clarity, a separate column of “Liquidity” shall be provided which would include cash balances, liquidity coverage ratio, adequacy of cash flows et cetera.
- b. The CRA’s while carrying out their function of “Monitoring of Repayment Schedules”, shall take into account the liquidity conditions of the issuer and any asset-liability mismatch.
- c. With a goal of enhancing the level of transparency, the CRA’s should also publish relevant data related to the historical average rating transition rate across several rating categories. For the same purpose the CRA’s shall showcase 1 year of average rating transition rate over a period of 5years, on their respective websites.
- d. The Guidelines also provides for disclosure of performance of CRA’s on Stock Exchange and Depository website on half yearly basis, within a period of 15 days from the end of the half year i.e. 31st March or 30th September.
- e. The half yearly internal audit mandated by the SEBI (Credit Rating Agencies) Regulations, 1999, shall also adhere to the mandated method of calculation of transition rates.



[Read more at: <https://www.sebi.gov.in/legal/circulars/nov-2018/guidelines-for-enhanced-disclosures-by-credit-rating-agencies-cras-40988.html>]

- NEW FORM GSTR – 9 RELEASED BY CIBC

CIBC (Central Board for Indirect taxes and Customs) via Notification No. 39/2018 released GSTR- 9 form. It is an annual return which has to be filed by GST registered taxpayer irrespective of their turnover. The same has to be filed on or before 31st December on the GST portal or through facilitation centre. Furthermore, no certification is required by CA or CMA but the form shall be attested by the taxpayer using a digital signature. Casual Taxable Person, Input service distributors, Non-resident taxable persons and Persons paying TDS under Section 51 of Goods and Services Tax Act, 2017 are not required to file GSTR-9 Annual Return. The penalty for late filing of annual return is Rs. 100/-) per day subject to a maximum cap of an amount at 0.25 % of total turnover in respective State/UT.

[Read more at: http://gstcouncil.gov.in/sites/default/files/cgst-Notification-2018/Notification-39-2018-central_tax-English.pdf]

- STREAMLINING THE PROCESS OF PUBLIC ISSUE OF EQUITY SHARES AND CONVERTIBLES

SEBI to provide an efficient mechanism for raising funds, has introduced the Unified Payments Interface (UPI) as a payment mechanism for applications in public issues by retail individual investors through intermediaries. The proposed alternate payment mechanism is proposed to be introduced in a phased manner

[Read more at: <https://www.sebi.gov.in/legal/circulars/nov-2018/streamlining-the-process-of-public-issue-of-equity-shares-and-convertibles-40923.html>]

- MCA NOTIFIES NATIONAL FINANCIAL REPORTING AUTHORITY RULES, 2018

The Ministry of Corporate Affairs (MCA) issued a notification to introduce the National Financial Reporting Authority Rules, 2018. One of the key changes brought about by the rules is the introduction of return to be filed by all auditors with the Authority on or before 30th April every year.

[Read more at: http://www.mca.gov.in/Ministry/pdf/NFRARules2018_13112018.pdf]

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