

Companies Amendment Ordinance, 2018: A Primer

■ Dr. Manoj Kumar

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he Companies Amendment Ordinance, 2018 ("Ordinance") promulgated effective from 2nd November, 2018, made amendments to the provisions of Companies Act, 2013 ("Act"). This primer seeks to flag some significant changes:

1. Change of 'financial year' by companies having holding/subsidiary/associate companies overseas would now need to approved by the Central Government instead of the National Company Law Tribunal ("NCLT").

2. Alteration of the Articles of Association having the effect of converting a public company into private, now needs to be approved by an order to the Central Government instead of the NCLT.

3. A declarations and verifications for the payment of the value of shares agreed to be taken by every subscriber to the memorandum is again required to be filed with the registrar before the commencement of any business, failing which would attract a penalty of fifty thousand rupees for every company and one thousand rupees for ever officer for each day during which the default continues. Deletion of erstwhile Section.11 of the Act in 2015 has been revisited.

4. If the Registrar of Coanies ("Registrar") has "reasonable cause to believe" that the company not carrying on any business or operations, he (the registrar) may cause "physical verification" of the registered office of the company and also initiate action for the removal of name of the company from the register upon a default or failure to have a registered office capable of receiving and acknowledging communication and notices.

5. The penalty for issue of shares at a discount would be amount equivalent to that raised (not minimum one lac rupees) apart from imprisonment as prescribed.

6. The Companies and officers would be treated uniformly for failing to comply with Section.92 (Annual Returns) - a penalty of Rs. 50,000/- and in case of continuing failure Rs. 100/- per day of continuance upto five lakh rupees, a change from the earlier provision which provided differential and harsher treatment to officers.

7. The period for registration process for the creation of charges is reduced to 60-days instead of 300-days span provided under section 77 of the Act, on the payment of the advalorem fees. The Ordinance also prescribes that any contravention of section 77, by willfully furnishing false or incorrect information or knowingly suppressing material information would specifically attract penalties under Section 447 of the Companies Act, 2013 (Punishment for Fraud), in addition to other generally prescribed penalties.

8. The Ordinance brings back the power by the Registrar of Companies for compulsory removal of name of a company in the on two grounds. viz., not filed declaration and the e-form INC-22.

The softening of penalties coupled with shifting of approvals of administrative matters from NCLT to Central Government is expected to create a more enabling compliance regime going forward. There however is a need to replace the Ordinance with an amendment of the Act through a Bill of the Parliament, failing which uncertainties of consequential liabilities upon the Ordinance lapsing may limit the compliance positive aspects of the Ordinance. ■



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Law making and policy initiatives in a digital age

By Manoj Kumar, Hammurabi & Solomon

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As the technological revolution advances, bringing challenges such as Aadhar, privacy, data protection and e-governance, the process of law making and initiating policy has to face its own trials.

In a digital age, the essential question is whether technology decides the direction of sustainability and development and thus also laws and policies, or do sustainability and development priorities decide the direction of technology and innovation through laws and policies? Those who advocate the former, need to answer whether technology has indeed served the ends of sustainability, developmental goals of societies and economies. Has technology enabled people to improve their quality of life or has it resulted in the denial to many of such improvement? Concrete examples of this conundrum are whether technology has, for example, led to – improved food grain distribution systems and inventory management; advanced the accuracy and timeliness of advisories to farmers through satellite mapping of weather patterns; or enabled online and doorstep delivery of public services to the last person in the rule of law and access to justice value chain?

As the conflict between needs and resources becomes more acute, direction of law making and policy initiatives should be towards creating a system that enables new technology to enrich and benefit quality of human life through sustainability and development; improving governance and the delivery of public services by encouraging all stakeholders and aggregators to use new technology; enabling government agencies and NGOs effectively to use and manage data whilst implementing proper data protection and access policies; mandating the use of new technology in all business sectors to achieve transparency and an ethical work culture; and maintaining a balance between regulating businesses for the public good and freeing innovators and entrepreneurs from the hindrance of unnecessary and restrictive bureaucratic intervention.

Governance in the digital age is therefore to manage technology, using it to transform for the better – the economy, social frameworks, sustainable policies and institutions to enable multi-sectoral development with the aid of technology to meet strategic, societal goals in a timely manner.

There is now a need for a much closer collaboration between government and sectoral stakeholders resulting in the speedy formulation of high-quality policies and legislation. This synthesis results from key players adapting to the successively accelerating changes brought about by technology.

There is still great pressure on policy makers and legislators to develop their abilities to deal with (1) rapid changes in technology; (2) the uncertainty that these changes have on stakeholders and their ability to adapt; and (3) the necessity continually to be driven by a clear development strategy. There are public interest considerations that must be taken into account. Matters such as privacy, data and cyber security, and protection for intellectual property rights are the core drivers of this development strategy. A proper strategy enables stakeholders to focus on an inclusive digital ecosystem continuously aiding in improving the delivery & access of justice, social, political and economic to all by providing access and empowerment to small and medium enterprises, farmers and economically weaker communities.

As the focus and direction gains momentum towards bridging the digital divide between different communities and regions by building a stable digital infrastructure, new laws and policies have to ensure that vulnerable people are able to withstand the challenge of change. This happens through continuous collaborations between government and non-government stakeholders.

Additionally, many areas of governance continue to pose challenges to multi-sectoral sustainability because of lack of transparency and real time credible data mapping. These include banking and finance, tax administration, public distribution systems, land records, forests and resources, manufacturing, farming and farm produce movements. Even looking at block chain as a means for logging/recording transactions and records could prove to be the key to ensure incorruptibility and transparency and, hence, aiding sustainability across social and economic sectors. The digital age brings opportunities to enhance the sustainability of societies and economies by empowering the socially, economically and geographically weak. The benefits of the digital age can be made available and affordable for all by finding the right balance between technology and sustainability in law making and policy initiatives in the digital age.



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Dr. Manoj Kumar, Founding & Managing Partner, H&S, once again ranked in India Business Law Journal's Top 100 Lawyers A List

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An ace lawyer, Kumar has been acknowledged by reputed clients for his outstanding leadership, strategy and ability to find alternate solutions to most critical and complex challenges related to policy & regulation, corporate governance, corporate and M&A, cross-border transactions, disputes, crisis & reputation management & strategies, real estate, infra projects, IPR management & protection, project finance, business restructuring and legal and regulatory compliance across geographies.

In the policy and regulation space, Kumar has worked extensively across sectors, including civil nuclear liability, pricing of IPR in media, natural resources sector, environment, climate change, forests, public-private partnerships, technology and IT, data privacy, corporate laws and capital markets, land acquisition, POSH, legal services sector reforms in India, safe cities in India, making India a hub for international arbitration, ease to do business, fast track commercial courts, blockchain and crypto, AI, media regulation, legal status of intel agencies in India etc. to name a few.

Kumar is a recipient of the prestigious Mahatma Gandhi Samman awarded at the House of Lords, London. He was named as one of the *100 Legal Luminaries* of India, published

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