Callidus News

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PROPOSED CHANGES IN THE CORPORATE LAW IN INDIA

Government of India has promulgated the Companies (Amendment) Bill, 2019 on 12th January 2019 as the Companies (Amendment) Bill, 2018, enacted with the same aim and objectives could not be passed in the recently concluded parliament session. The bill was introduced in the LokSabha on 20th December, 2018 and was considered and passed by the LokSabha on 4th January 2019. Though the Bill was transmitted to the RajyaSabha but it could not be considered and passed in the Upper House. Hence the ordinance was re-promulgated as Companies (Amendment) Bill, 2019 The amendments are based on the recommendations of the Committee to review offences under the Companies Act, 2013. The proposed changes in the amendment bill are expected to lead to greater compliance by corporate, and are expected to reduce the burden on judiciary. Huge number of cases pending in courts and tribunals all over the country pertaining to sections dealing with procedural lapses are expected to be resolved through in-house adjudication mechanism within the corporate. The amendments aim, in future, to reduce cases load on NCLT. The proposed changes would also allow ROCs to more effectively pursue action against serious offences. The successful implementation of the proposed changes would lead to ROCs (adjudicating officers) disposing adjudicating proceedings within stipulated time limits. The following are the highlights of the recently promulgated ordinance:

- **Re-categorisation of certain Offences**: The 2013 Act contains 81 compoundable offences punishable with fine or fine or imprisonment, or both. These offences are heard by courts. The Ordinance re-categorizes 16 of these offences as civil defaults, where adjudicating officers (appointed by the central government) may now levy penalties instead. These offences include: (i) issuance of shares at a discount, and, (ii) failure to file annual return.

- **Issue of shares at a discount**: The Act prohibits a company from issuing shares at a discount, except in certain cases. On failure to comply, the company is liable to pay a fine between one lakh rupees and five lakh rupees every officer in default

THOUGHT for the MONTH

The three things that stop people more than anything else does from achieving their goals: criticizing, complaining, and blaming. These are the three horsemen of failure

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may be punished with imprisonment up to six months or fine between one lakh rupees and five lakh rupees. The Ordinance changes this to remove imprisonment for officers as a punishment.

- Further, the company and every officer in default will be liable to pay a penalty equal to the amount raised by the issue of shares at a discount or five lakh rupees, whichever is lower. The company will also be liable to refund the money received with interest at 12% per annum from the date of issue of the shares.

- **Commencement of business**: The Ordinance states that a company may not commence business, unless it (I) files a declaration within 180 days of incorporation, confirming that every subscriber to the Memorandum of the company has paid the value of shares agreed to be taken by him, and (ii) files a verification of its registered office address with the Registrar of Companies within 30 days of incorporation. If a company fails to comply with these provisions and is found not to be carrying out any business, the name of the Company may be removed from the Register of Companies.

- **Registration of charges**: The Act requires companies to register charges (such as mortgages) on their property within 30 days of creation of charge. The Registrar may permit the registration within 300 days of creation. If the registration is not completed within 300 days, the company is required to seek extension of time from the central government.

- **The Ordinance changes this to permit registration of charges**: (i) within 300 days if the charge is created before the Ordinance, or (ii) within 60 days if the charge is created after the Ordinance. If the charge under the first category is not registered within 300 days, it must be completed within six months from the date of the Ordinance. If the charge under the second category is not registered within 60 days, the Registrar may grant another 60 days for registration.

- **Change in approving authority**: Under the Act, change in period of financial year for a company associated with a foreign company, has to be approved by the National Company Law Tribunal. Similarly, any alteration in the incorporation document of a public company which has the effect of converting it to a private company, has to be approved by the Tribunal. Under the Ordinance, these powers have been transferred to central government.

- **Declaration of beneficial ownership**: If a person holds beneficial interest of at least 25% shares in a company or exercises significant influence or control over the company, he is required to make a declaration of his interest. Under the Act, failure to declare this interest is punishable with a fine between one lakh rupees and ten lakh rupees, along with a continuing fine for every day of default. The Ordinance provides that such person may either be fined, or imprisoned for up to one year, or both.

- **Compounding**: Under the Act, a regional director can compound (settle) offences with a penalty of up to five lakhs rupees. The Ordinance increases this ceiling to Rs 25 lakhs.

UAE's New Arbitration Law on Rendering And Executing The Award

The new Federal Arbitration law of the UAE – Federal Law No. 6 of 2018 on Arbitration came into force on 15 May 2018 and came into effect in June 2018. This new legislation repeals the previous outdated and non-comprehensive UAE Chapter on Arbitration contained in articles 203 to 218 of the UAE Civil Procedures Law No. 11 of 1992 ("UAE Civil Procedure Code ").

The Arbitration Law shall apply to all ongoing arbitration proceedings (retrospective) at the time that the new law comes into force.

The prominent exception being given under Article 2(1), which states that the Arbitration Law shall not apply to arbitration proceedings where the parties have agreed that their arbitration is subject to the DIFC Arbitration Law (DIFC Law No. 1 of 2008), or that the seat of their arbitration shall be the Dubai International Financial Centre (Dubai's financial free zone) likewise under Article 2(2), the Arbitration Law shall not apply to arbitration conducted outside of the UAE unless the parties have agreed to apply the Arbitration Law.

With regard to the issuance of the award, Article 42(1) provides that, unless agreed otherwise, an award must be issued within 6 months from the date of the first hearing of the arbitration, such a date can now be extended for an additional 6 months, unless the parties agree to a longer extension, either explicitly or implicitly. Article 42(2) provides that absent such an agreement, further extension of time can only be made by the courts upon petition by the parties or the tribunal itself. It is important to bear in mind in this regard that the failure to meet this time limit is a ground for challenging an Award pursuant to Article 53(1)(g) of the New Arbitration Law.

The New Arbitration Law also explains the process for enforcing UAE arbitral awards. The New Arbitration Law provides that arbitral awards are binding on the parties, and that such awards shall be enforceable in the same manner as a judicial ruling/decree, provided ratification is obtained. If the enforcement of the award is sought in the UAE, a ratification of such an award by the court is required in order to proceed with the enforcement of such an award.

Another major development in the New Arbitration Law lies in the fact that enforcement proceedings can now be commenced directly before the UAE federal or local Court of Appeal, unlike before the same has to be filed in the Court of First Instance. The enforcement procedure has also been simplified in a way that Instead of filing a case before the court, the award-creditor can seek the ratification and enforcement of an award through the filing of an application with the Chief Justice of the Court of Appeal. Pursuant to Article 55(2), the relevant authority will now have 60 days from the date of the application to order the ratification and enforcement of the award unless it finds grounds for annulment.

The UAE Federal Law No. 6 of 2018 on Arbitration, undoubtedly constitutes a landmark development for arbitration in the UAE by providing a standalone arbitration law aligned with international best practices and standards. Although broadly based on UNCITRAL Model Law on International Commercial Arbitration adopted by the United Nations Commission on International Trade (the UNCITRAL Model Law), it overall preserve and respect of party autonomy and the focus on more streamlined and efficient proceedings, which will build the UAE's reputation as a preferred seat for international arbitration in the region.

HOT NEWS

23 WAYS TO BE HAPPY

1. Find out what to do first.
2. Give yourself a confidence boost
3. Fuel your progress by learning how to feel better about yourself.
4. Create balance and overcome burnout.
5. Build a growth mindset for happiness.
6. Make positive memories.
7. Find those silver linings.
8. Take breaks from social media.
9. Spend smarter for more happiness.
10. Communicate kindly.
11. End your negative patterns of thinking.
12. Find clarity.
13. Live your values.
14. Pay attention to the good.
15. Use your imagination to create the life you seek.
16. Stay mindful.
17. Explore what happiness means to you.
18. Go after life.
19. Speak up and be yourself.
20. Find your purpose.
21. Build meaningful connections.
22. Get off the hedonic treadmill.
23. Hold yourself accountable.

In sum, you can be happier. It's just a matter of building the right "happiness skills."

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