

**India amends its Companies Act, 2013 (again) !! Should you change your registered office address?**

On November 2, 2018, the Government of India announced new amendments to the Companies Act, 2013. These amendments are a continuation of a number of steps the Government of India has taken in the past couple of years, to strengthen the compliance mechanism for companies incorporated in India, principally to weed out dummy companies and ensure that financial fraud is eliminated or detected early. Among the most significant of these steps has been the reverification of director data and video verification before a digital signature can be issued.

This time, the most misunderstood amendment appears to be due to the insertion of a new Section 12(9) in the Companies Act, 2013, which ostensibly allows the Registrar of Companies to weed out a “dummy” or “ghost” company through physical verification. Section 12(9) allows the Registrar of Companies to physically verify whether a company is carrying on business or operations by visiting the registered office of the company, and initiating action to remove the name of the company from the register of companies if the company is not carrying on business or operations. Typically, the registered office of a company (particularly a foreign company) is the address of its legal advisor or its accountant or company secretary, while its actual business or operating office is elsewhere.

Some have misread this amendment to require companies to shift their registered address to their operating address. However, the correct reading of this amendment is that if the Registrar finds that a company is not carrying on any business or operations (in which case it will generally not have a business or operating address), then in those cases the Registrar can visit the registered office to verify this fact in some yet to be prescribed manner and initiate removal proceedings if the Registrar concludes that the company is simply a “dummy” or “front” company. Therefore, companies that have genuine business operations but have their registered office address listed as their legal or financial advisor’s address, need not panic. As long as one has genuine business or operations in India, the registered office address can continue to remain the address of its legal or financial advisor.

Other notable amendments are as follows:

(1) Section 2(41) mandates all companies to have a uniform financial year from April 1 to March 31. The proviso to Section 2(41) permitting holding and subsidiary companies of foreign companies to have a different financial year end instead of March 31 for purposes of consolidation of accounts, has now been expanded to include associate companies as well.

(2) A new Section 10A has been introduced prohibiting a company from commencing business or exercising any borrowing powers, until and unless (i) the directors have filed within 180 days of the date of incorporation a declaration that every subscriber to the memorandum of association has paid for the value of the shares subscribed; and (ii) the company has confirmed its registered office address in the manner prescribed in Section 12(2). Default in these filings makes the company liable for a reasonably high (but not stringent enough) monetary penalty and also penalizes officers of the company with daily monetary penalties until the default is corrected. Further, the Registrar of Companies is now empowered to remove the name of the company in case of failure to file the declaration of payment of shares by the subscribers within the prescribed 180 days period and if

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the Registrar has reasonable cause to believe that the company has not commenced business operations.

(3) A new proviso to Section 14(1) of the Companies Act, 2013 now allows the government direct control over the conversion of a public company into a private company. Prior to this amendment, the power to allow such conversion was with the National Company Law Tribunal.

(4) Section 53 of the Companies Act prohibits a company from issuing shares at a discount. The penalties for violating this prohibition have now been increased to the amount collected by issuing discounted shares or Rupees 500,000 (approx. US\$ 7,000), whichever is less plus requiring the collected amount to be refunded with 12% interest.

(5) Section 77 of the Companies Act has been amended to allow companies to register charges created prior to this amendment within 300 days and charges created after this amendment, within 60 days of the creation of the charge (increased from the current 30 days) and allows registration thereafter on payment of additional fees. In addition, the amendment now permits prosecuting any person for willfully furnishing false or incorrect information or knowingly suppressing material information to be prosecuted for fraud, for which the punishment can be as high as imprisonment for a period of up to 10 years.

(6) Sections 89 and 90 of the Companies Act were amended in May-June 2018 to enforce strict disclosure and reporting of beneficial interests. The current amendment further tightens the law by putting a time limit of one year for appealing against any restrictions placed on shares whose beneficial ownership is not disclosed or unsatisfactorily disclosed, and also introduces imprisonment as a punishment for failure to disclose.

(7) Various provisions of the Companies Act favoring shareholders or requiring reporting or filing have been amended to increase the amount of penalties payable in case of default by the company.

(8) The restriction preventing independent directors from receiving stock options has also been now removed.

These amendments, in some ways, make doing business in India more onerous, but they are intended to clean up the system of dummy companies, protect innocent shareholders and bring about greater transparency in corporate India, and therefore are welcome steps in India's steady growth objectives.

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