

BUSINESS LAWS – Amendments for Nov 2021

Chapter 2 – The Companies Act, 2013

A) Resident in India in One Person Company -

Substituted by Companies (Incorporation) Second Amendment Rules, 2021

■ Old Provision -

Only a natural person who is an Indian citizen and resident in India (person who has stayed in India for a period of not less than 182 days during the immediately preceding one calendar year) -

- shall be eligible to incorporate a OPC;
- shall be a nominee for the sole member of a OPC.

■ New Provision -

Only a natural person who is an Indian citizen whether resident in India or otherwise and has stayed in India for a period of not less than 120 days during the immediately preceding financial year)-

- shall be eligible to incorporate a OPC;
- shall be a nominee for the sole member of a OPC.

B) Conversion of OPC to other company -

Omitted by Companies (Incorporation) Second Amendment Rules, 2021

- OPC cannot convert voluntarily into any kind of company unless two years have expired from the date of incorporation, except where the paid up share capital is increased beyond fifty lakh rupees or its average annual turnover during the relevant period exceeds two crore rupees.

C) Small Company [Section 2(85)] -

Inserted by Companies (Specification of Definitions Details) Amendment Rule, 2021,

- Small company given under the section 2(85) of the Companies Act, 2013 which means a company, other than a public company -
 - i) paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than ten crore rupees; and
 - ii) turnover of which as per its last profit and loss account does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than one hundred crore rupees.
- As per Rules - For the purpose of sub-clause (i) and sub-clause (ii) of clause (85) of section 2 of the Act, paid up capital and turnover of the small company shall not exceed rupees two crores and rupees twenty crores respectively.

D) Definition of Listed Company [Section 2(52)] -

Inserted by the Companies (Amendment) Act, 2020,

- Listed company" means a company which has any of its securities listed on any recognised stock exchange:

Provided that such class of companies, which have listed or intend to list such class of securities, as may be prescribed in consultation with the Securities and Exchange Board, shall not be considered as listed companies.

E) Section 8(11)

Substituted by the Companies (Amendment) Act, 2020.

- Old Provision -

Penalty/ punishment in contravention - If a company makes any default in complying with any of the requirements laid down in this section, the company shall, be punishable with fine varying from ten lakh rupees to one crore rupees and the directors and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine varying from twenty-five thousand rupees to twenty-five lakh rupees, or with both and where it is proved that the affairs of the company were conducted fraudulently, every officer in default shall be liable for action under section 447 which deals with Fraud.

- New Provision -

Penalty/punishment in contravention - If a company makes any default in complying with any of the requirements laid down in this section, the company shall, without prejudice to any other action under the provisions of this section, be punishable with fine which shall not be less than ten lakh rupees but which may extend to one crore rupees and the directors and every officer of the company who is in default shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to twenty-five lakh rupees: Provided that when it is proved that the affairs of the company were conducted fraudulently, every officer in default shall be liable for action under section 447.