

## **ALTERATION IN FINANCIAL YEAR OF THE COMPANY**

Ministry of Corporate Affairs has made Several Amendments in the Companies Act, 2013 vide its Companies (Amendment) Ordinance, 2018 dated November 2<sup>nd</sup>, 2018 which is replaced by the Companies (Amendment) Ordinance, 2019 dated January 12<sup>th</sup>, 2019 was passed by the house of people on 4<sup>th</sup> January, 2019 however the same was pending in the council of the states for the approval.

Further the House of Parliament was not in the session therefore Hon'ble President of India in pursuance of power conferred by clause (1) of Article 123 of constitution of India has promulgated an ordinance named as Companies (Amendment) Second Ordinance, 2019 in order to give continue effect of the provisions of the Companies (Amendment) Ordinance, 2018 which was replaced by the Companies (Amendment) Ordinance, 2019.

Out of those several amendments made through this ordinance, substitution of first proviso to the section (41) of section 2 is a major amendment, by which Ministry of corporate affairs has vest the power to approve the alteration in the financial year of the company, with the central Government (Hon'ble Regional Director), upon an application being made in prescribed form. Previously, alteration in financial year could be approved only by the Hon'ble National Company Law Tribunal (NCLT). Which inter-alia effective date and changes in compliance/ procedure with respect to this amendment have been briefed below:

### **EFFECTIVE DATE**

It shall be deemed to have come into force on the 2<sup>nd</sup> Day of November, 2018.

### **SUBSTITUTION OF FIRST PROVISIO TO THE SUB SECTION 41 OF SECTION 2 OF THE COMPANIES ACT, 2013**

In sub section (41) of Section 2, first proviso is substituted, namely:-

Provided that where a company or body corporate, which is a holding company or a subsidiary or associate company of a company incorporated outside India and is required to follow a different financial year for consolidation of its accounts outside India, the "**Central Government**" may, on an application made by that company or body corporate in such form and manner as may be prescribed, allow any period as its financial year, whether or not that period is a year.

Provided also that any application pending before the **Tribunal** as on the date of commencement of the Companies (Amendment) Ordinance, 2019 shall be disposed of by the Tribunal in accordance with the provisions applicable to it before such commencement.

It means that by way of substitution of first proviso to the sub section (41) of section 2, Ministry of corporate affairs has vest the power to approve the alteration in the financial year of the company, with the central Government (Hon'ble Regional Director), upon an application being made in prescribed form. Previously, alteration in financial year could be approved only by the Hon'ble National Company Law Tribunal (NCLT).

Where a company or body corporate which is a holding company or subsidiary or associate company of a company incorporated outside India and is required to follow a different financial

year for consolidation of its accounts outside India, then those companies/ body corporate may apply to the Central Government (Hon'ble Regional Director) for the alteration in financial year similar to their foreign holding company/subsidiary/ Associate company, in the prescribed form with the necessary documents.

However any application pending before the Hon'ble National Company Law Tribunal ("NCLT") as on the date of commencement of this ordinance shall be disposed of by the NCLT in accordance with the provisions applicable to it before this amendment.

For the detailed reading of original notification you may click on the below given hyperlink:  
[http://www.mca.gov.in/Ministry/pdf/NotificationCA02019\\_15012019.pdf](http://www.mca.gov.in/Ministry/pdf/NotificationCA02019_15012019.pdf)

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