

Report

Interactive Session

Companies Act: Impact of the Amended Section 403(fees for filing)

Dormant Companies and Disqualification of Director

June 28, 2018

The Governance Committee of the Bombay Chamber organised Interactive Session on Companies Act 2013: Impact of the Amended Section 403 (fees for filing), Dormant Companies and Disqualification of Director on June 28, 2018 at Taj President, Cuffe Parade. Ms. Usha Maheshwari, Additional Director, Bombay Chamber welcomed speakers and delegates. She briefed about history and the milestone achieved by Bombay Chamber. There were 15 delegates from different organisations participated in the Session.

Objectives of Interactive Session

1. To discuss the recent amendments in Section 403 of the Companies Act, 2013 (the "Act") pertaining to payment of additional fees and the financial impact on a Company in the instance of failure to submit, file, register or record any document with the Registrar of Companies.
2. To discussed other consequences of failure to file Financial Statements/Annual Returns for consecutive years pursuant to Section 455(4) and Section 164(2)(a) of the Act and the importance of having alert mechanisms for timely filing of returns/forms by a Company. And Maximum time period up to which documents can be filed.

Ms. Savithri Parekh, Senior Vice President Legal and Secretarial, Pidilite Industries Ltd. and Co-Chairperson of Governance Committee, presented the theme and introduction to the topic.

Mr. Apurv Sardeshmukh, Partner, Legagis Partners started with an overview of the Statutory and Regulatory landscape pertaining to payment of Fees, Dormant Companies and disqualification of Directors.

Review of sec.403

- Necessary to ensure that companies file all documents in the registry within time;
- Delayed filing allowed but with additional fees/higher additional fees;
- The additional fee shall be determined considering the nature of document, the size of the company concerned and without any bar from prosecutions for the delayed filing;
- Company shall be subject to punishment/penal action in order to deter non-compliance;

He explained the difference between pre and post amendments under section 403 of Companies Act are -

Section 403: Before the Companies Amendment Act	Section 403: Post the Companies Amendment Act
<ul style="list-style-type: none">▪ Immunity given to companies to file returns within 270 days of the delay in certain cases;▪ post 270 days, the company is liable for higher additional fees and prosecution/penal action;▪ In case of condonation of delay, online facility (e-forms) not available.	<ul style="list-style-type: none">▪ Immunity of 270 days has been done away with i.e. company shall be immediately liable for punishment/penal action;▪ Payment of additional fees to not relieve the company from its liabilities;▪ For delay in filing of Annual Return (S.92) and Financial Statements (S.137), penalty of Rs.100/- per w.e.f. July 1, 2018▪ E-forms : CG-1 introduced

Later Mr. Apurv Sardeshmukh & Ms. Savithri Parekh discussed about various amendment done under section 403 Companies Act 2017.

Proviso to sub- section (1) of Section 403:

1. **First Proviso (Notified):** For delay in filing of Annual Return (S.92) and Financial Statements (S.137): Specific additional fees of not less than Rs.100/- per day in addition to other legal action or liability;

2. **Second Proviso (Not Notified):** For delay in filing of returns in any other case: Additional Fees as prescribed in Companies (Registration Offices and Fees) Rules, 2014 and Companies (Registration Offices and Fees) Second Amendment Rules, 2018;
3. **Third Proviso (Not Notified):** Default on two or more occasions in submitting documents to attract higher additional fee as may be prescribed.

Sub- section (2) of Section 403 (Notified):

- Default by company to file returns before the expiry of the period as specified in the relevant sections: the company and the **officers of the company** shall immediately be liable for additional fees as well as the penalty or punishment provided under this Act for such failure or default.
- There are two parts – 1) Annual Forms 2) Forms other than Annual filing forms.
- Immunity provided to companies to file within additional 270 days has been done away with. Therefore, any filing beyond timeline specified in the respective section will invite additional fees as well as the condonation of delay (Proviso 1&2).
- The default on two or more occasions in submitting, filing, registering or recording of the document, fact or information will attract higher penalty the minimum being twice the additional fee provided in the Act (Proviso 3).

Additional Liability

- Prescribed fee or/ and additional fee, as the case may be, shall be levied without prejudice to penalty & punishment contained in the relevant section is an additional liability to the companies.
- where the relevant section does not contains the provision with respect to filing of the respective Form with additional fee then, in those cases, once the time line prescribed in the respective section is expired, it will amount to violation, which is liable to condone under section 460 of the Companies Act, 2013 and shall also attract the penalty mentioned under respective Section.

Later speakers discussed assessment of the monetary impact on a Company in the instance of failure to file Annual Return and Financial Statements with the ROC and Penalties for failure to file forms other than Annual Return and Financial Statements with the ROC they explained that as Immunity of 270 days has been done away with, the companies has to file E-form CG-1 along with Documents for which the company is making application for condonation of delay; Certified true copy of the Board Resolution authorizing for filing the application and appointing authorized representative, if any; Application with reasons for delay and relief sought; & Other documents/ clarifications, if any. They also explained that additional fee is applicable for delay in filing of forms other than for increase in Nominal Share capital or forms under Section 92/ 137 of the Act.

Table of additional fee applicable for delay in filing of forms other than for increase in Nominal Share capital or forms under Section 92/ 137 of the Act

Sr. No	Period of delays	Forms including charge documents
01	up to 15 days (Section 139 and 157)	One time
02	More than 15 days and up to 30 days (Section 139 and 157) and up to 30 days in remaining forms.	2 times of normal filing fees
03	More than 30 days and up to 60 days	4 times of normal filing fees
04	More than 60 days and up to 90 days	6 times of normal filing fees
05	More than 90 days and up to 180 days	10 times of normal filing fees
06	Beyond 180 days	12 times of normal filing fee

Disqualification of Directors

Further speakers spoke about Impact on the Company for Non-filing of Financial Statements in consecutive Years: changing status as Dormant Company, Strike Off and Disqualification of Directors. They explained that director are disqualified if they do not file financial statements or annual returns for any continuous period of three financial years; & if they are Fail to repay the deposits accepted by it or pay interest thereon or to redeem any debentures

on the due date or pay interest due thereon or pay any dividend declared and such failure to pay or redeem continues for one year or more but they are eligible to be re-appointed as a director of that company or appointed in other company for a period of five years from the date on which the said company fails to do so. Further they explained that

- Director not to incur disqualification for a period of six months.
- If the existing director of such a company in default incurs disqualification, the office of such director would become vacant in all other companies, except the company which is in default, to ensure that the defaulting company has the requisite number of directors to remedy the default.
- Disqualification to continue even if an appeal/petition has been filed against the order/conviction

After speaking about disqualification of director speakers briefed about **Dormant Companies** that company which has not filed financial statements or annual returns for two financial years consecutively, to them Registrar shall issue a notice to that company and enter the name of such company in the register maintained for dormant companies. Registrar also has the power to strike off the Companies.

They also touched upon Importance of having monitoring mechanisms and timely alerts to ensure compliance with the requirement of filing timely returns with the ROC.

Ms. Savithri Parekh contributed through explanations and cases during the session on various aspects of presentation.

At the end Ms. Usha Maheshwari delivered vote of that to speakers and delegates. The session was very interactive and the participants got the opportunity to share their practices followed in their organizations and clarified the doubts.

