



LATEST STATUTORY SNAPSHOT

MONDAY, 28 JANUARY 2019



The erstwhile Companies Act 1956, provided that a public company should obtain a certificate for commencement of business and conduct a statutory meeting within 180 days of its incorporation for laying before the shareholders the statutory report. The statutory report provided information on the total consideration received by the company in respect of shares allotted including the subscribers to the memorandum of association.

The present Companies Act 2013 (the Act) initially provided that a company incorporated under the Act should file a declaration under Section 11 with the Registrar of Companies (RoC) within 180 days of its incorporation, stating that, the subscribers to the Memorandum have paid for the shares subscribed by them. This compliance was essential for any company (public or private with share capital) incorporated under the Act for commencing its business or for exercising its borrowing powers. However, Section 11 was deleted by the Companies Amendment Act 2015 with effect from 29th May 2015 as a measure of ease of doing business. Thus Section 11 was in existence from 1st April 2014 to 29th May 2015 only. Recently, the Government promulgated an Ordinance (Companies (Amendment) Ordinance, 2018) on 2nd Nov 2018 by which inter alia Section 10A was introduced. Section 10A brought back the earlier omitted Section 11. As per Section 10A any company incorporated on or after 2nd November 2018 with share capital must file a declaration that every subscriber has paid the value for the shares so subscribed on the date of making of such declaration.

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Subsequently, the said Ordinance was re-promulgated on 12th Jan 2019 as Companies (Amendment) Ordinance, 2019, to ensure that the amendments brought about by the Companies Amendment Ordinance, 2019 does not lapse due to the parliament not being in session.

Therefore, any person who is a subscriber should bring the consideration for the shares taken as soon as may be possible but not later than 180 days. Since the minimum capital required under the Act has been done away with, it is pertinent for the subscribers to bring the money for the shares subscribed within the stipulated period of 180 days. It may be noted that the SPICE e-form which needs to be filed for incorporation of a company requires a minimum subscription of value equal to Re.1/- for a one-person company, Rs.2/- for a private company and Rs.7/- for a public company.

Further, Sweat Equity shares can be issued upon incorporation which can make it easier for paying up the subscribers' shares.

A company which has failed to file the declaration under Section 10A will be deemed to have failed to commence business and hence can be struck off by the RoC under Section 248 of the Act.

A company is also required to have a registered office within 30 days of its incorporation and at all times in terms of Section 12. The Ordinance has also amended Section 12 whereby, if the RoC has reasonable cause to believe that a company is not carrying business or operations, he can inspect the premises of the registered office of the company (in a manner to be prescribed) and if it is found that the registered office does not exist in the address provided by the company, the RoC can initiate steps to strike-off the company under Section 248.

CENTRAL OFFICE

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Indus Chamber
No.101, Govt Arts College Road,
Coimbatore – 641018.
Tel No: - (0422)2302868, 4952868
Email: info@ksrandco.in
Linked in: gene@ksrandco.in

Flat No.1, 26/27, Venkatesham Flat,
Gopal Street,
T-Nagar,
Chennai – 600 017.
Tel No: - (044)24337620,
Email: chennai@ksrandco.in

S-311, 3rd Floor, South Block,
Manipal Centre,
No.47, Dickenson Road.
Bangalore – 560042,
Tel No: - (080)25323232
Email: bangalore@ksrandco.in

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