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Key Highlights of Companies (Amendment) Bill, 2019

Indian Government proposes amendments to Company Law to strengthen the regulatory framework and to promote ease of doing business.

Background

In a major initiative to strengthen the regulatory framework and unclog the burden on National Company Law Tribunal (NCLT), the Government of India (GOI) had, on 2 November 2018, promulgated the Companies (Amendment) Ordinance, 2018 (Ordinance) and amended the Companies Act, 2013 (Companies Act). However, the Ordinance subsequently lapsed and it was reintroduced as Companies (Amendment) Ordinance, 2019 on 12 January 2019 and as Companies (Amendment) Second Ordinance, 2019 on 21 February 2019.

To regularise the Ordinance, the Companies (Amendment) Bill, 2019 has been introduced in the Parliament. The Companies (Amendment) Bill 2019 has been passed by the Lok Sabha on 26 July 2019 (Amendment Act 2019).

The Amendment Act 2019 is a step further to promote ease of doing business, de-clogging of NCLT and Special Courts, to highlight mandatory spend towards CSR, ensure more accountability and improved enforcement to strengthen corporate governance norms and compliance management in the corporate sector.

Key highlights

Following provisions shall be effective from 2 November 2018:

- **Transfer of powers from NCLT to central government**
 - Selection of a financial year, which is different than a period ending 31 March every year
 - Conversion of a public company into a private company
- **Pre-conditions to commence business or borrow money after incorporation**

A company incorporated after the commencement of the Amendment Act 2019 and having share capital cannot commence any business or exercise any borrowing powers unless:

 - A declaration is filed by a director with the Registrar of Companies (RoC) within 180 days from the date of incorporation with regard to the receipt of subscription money from each of the subscribers to the memorandum;
 - The company has filed with the RoC within 30 days of incorporation, a verification of its registered office.

If aforesaid declaration of receipt of subscription money is not filed within 180 days of incorporation and the RoC has reasonable cause to believe that the company is not carrying on any business or operations, the RoC is empowered to initiate action to remove the name of the company from the register of companies.

The above provisions are applicable to all companies, whether private or public, having share capital.
- **Non-maintenance of registered office to be a ground for removal of the name of the company**

If the RoC has reason to believe that a company is not carrying on any business or operations, it may physically verify the registered office address of the company and if any default is found in complying with the requirement of maintenance of registered office, it may initiate action for the removal of name of the company from the register of companies.

- **Decriminalisation of offence - Removal of imprisonment provision for certain defaults**

Imprisonment provisions with regard to certain contraventions have been removed for an officer in default - illustratively:

- Issue of shares at discount
- Filing of annual return with RoC
- Filing of financial statement with RoC
- Appointment of directors
- Obtaining more than one Director Identification Number (DIN)
- Intimation of DIN by the director to the company

- **Reduction in timelines for registration and modification of charges**

Maximum time for creation and modification of charge on or after the commencement of the Amendment Act 2019 with RoC has been reduced from 300 days to 60 days from date of creation / modification. In case of delay beyond 60 days, RoC may allow registration within further period of 60 days on payment of ad valorem fees.

- **Power of central government in rectification of Register of Charges**

Central government may extend time or allow rectification, if it is satisfied that the omission to give intimation to RoC for the payment / satisfaction of charges or modification was accidental / inadvertent.

- **Fine replaced with penalty clause for continuing failure**

In case of contraventions of the following provision of the Companies Act (illustrative list), provision of fine is replaced with penalty, and further additional penalty is prescribed in case of continuous default:

- Notice to be given to RoC for alteration of capital
- Filing the copy of certain resolution and agreements with RoC
- Filing of report on annual general meeting by listed companies with RoC
- Filing of statement by the auditor with regard to resignation with company and RoC / Comptroller and Auditor General of India, as the case may be

- **Increase in threshold limit for compounding of certain offences**

The threshold limit of fine for compounding of offences by Regional Director (RD) has been increased from INR 5,00,000 to INR 2.5 million. For amount of fine beyond INR 2.5 million, the application for compounding of offences will have to be made to NCLT.

- **Penalty for repeated default**

A new section has been inserted to provide that penalty for repeated default within 3 years, by a company or an officer of the company or any other person, be equal to twice the amount of penalty provided for such default under the relevant provisions of the Companies Act.

Following provisions shall be effective from date to be notified by the central government:

- **Issue of Securities to be in dematerialised form**

Currently, public companies are required to issue and transfer securities only in dematerialised form. Now, securities of prescribed class of unlisted companies (private and public) shall be held and transferred only in dematerialised form.

- **Significant beneficial owner**

Duty is cast on companies to find out if there is any individual who is a significant beneficial owner in relation to the company. If so, that individual will be required to comply with the provisions of the Companies Act 2013.

Failure to take necessary steps to identify an individual who is an SBO shall lead to penal provisions.

- **Constitution of National Financial Reporting Authority (NFRA)**

- NFRA to discharge its functions through divisions which will be prescribed by way of Rules, and each such division of NFRA to be presided over by a Chairperson or a full-time person authorised by the Chairperson.
- In case of professional or other misconduct by member or a firm of chartered accountants, powers of NFRA specified to debar such member or firm of chartered accountants from being appointed as an auditor or internal auditor or performing any valuation etc. for minimum period of 6 months (not exceeding 10 years) as against the current power of prohibiting from engaging in practice of a chartered accountant.

- **Corporate Social Responsibility (CSR)**

- Clarificatory amendment specifying that CSR is also to be undertaken by companies which have not completed 3 financial years since incorporation.
- Unspent amount of CSR spend on any 'ongoing project' fulfilling prescribed conditions to be transferred to an 'Unspent Corporate Social Responsibility account' in a scheduled bank within 30 days from the end of the financial year and such amount must be spent on CSR obligation within a period of 3 financial years from the date of transfer. If the money has not been so spent, the amount should be transferred to any of the following funds viz., Swachh Bharat Kosh or Clean Ganga Fund or Prime Minister's National Relief Fund at the discretion of the Company.
- Unspent amount of CSR spend (other than for 'ongoing projects') shall be transferred to the aforesaid funds within a period of 6 months from the end of financial year.
- Clear shift from "**comply or explain**" to "**compulsory spend**" - penal provisions proposed to be introduced for shortfall in CSR spend, i.e. the company shall be punishable with fine of at least INR 50,000 which may extend to INR 2.5 million, and every officer of such company who is in default shall be punishable with imprisonment for a term which may extend to three years or with a fine of at least INR 50,000 which may extend to INR 500,000, or with both.
- Central government empowered to give general or special directions to a company or class of companies to ensure compliance of CSR provisions by such companies.

- **Fine replaced with penalty clause for continuing failure**

In case of contraventions of the following provision of the Companies Act (illustrative list), provision of fine is replaced with penalty, and further additional penalty is prescribed in case of continuous default in certain cases:

- Making proper disclosure under explanatory statement to the notice of general meeting of the company
- Appointment of proxy
- Filing the copy of certain resolution and agreements with RoC
- Filing of report on annual general meeting by listed companies with RoC
- Filing of statement by the auditor with regard to resignation with company and RoC / Comptroller and Auditor General of India, as the case may be
- Filing relating to intimation of DIN with RoC
- Cap on the number of directorships
- Managerial Remuneration and appointment of KMPs

- **Disgorgement of assets, properties, cash in case of corporate frauds**

Where the report of the Serious Fraud Investigation Office (SFIO) states that fraud has taken place in a company and due to such fraud any director, key managerial personnel, other officer of the company or any other person or entity, has taken undue advantage or benefit, whether in the form of any asset, property or cash or in any other manner, the central government (CG) may file an application before the NCLT with regard to disgorgement of undue benefits gained by director, key managerial personnel, other officer or any other person as a result of such fraud and they shall be personally liable without any limit on liability.

- **Fit and proper criteria**

The central government may refer the matter under certain set of circumstances (such as fraud, misfeasance, persistent negligence, default in carrying out obligations and functions under the law, breach of trust etc.) to the NCLT to inquire into such matters and record its decision with regards to whether or not a person is a fit and proper person to hold office of the director or any other office connected with the conduct and management of the Company.

Where a person has been declared as not a fit and proper person, such person shall not hold office of director or any other office connected with the conduct and management of affairs of any Company for a period of 5 years (unless the CG permits with the leave of NCLT) and further shall not be entitled to or paid any compensation for loss of office.

Source: Companies Amendment Bill, 2019 passed by Lok Sabha on 26 July 2019



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