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Decriminalisation of various compoundable offences under the Companies Act, 2013

The Parliament has passed a bill to amend the Companies Act 2013, in order to decriminalise various offences and relax certain provisions to facilitate doing business in India

Background:

The Parliament has passed the Companies (Amendment) Bill, 2020 (the Bill) to amend the Companies Act 2013 (the 2013 Act). The Bill aims to decriminalise various compoundable offences under the 2013 Act and relaxes certain provisions to facilitate doing business in India.

These amendments to the 2013 Act are based on the recommendations of the Company Law Committee ("CLC/Committee") set up in September 2019.

Key highlights of the Companies (Amendment) Bill, 2020 are summarised below:

Provisions	Key amendments
Revision in definition of a listed company	Central Government may, in consultation with the Securities and Exchange Board (SEBI), prescribe certain class of companies which have listed / intend to list certain class of securities on stock exchanges, to be excluded from the definition of a "listed company".
Direct listing in foreign jurisdictions	<ul style="list-style-type: none">• Class of public companies as may be prescribed, allowed to list certain class of securities on permitted stock exchanges in foreign jurisdictions.• Central Government may by notification exempt such class of public companies listing their securities in foreign jurisdictions from certain provisions of the 2013 Act.
Proposal for lesser time period for offer letter	The minimum time limit for accepting / declining the offer for issue of further shares on rights basis can be reduced from 15 days to such lesser number of days, as may be prescribed by the Central Government.
Relaxation to registered NBFCs and HFCs from filing the resolution in e-Form MGT- 14	Existing exemption granted to a banking company from filing with the Registrar of Companies (ROC) of resolutions passed in respect of grant of loans, or giving guarantee or providing security in respect of loans granted in the ordinary course of their business extended to class of Non-Banking Financial Company (NBFC) and Housing Finance Company (HFC), as may be prescribed.

<p>New requirement of periodical financial results</p>	<p>New Section 129A is introduced in the 2013 Act which empowers the Central Government to require prescribed class or classes of unlisted companies to:</p> <ul style="list-style-type: none"> • Prepare periodical financial results • Obtain approval of the Board of Directors and complete audit or limited review of such periodical financial results • File a copy of such financial results with the ROC within 30 days of completion of the relevant period.
<p>Corporate Social Responsibility (CSR)</p>	<ul style="list-style-type: none"> • Companies which have spent towards CSR in excess of the requirement allowed to set-off such excess amount spent against CSR, for such number of succeeding financial years and in such manner as may be prescribed. • Failure to spend CSR amount will attract penalty of two times the amount required to be transferred to the Fund specified in Schedule VII of the 2013 Act / Unspent Corporate Social Responsibility Account or INR 10 million, whichever is less. • Every Officer of the Company who is in default will be liable to a penalty of 1/10th of the amount required to be transferred to the Fund specified in Schedule VII of 2013 Act / Unspent Corporate Social Responsibility Account or INR 0.2 million whichever is less. • Exemption granted from constitution of CSR committee of the Board for companies who are required to spend not more than INR 5 million towards CSR. In such cases, the Board of Directors are made responsible to discharge the functions of the CSR Committee.
<p>Remuneration of non – executive directors and independent directors</p>	<p>If a company has no profits or its profits are inadequate, non-executive director and an independent director may receive remuneration, exclusive of any fees payable under section 197(5), in accordance with the provisions of Schedule V of the 2013 Act.</p>
<p>Reduction in timeline for rectification of name of a company pursuant to application made to Central Government by registered proprietor of trade mark</p>	<p>In case name of any company is identical with or nearly resembles with the registered trade mark of a registered proprietor, then, and on an application made by such registered proprietor, the Central Government may direct existing company to change its name within 3 months as against existing period of 6 months.</p>
<p>Powers granted to Central Government to exempt any class of persons from providing declaration in respect of</p>	<p>Central Government may exempt, in public interest, any class of persons from providing declaration of beneficial interest in any share under section 89 of the 2013 Act.</p>

beneficial interest in any share	
Decriminalisation of offence - removal of imprisonment provision for certain defaults under 2013 Act	<p>Imprisonment provisions with regard to certain contraventions mentioned below have been removed for an officer/person in default:</p> <ul style="list-style-type: none"> • Formation of companies with charitable objects (Section 8) • Matters to be stated in prospectus issued by company (Section 26) • Securities to be dealt with in stock exchanges (Section 40) • Power of company to purchase its own securities (Section 68); • Register of significant beneficial owners in a company (Section 90); • Place of maintaining books of accounts of the company (Section 128); • Financial Statement, Board’s Report, etc. (Section 134); • CSR (Section 135); • Punishment for contravention of provisions of sections 139 to 146 by company (Section 147); • Vacation of office of directors (Section 167); • Audit Committee and Nomination & Remuneration Committee (Section 178); • Default in disclosure of interest by directors (Section 184); • Investments of a company to be held in its own name (Section 187); • Related party transactions (Section 188); • Filing of order of the Tribunal for compromise or arrangement with Registrar of Companies (Section 232). • Alteration in Memorandum and Articles of Association without the leave of the Tribunal (Section 242); • Consequence of termination or modification of certain agreements (Section 243); • Failure to maintain books and papers of the company after winding up as directed by the Central Government (Section 347); • Information to be filed pending liquidation (Section 348); • Punishment for contravention of provisions of companies incorporated outside India (Section 392); • Failure to provide any information or statistics as required by the Central Government from the company (Section 405);

	<ul style="list-style-type: none"> • Failure to comply with any order made by the Tribunal / Regional Director or any officer authorised by the Central Government during compounding proceedings to file or deliver any document (Section 441).
<p>Fine replaced by reduced / fixed / maximum penalty and removal of provisions of imprisonment wherever applicable for contravention of certain matters</p>	<p>Fine replaced by reduced / fixed / maximum penalty and removal of provisions of imprisonment wherever applicable for contravention in respect of below matters:</p> <ul style="list-style-type: none"> • Transfer and transmission of securities (Section 56); • Notice to be given to Registrar for alteration of share capital (Section 64); • Registration of charges (Section 77 to 87); • Default in maintaining register of members or debenture holders or any security holders (Section 88); • Declaration in respect of beneficial interest in any share (Section 89); • Failure to file annual return (Section 92); • Appointment of proxies (Section 105); • Resolutions and Agreements to be filed (Section 117); • Unpaid Dividend (Section 124); • Copy of financial statements to be filed with Registrar (Section 137); • Removal, Resignation of Auditor and giving of Special Notice (Section 140); • Powers and duties of auditors to report fraud to the Central Government (Section 143); • Number of directorship (Section 165); • Appointment and qualifications of directors (Section 149 to 172); • Secretarial audit for bigger companies (Section 204); • Valuation by Registered Valuers (Section 247); • Punishment where no specific penalty or punishment is provided (Section 450)
<p>Removal of specific penal provision i.e. fine and / or imprisonment for contravention of certain matters</p>	<p>Specific penal provisions i.e. fine and / or imprisonment for contravention of below matters have been removed:</p> <ul style="list-style-type: none"> • Rectification of name of company (Section 16) • Variation of shareholders' rights (Section 48) • Rectification of Register of Members (Section 59) • Reduction of share capital (Section 66) • Issue of debentures (Section 71)

	<ul style="list-style-type: none"> • Promoters, directors, etc. to cooperate with Company Liquidator (Section 284) • Dissolution of company by Tribunal (Section 302) • Prosecution of delinquent officers and members of company (Section 342) • Powers of Tribunal to declare dissolution of company void (Section 356).
Benches of National Company Law Appellate Tribunal (NCLAT)	The Bill seeks to establish benches of the NCLAT in different cities, as may be notified.
Producer companies	<ul style="list-style-type: none"> • Producer companies include companies which are engaged in the production, marketing and sale of agricultural produce, and sale of produce from cottage industries. • Under the 2013 Act, provisions of the Companies Act, 1956 continued to apply to Producer companies. These include provisions relating to membership, conduct of meetings, maintenance of accounts etc. • The Bill adds a new Chapter in the 2013 Act with similar provisions applicable to Producer companies. Consequently, provisions of the Companies Act 1956 relating to Producer companies are done away with.
Minimum higher additional fees of two times of additional fees for continuing default in filing / submitting / registering documents with the ROC removed	Currently, in case of default on two or more occasions in submitting, filing, registering or recording any document, fact or information with the ROC, higher additional fees which shall not be less than twice the additional fee has been provided. Reference to twice the additional fee has been done away with and ROC may levy such higher additional fees as may be prescribed.
Payment of lesser monetary penalty by certain class of companies	<p>Section 446B of the 2013 Act is amended to provide for lesser monetary penalties for Small Companies, One Person Companies (OPC), Producer Companies and Start-up Companies, for non-compliance of provisions of the 2013 Act.</p> <p>Penalty shall not be more than one-half of the penalty specified in relevant provisions subject to a maximum of INR 2,00,000 in case of a company and INR 1,00,000 in case of an officer who is in default or any other person, as the case may be.</p>
Penalties shall not be levied by Adjudicating Officer for delay in filing Annual Returns and Financial Statement in certain cases	No monetary penalty shall be imposed if default with respect to non-filing of annual return or financial statement with ROC, is rectified within 30 days of issue of notice by the adjudicating officer.

<p>Punishment where no specific penalty or punishment is provided (Section 450)</p>	<p>Where a company or any officer of a company or any other person contravenes any of the provisions of the 2013 Act / Rules and for which no penalty or punishment is provided elsewhere in the 2013 Act, then the company / every officer of the company who is in default / such other person, shall be liable to a penalty of INR 10,000 and in case of continuing contravention, with a further penalty of INR 1,000 for each day after the first during which the contravention continues.</p> <p>There will now be a cap on such penalty of INR 2,00,000 in case of a company and INR 50,000 in case of an officer who is in default or any other person.</p>
<p>Jurisdiction of Special Court in matters of wrongful withholding of property</p>	<p>Offences under section 452 of the 2013 Act for wrongful withholding of property would be excluded from the purview of the Special Courts.</p>

Conclusion:

The proposed amendments to the 2013 Act are aimed at improving ease of doing business in India. Many penalty provisions are decriminalised by doing away with imprisonment.

Small companies, OPC, Producer Companies and Start-ups would be subjected to lesser penalty.

A window of 30 days has been provided to make good (without levy of penalties) the default in filing annual returns and financial statements with the ROC, which is a welcome step.

Directing prescribed class of unlisted companies to file periodical financial results with the ROC is aimed toward increasing transparency.

On a similar front, where unspent / underspent CSR amount is required to be spent in a subsequent year, the proposal to allow excess amount spent towards CSR in one financial year to be off-set in successive year, reflects adoption of a balanced approach.



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