

KEY TAKE AWAY - THE COMPANIES (AMENDMENT) BILL, 2020

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Government has passed The Companies (Amendment) Bill, 2020 as Bill No. 88 of 2020 to further amend Companies Act, 2013. CLC Committee submitted its report in November, 2019. There are amendments in 66 Sections of Companies Act, 2013.



A. Object of this bill is

- To **decriminalize** some provisions of the Act, based on their gravity;
- To amend various provisions of the Act to **decriminalise minor procedural** or technical lapses under the provisions of the said Act, into civil wrong
- To constant Endeavour of the Government to facilitate Greater **Ease of Living** of Law abiding corporates;
- To provide greater ease of living to corporates through certain other amendments to the Act

B. Key Amendments by Companies (Amendment Bill), 2020

- To decriminalise certain offences under the Act in case of defaults which can be determined objectively and which otherwise lack any element of fraud or do not involve larger public interest;
- To empower the Central Government to exclude, in consultation with the Securities and Exchange Board, certain class of companies from the definition of "listed company", mainly for listing of debt securities;

- To clarify the jurisdiction of trial court on the basis of place of commission of offence under section 452 of the Act for wrongful withholding of property of a company by its officers or employees, as the case may be;
- To incorporate a new Chapter XXIA in the Act relating to Producer Companies, which was earlier part of the Companies Act, 1956;
- To set up Benches of the National Company Law Appellate Tribunal;
- To make provisions for allowing payment of adequate remuneration to non-executive directors in case of inadequacy of profits, by aligning the same with the provisions for remuneration to executive directors in such cases;
- To relax provisions relating to charging of higher additional fees for default on two or more occasions in submitting, filing, registering or recording any document, fact or information as provided in section 403;
- To extend applicability of section 446B, relating to lesser penalties for small companies and one person companies, to all provisions of the Act which attract monetary penalties and also extend the same benefit to Producer Companies and start-ups;
- To exempt any class of persons from complying with the requirements of section 89 relating to declaration of beneficial interest in shares and exempt any class of foreign companies or companies incorporated outside India from the provisions of Chapter XXII relating to companies incorporated outside India;
- To reduce timelines for applying for rights issues so as to speed up such issues under section 62;

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- To extend exemptions to certain classes of non-banking financial companies and housing finance companies from filing certain resolutions under section 117;
 - To provide that the companies which have Corporate Social Responsibility spending obligation up to fifty lakh rupees shall not be required to constitute the Corporate Social Responsibility Committee and to allow eligible companies under section 135 to set off any amount spent in excess of their Corporate Social Responsibility spending obligation in a particular financial year towards such obligation in subsequent financial years;
 - To provide for a window within which penalties shall not be levied for delay in filing annual returns and financial statements in certain cases;
 - To provide for specified classes of unlisted companies to prepare and file their periodical financial results;
 - To allow direct listing of securities by Indian companies in permissible foreign jurisdictions as per rules to be prescribed.
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C. Other Amendments in Brief:

1) **Related to Penalty/ Fine/ Imprisonment:** Out of 66 amendment approx 45 amendments are relating to amendment in penalty clause of Sections like:

- Some sub-sections of penalty has been omitted
- Many places imprisonment substituted with penalty
- Some places penalty/ fine decreased etc.

2) Section 129A – New Section - Periodical Financial Result:

The Central Government may, require such class or classes of unlisted companies, as may be prescribed,—

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- (a) To prepare the financial results of the company on such **periodical basis** and in such form as may be prescribed;
 - (b) To obtain approval of the Board of Directors and complete audit or limited review of such periodical financial results in such manner as may be prescribed; and
 - (c) **File a copy with the Registrar within a period of thirty days of completion of the relevant period** with such fees as may be prescribed."

Purpose/ Effect: Purpose of insertion of this section is to empower Central Government to provide by rules such class or classes of unlisted companies to prepare periodical financial results of the company, audit or limited review thereof and their filing with Registrar within thirty days from the end of that period as specified in the rules.

3) Corporate Social Responsibility Section 135:

In sub-section (5), after the second proviso, the following proviso shall be inserted, namely:—

"Provided also that if the company spends an amount in excess of the requirements provided under this sub-section, such company may set off such excess amount against the requirement to spend under this sub-section for such number of succeeding financial years and in such manner, as may be prescribed."

Purpose/ Effect: Purpose to allow companies, which have spent an amount in excess of the requirement provided under the said sub-section, to set off such excess amount out of their obligation in the succeeding financial years in such manner as may be provided by rules.

4) Independent Director Section 149:

In section 149 of the principal Act, in sub-section (9), the following proviso shall be inserted, namely:—

"Provided that if a company has no profits or its profits are inadequate, an independent director may receive remuneration, exclusive of any fees payable under sub-section (5) of section 197, in accordance with the provisions of Schedule V."

Purpose/ Effect: a new proviso which provides that an independent director may receive remuneration, if a company has no profits or inadequate profits in accordance with Schedule V of the Act.

5) Remuneration to Directors- Section 197:

(3) Notwithstanding anything contained in sub-sections (1) and (2), but subject to the provisions of Schedule V, if, in any financial year, a company has no profits or its profits are inadequate, the company shall not pay to its directors, including any managing or wholetime director or manager or any other non-executive director, including an independent director, by way of remuneration any sum exclusive of any fees payable to directors under sub-section (5) hereunder except in accordance with the provisions of Schedule V .

Purpose/ Effect: Purpose if a company fails to make profits or makes inadequate profits in a financial year, any non-executive director of such company, including an independent director, shall be paid remuneration in accordance with Schedule V of the Act

6) Right Issue of Shares Section 62:

The offer shall be made by notice specifying the number of shares offered and limiting a time not being less than fifteen days “*or such lesser number of days as may be prescribed*” and not exceeding thirty days from the date of the offer within which the offer, if not accepted, shall be deemed to have been declined;]

7) Section 117(3)(g):

In sub-section (3), in clause (g), for the second proviso, the following proviso **shall be substituted**, namely:—

"Provided further that nothing contained in this clause shall apply in respect of a resolution passed to grant loans, or give guarantee or provide security in respect of loans under clause (f) of sub-section (3) of section 179 in the ordinary course of its business by,—

- (a) a banking company;
- (b) any class of non-banking financial company registered under Chapter IIIB of the Reserve Bank of India Act, 1934, as may be prescribed in consultation with the Reserve Bank of India;
- (c) any class of housing finance company registered under the National Housing Bank Act, 1987, as may be prescribed in consultation with the National Housing Bank; and."

8) Producer Company – Chapter XXIA

Provisions of Producer Company added after Section 378 as **378A to 378ZU**.

Purpose/ Effect: to insert a new Chapter as Chapter XXIA relating to Producer Companies on similar lines as provided in the Companies Act, 1956.

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