



THE COMPANIES AMMENDMENT BILL, 2017

DECODED

THE JOURNEY:

The Companies (Amendment) Bill, 2016 for first time was introduced in Lok Sabha on March 16, 2016 subsequently it was referred to Standing Committee. After which the Companies (Amendment) Bill, 2017 (“**the Bill**”) was passed by Lok Sabha in Monsoon Session on July 27, 2017. The much awaited Bill to strengthen corporate governance standards, initiate strict action against defaulting companies and help improve ease of doing business in the country was finally passed by Rajya Sabha through voice vote on December 19, 2017. The Bill, which was adopted by both the houses, will now have to receive the assent of the President to become Act.

Most of the amendments proposed in the Bill are to implement the recommendations of the Company Law Committee, which was appointed in response to thousands of complaints that the Companies Act 2013 was unduly restrictive and counter-productive. Further the Bill aims to align the provisions of Companies Act with Securities and Exchange Board of India Act, 1992 and the regulations made thereunder, and the Reserve Bank of India Act, 1934 and the regulations made thereunder.

ASD’S COMMENTS:

- The Bill is expected to address the difficulties in implementation owing to stringency of compliance requirements and rectify omissions and inconsistencies in the Act;
- Various definitions like the definition of associate company, cost accountant, debentures, financial year, holding company, key managerial personnel, net worth, related party, small company, subsidiary company and turnover which were not clear have been

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amended to remove the ambiguities, making it more precise and also the definition of interested director is proposed to be omitted;

- The Bill also intends to simplify and fast track various procedures including the procedure for company registration in India, easing out the procedural difficulties and delay in incorporation;
- Various statutory and cumbersome requirements are proposed to be dropped out. For eg: statutory requirement of obtaining DIN is proposed to be dispensed off and to have another universally accepted identification number as may be prescribed by the Government;
- Various lacunas in the Companies Act, 2013 have been attempted to address in the Companies Amendment Bill, 2017. For e.g. In the definition of Independent Director, the words “pecuniary interest” is proposed to be substituted by “pecuniary relationship, other than remuneration as such director or having transaction not exceeding ten per cent. of his total income or such amount as may be prescribed;
- Duplication of compliances required according to different regulatory authorities has been streamlined and accordingly the same has been eliminated. For eg: the requirement for intimating the change in promoter’s and top ten shareholders shareholding in Form MGT-10 is proposed to be dispensed with as the same is required to be intimated with the Stock Exchanges/SEBI thus avoiding duplication of compliances;
- The Bill also seeks to simplify private placement process, remove restrictions on layers of subsidiaries and investment companies, amend CSR provisions to bring greater clarity and exempt certain class of foreign entities from the compliance regime under the Act;
- One of the shortcomings of the Bill is that it rewrites the entire section 42; it in fact bars the use of money until the return of allotment has been filed with the Registrar of Companies. It is curious to notice that the use of the money has been linked with filing of a document, for which the time allowed is as much as 60 days for allotment, and 15 days for filing the return. More often than not, the amount received in private placement is large, and companies cannot afford to keep the amount idle even for a day. The only relief in the private placement provisions seems to be that the amount of penalty for contravention has been limited to Rs 2 crores, which was earlier seemingly extending to the entire amount raised by private placement;

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- It is also proposed in the Bill that in case a company has made a default in repayment of deposits and a period of five years has elapsed since the date of making the default good, then such company can accept the deposits further. Through this change a fair chance is being proposed to be given to the Companies whose intention were not mala fide in the past;
- Restrictions on items not to be transacted through video conferencing are proposed to be dispensed off and the same can be transacted through video conferencing provided there is physical quorum at the venue of the meeting. This was earlier restricted in entirety as participation through VC was not allowed for the restricted items under the proviso to 173 (2).
- The Bill proposed that if any Company fail to comply with the provisions of section 92 or 137 of the Companies Act 2013 i.e. filing of e Form MGT-7 within the period of 60 days from the date of Annual General Meeting and Filing of e Form AOC-4 within the period of 30 days of date of Annual General Meeting, then it is proposed in the Bill that the company can file such forms subject to additional fees of Rs.100 per day and any different amount as may be prescribe for different classes of companies.
- The Bill 2017, further proposed that if the Company fail to file forms, documents , fact or information as required to be submitted, filed, registered or recorded, under the provisions of section 89, 117, 121 and 157 of the Act, then company can file such file forms documents, fact or information to Ministry of Corporate Affairs with additional fees subject to condonation of delay as available u/s 460 of the Act.
- If the Company commits default of two or more occasions in submitting, filing, registering or recording of the document, fact or information as require to be submitted, filed, registered or recorded under the provisions of Section 89, 92, 117, 121, 137 and 157 of the Act, the company has to pay higher additional fee, as may be prescribed and which shall not be lesser than twice the additional fee provided under the first or the second proviso as applicable to the company.

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CONCLUSION:

The Ministry of Corporate Affairs in consultation with the Central Government of India, had introduced the Companies Amendment Bill, 2017 intending to increase the flexibility and removing the ambiguities in the Act and providing a conducive and attractive environment for setting up business in India with lesser compliances.

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