

Amita Desai & Co., Company Secretaries, Mumbai, India

Companies Amendment Bill, 2020

Background

It is noted that the enactment of the Companies Act, 2013 (CA 2013) with effect from 1st April, 2014 is one of the most significant legal reforms in India in recent past and Insolvency & Bankruptcy Code, 2016 (IBC, 2016) is another such legislation. These reforms are step in the direction of Ease of Doing Business and Ease of Living in India. The same are also the need of an hour to address certain issues with change in time, technology and economy and in tune with global standards.

CA 2013 is amended in the year 2015, 2017, 2019 and again in 2020, the Companies (Amendment) Bill, 2020 is proposed. Amendments are generally announced after detailed consideration of representations by the industry, professional institutions and stakeholders at large by the separate task committee set up for the purpose.

The Companies Amendment Bill, 2020 (CA 2020) is also an outcome of the recommendation from the Company Law Committee (CLC) which was set up on 18th September 2019 for a term of one year to suggest any further amendment require in the CA 2013 to achieve the aim of Government for Ease of Doing and Ease of Living. CLC had given its report on 14th November, 2019.

On 17 March, 2020 the Companies Amendment Bill (CAB) 2020 was introduced in the Lok Sabha to improve Ease of Doing Business. Shri Anurag Thakur, Minister of State for Finance, proposed the Bill and said that the Bill will promote ethical and honest business in the nation

This Article is a brief review of this proposed amendment in CAB 2020 and not detailed analysis of section by section.

The focus of CAB 2020 is for decriminalization of certain offenses, having compliances and governance framework for Producer Companies and permit issuing of certain class of securities of public companies for the purpose of listing on permitted stock exchanges in foreign jurisdiction. There are 72 changes suggested and 65 sections to be amended.

The Article is divided in Four parts

- A. Key changes in the Companies Amendment Bill (CAB) 2020
- B. 16 offenses are proposed in which penalty of imprisonment deleted (decriminalization)
- C. 21 offenses where provisions are changed from FINE to PENALTY to make it in house adjudication by Registrar or Regional Director
- D. 10 sections where Central Government is empowered to specify / prescribe or notify certain exemption or provisions

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A. Key changes in the Companies Amendment Bill (CAB) 2020

1. To **decriminalize** certain offence under the Companies Act, 2013 (the Act) and put a cap on maximum amount of penalties in certain sections.) Decriminalization is required as proving “mens rea” or knowledge on the part of the company or its officers is a subjective analysis that is often time consuming to prove. Fraudulent wrongs and the degree of public interest involved should determine criminal offence otherwise excessively high penalties or fines may be counter-productive towards incentivizing compliance
2. To empower Central Government to exclude certain class of companies from the definition of “**Listed Company**” (after consultation with SEBI).
3. To allow **direct listing of securities by Indian Company in Foreign Jurisdiction.**
4. To empower Central Government **to exempt certain Foreign Company/**Company incorporated outside India whether it has place of business in India or not from the provisions of compliances under Chapter XXII of the Act
5. To mandate **specified classes of unlisted Company to file periodical Financial Results.**
6. To empower Central Government u/s 16 to allot a new name to any company having similar name and issue fresh Certificate of Incorporation due to **Rectification of Name** of the company.
7. To empower Central Government to exempt class of persons from complying with regulation of **Section 89 relating to beneficial interest** in shares of the company .
8. To allow lesser period than 15 days for mandatory keeping **Letter of Offer open in Right Issue** u/s 62 to enable to speed up such issues.
9. To **empower Trial Court instead of Special Court u/s 435** with jurisdiction on the basis of place of offense for any wrongful withholding of property of a company by its officers or employees u/s 452 of the Act.
10. To add new Chapter XXIA for the governance of **Producer Company.**
11. To set up benches of **NCLAT.**
12. To allow remuneration to **Non Executive / Independent Directors** in case of no profit or inadequacy of profits by the company.
13. To relax charging of **higher additional fees u/s 403 for default on 2 or more** occasions submitting, filing, registering or recording any document, fact or information.
14. To impose **lesser penalties on Small Company, One Person Company (OPC), Producer Company and Start ups** (Section 446B).
15. To **exempt Non Banking Financial Companies (NBFC) and Housing Finance Company** from filing certain resolutions u/s 117 with ROC for grant of loan, giving of guarantee or providing of securities as mentioned u/s 179 (3) (f).
16. To provide certain changes in **Corporate Social Responsibility** provisions like:
 - a.To exempt class of companies whose spent on CSR<5 Lac to form CSR Committee;
 - b.To carry forward excess amount spent on CSR to succeeding Financial Year; &
 - c.To provide higher penalty, if the company fail to transfer funds to unspent CSR A/c or Fund specified in Schedule VII of the Act.
17. To **reduce penalty** of Secretarial Auditor u/s 204 from Rs.5 Lacs to Rs.2 Lacs.
18. To **reduce penalty** of Registered Valuer u/s247 to a maximum amount of Rs. 50,000/-
19. To **reduce liability** of Company Liquidator u/s 284, 302, 348 and 356.
20. To provide for a window within which **penalties shall not be levied** for delay in filing annual returns and financial statements in certain cases.

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B. 16 offenses are proposed in which penalty of imprisonment deleted (decriminalization)

While introducing the Bill, Shri Anurag Thakur said the proposed decriminalization was only for "minor procedural and technical defaults which do not involve fraud, injury to the public interest or non-compoundable offences". The following are 16 sections where imprisonment provisions in case of default is deleted.

1. Section 8 (11) - Formation of Company for charitable objects
2. Section 26 (9) - Matters to be stated in Prospectus
3. Section 40 (5) - Securities to be dealt with in Stock Exchanges
4. Section 48 (5) - Variation of shareholders right
5. Section 59 (5) - Rectification of Register of Members
6. Section 68 (11) - Power of Company to purchase its securities
7. Section 71 (11) - Debentures
8. Section 128 (6) - Books of accounts etc.
9. Section 147 (1) & (2) - Punishment for contravention of Section 139 to 146
10. Section 167 (2) - Vacation of office of Director
11. Section 242 (8) - Power of Tribunal
12. Section 243 (2) - Consequence of termination of certain agreement
13. Section 302(3) - Dissolution of company by Tribunal
14. Section 347(4) - Disposal of books & papers of company
15. Section 392 - Punishment for contravention of Chapter XXII, Company incorporated outside India
16. Section 441 (5) - Compounding

C. 21 offenses where provisions are changed from FINE to PENALTY to make it in house adjudication by Registrar or Regional Director

1. Section 56 – Transfer or Transmission of Shares
2. Section 86 – Punishment for Contravention on Share Capital
3. Section 88 – Register of Members
4. Section 89 – Beneficial Interest
5. Section 90 – Register of SBO
6. Section 92 – Annual Return – PCS Certification
7. Section 105 – Proxies
8. Section 124 – Unpaid Dividend Account
9. Section 134 - Financial Statement/ Board's Report
10. Section 135- Corporate Social Responsibility
11. Section 143 - Auditors Liability
12. Section 172- Punishment for contravention of chapter XI
13. Section 178 – Nomination and Remuneration Committee
14. Section 184 – Disclosure of Interest of Director
15. Section 187 – Investment of Company in its own name
16. Section 188 – Related Party Transaction
17. Section 204-- Secretarial Audit Liability
18. Section 232 – Merger and Acquisition

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19. Section 247 – Registered Valuer
20. Section 405- Power of Central Government to direct company to furnish information
21. Section 450- Punishment where no specific penalty or punishment provided

D. 10 sections where Central Government is empowered to specify / prescribe or notify certain exemption or provisions

1. Section 2(52) – Definition of Listed Company
2. Section 16 (3) - Rectification of Name of the Company
3. Section 23 (4)- Public company to issue securities to list in Stock Exchange Overseas
4. Section 89 (11)- Exempt from declaring Beneficial Interest
5. Section 62 (1) - Right Issue – Reducing time limit of Offer to be kept open
6. Section 129 A – Unlisted Company to file Financial Results periodically
7. Section 378 A – with reference to Producer Company and alteration in MoA, shifting of Regd Off, having full time CS, Investment of General Reserves etc
8. Section 393 A – Exempting class of Foreign Company
9. Section 403 (1)- Punishment for default on two or more occasions
10. Section 418 A (2) – Set up Benches NCLAT

CONCLUSION: The Ministry of Corporate Affairs in consultation with the Central Government of India, has introduced the Companies Amendment Bill, 2020 and the Bill has been placed in Lok Sabha and is awaited for the assent of the both the houses of the Parliament and will be enforced after the assent of the President of India.

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