

COMPANIES AMENDMENT ACT- A NEW BEGINNING



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Background

The Ministry of Corporate Affairs (MCA) constituted a Company Law Committee (CLC) to review sections on offences under the Companies Act, 2013 (2013 Act). The CLC contemplated on various matters in addition to review of offences under the 2013 Act i.e. introducing a mechanism to reduce burden on courts and for effective disposal of cases, simplifying compliances, repealing the redundant provisions of the Act, improving functioning of authorities under the 2013 Act and changes aimed at promoting the ease of conducting business in India.

CLC submitted its report to MCA, recommending changes in the 2013 Act on 14th November 2019.

In the press briefing done by Hon'ble Finance Minister, special emphasis was laid down on decriminalisation provisions under the companies law, which would also help small companies by reducing the litigation burden on them.

Journey of the Act

The Amendment Act was passed by the Lok Sabha on 19th September, 2020 and by the Rajya Sabha on 22nd September, 2020. The assent of the President was received on Sept 28, 2020 to the Amendment Act.

Arrangement of Sections

There are amendments in 61 sections in the Act and a new Chapter XXIA has been newly inserted which includes the provisions for Producer Companies.

Overview

Major thrust of the Amendment Act is decriminalisation of more than 48 offences under the Companies Act, 2013 and lightening rigour of penalties. Besides relaxation of CSR law so that smaller companies with lesser CSR obligations are not required to constitute CSR committee and excess spending on CSR in a particular year could be used for subsequent years., remuneration to non-executive directors in case of inadequate profits, addition of separate chapter relating to producer companies, periodic financial results by non-listed companies, has been provided.

In order to support the startup eco-system in India, the amendments allow direct listing in foreign jurisdiction, which will give the companies wider access to the Investors and will provide quicker exit to existing stakeholders.

The change brought by this Bill enables payment of remuneration to Non Executive and Independent Director even in case of inadequate profits, thereby aligning it with existing provisions applicable to Executive Directors.

To boost transparency certain specified classes of unlisted companies are now required to prepare and file their periodical financial results also as opposed to only annual financial results currently.

The above-mentioned amendments are a step in the right direction which will boost the morale of the Corporate Sector, especially in these distressed times, and would contribute towards improving India's rankings globally in Ease of Doing Business.

Section wise analysis of amendments

SR. NO	CHAPTER, SECTION AND REFERENCE	IMPACT /OUR VIEWS
1	CHAPTER I Section 2(52) Definition of Listed Company	Private Companies whose debt is listed on stock exchanges will be exempt from compliance of listed companies.
2	CHAPTER II Section 8(11) Formation of Companies with Charitable Objects:	Punishment of Imprisonment of three years is removed.
3	CHAPTER II Section 16(1)(b) & 16(3) Rectification of Name of Company	The time limit of compliance of direction given by the Central Government to change the name of company has been reduced from 6 months to 3 month. The Central Government has been empowered to allot a new name to the company, in case of default in complying with its direction instead of imposing punishment for non-compliance for such default. The company is however not prevented from subsequently changing its name
4	CHAPTER III Section 23 (3) and (4) Public Offer and Private Placement	Much awaited move to allow certain public companies to list their securities on foreign stock exchanges located outside India allowing access to global investors. These companies shall be exempt from requirements of the Act relating to share capital, Declaration & Investigation of Beneficial interest, punishment for non declaration of Dividend among others.
5	CHAPTER III Section 26 (9) Matters to be Stated in Prospectus	Punishment of imprisonment is deleted.
6	CHAPTER III Section 40 (5) Securities to be Dealt with in Stock Exchanges	Punishment of imprisonment in case of any default is removed.

7	CHAPTER IV Section 48(5) Variation of Shareholders' Rights.	In case of non-compliance, there is no Penalty under this Section, however residuary penalty u/s Section 450 would still be applicable.
8	CHAPTER IV Section 56 (6) Transfer and Transmission of Securities	Fixed Penalty of Rs 50,000/- for both Company and officer in default.
9.	CHAPTER IV Section-59(5) Rectification of Register of Members.	In case of non-compliance, there is no Penalty, however residuary penalty u/s Section 450 would still be applicable.
10	CHAPTER IV Section 62(1)(i) Further Issue of Share Capital (Right Issue)	To facilitate ease of business, time limit for reply to Right Issue offer letter can be lesser 15 days.
11	CHAPTER IV Section 64(2) Notice to be given to Registrar for Alteration of Share Capital	Reduced penalty from Rs.1000/- to Rs.500/- per day. Reduced maximum limit for officer in default to Rs. 100,000/-
12	CHAPTER IV Section 66(11) Reduction of Share Capital	Removed penalty in case of non-compliance of publishing the order of tribunal for reduction of share capital in manner as directed by tribunal.
13	Chapter IV Section 68(11) Power of Company to Purchase its Own Securities (Buy Back)	Punishment of Imprisonment is removed.
14	CHAPTER IV Section 71(11) Debentures	Imprisonment and Penalty both are deleted.
15	CHAPTER VI Section 86(1) Punishment for Contravention (Registration of Charges)	Fixed penalty for company made to 5,00,000/- and for officer in default fixed penalty of Rs 50,000/-
16	CHAPTER VII Section 88(5) Register of Members, etc	Fixed penalty for company of Rs 3,00,000/- Reduced penalty for officer in default to Rs:50,000/-
17	CHAPTER VII Section 89(5) (7) Declaration in Respect of Beneficial Interest in any Share	Maximum limit of penalty of Rs 500,000/- has been inserted and reduced penalty per day from Rs 1000/- to Rs 200/- Maximum limit of penalty for Rs 500,000/- has been inserted for Company and for officer in default Fine of Rs. 2,00,000/- New sub-section (11) has been inserted to enable the Central Government to notify classes of persons who shall, be exempt

18	<p>CHAPTER VII Section 90(10) Investigation of significant beneficial ownership of shares in certain cases.</p> <p>Section 90(11) If a company, required to maintain register or file the information or required to take necessary steps under this section, fails to do so or denies inspection as provided therein.</p>	<p>Reduced penalty from Rs. 1,00,000-10,00,000/- to Rs. 50,000/-, 1000/- per day for continuing offence.</p> <p>Maximum limit has been inserted for amount of Rs. 2,00,000/-.</p> <p>For Company penalty reduced to Rs. 1,00,000/-</p> <p>For Company continuing offence Rs. 500/- per day subject to maximum Rs.5,00,000/-</p> <p>For officer in default penalty of 25,000/-</p> <p>For Officer in default for continuing offence Rs. 200/- each day subject to Maximum of Rs 1,00,000/-</p>
19	<p>CHAPTER VII Section-92(5)&(6) Annual Return</p>	<p>Reduced penalty from Rs.50,000/- to Rs. 10,000/-</p> <p>And in case of continuous default also penalty reduced from Rs. 5,00,000/- to Rs. 2,00,000/-.</p> <p>For Practising Company Secretary fixed penalty of 2,00,000/- is substituted.</p>
20	<p>CHAPTER VII Section-105(5) Proxies</p>	<p>Reduced penalty from Rs. 1,00,000/- to Rs. 50,000/-.</p>
21	<p>CHAPTER VII Section-117(2) & (3) Resolutions and Agreements to be filed</p> <p>Second proviso in Section 117(3)(g)</p>	<p>Reduced penalty from Rs. 1,00,000/- to Rs. 10,000/- and in case of continuing default from Rs.500/- to Rs. 100/- per day. Subject to maximum from Rs.25,00,000 to Rs. 2,00,000/-</p> <p>Officer in Default including liquidator penalty reduced from Rs 50,000/- to Rs 10,000/-.</p> <p>In case of continuing offence further penalty reduced from Rs 500/- to Rs 100/- per day subject to maximum of Rs. 50,000/-</p> <p>The Central Government is empowered to exempt any class of NBFCs and any class of HFCs from filing of resolutions passed to grant loans or give guarantees or to provide security in respect of loans in the ordinary course of their business.</p> <p>Earlier, only Banking Companies were exempted.</p>

22	CHAPTER VIII Section-124(7) Unpaid Dividend	<p>Reduced minimum penalty of Rs. 5,00,000/- to Rs. 1,00,000/-</p> <p>For continuing default penalty reduced from Rs. 25,00,000/- to Rs. 10,00,000/-. (Rs 500/- each day subject to maximum Rs-10,00,000/-) For officer in default penalty of 25,000/-</p> <p>For continuing default further penalty of (Rs100/- each day subject to maximum Rs-2,00,000/-)</p>
23	CHAPTER IX Section-128(6) Books of Account	Imprisonment provision is removed.
24	CHAPTER IX Section 129A Financial Statement	To ensure greater transparency, the Central Government is empowered to specify the class of companies who will be required to prepare their financials on periodical basis.
25	CHAPTER IX Section 134(8) Financial Statement, Board's Report, etc.	Penalty has been reduced from Rs.25,00,000/- to Rs.3,00,000/- and in case of officer in default removed the imprisonment and reduced penalty from Rs.5,00,000/- penalty to Rs 50,000/-.
26	CHAPTER IX- Section-135: Corporate Social Responsibility Section 135(7)	<p>Now, the companies, which spend an amount in excess of the requirement of 2%, will be allowed to set off such excess amount out of their obligation in the succeeding financial years after complying with the prescribed rules.</p> <p>Penalty for non-spending of CSR Funds or transfer of unspent funds to special account made to twice the amount that was required to be transferred to special account, maximum of One Crores from 50,000/- to 25,00,000/-,</p> <p>Imprisonment for Officer in default removed and penalty changed from Rs 50,000/- to Rs 500,000/- to one tenth of the amount required to be deposited in the special account</p> <p>Requirement of CSR committee removed in case the amount required to be spent on CSR does not exceed Rs. 50 lakhs.</p> <p>Functions of committee to be discharged by the Board of directors.</p> <p>Ease of compliance for corporate where CSR amount spent is not significant.</p>

27	CHAPTER IX Section-137(3): Copy of Financial Statement to be filed with registrar	<p>Reduced continuing penalty in case of continuing default of Rs. 1000/- per day to Rs. 100/- per day</p> <p>Total penalty from Rs.10,00,000/- to Rs.2,00,000/-.</p> <p>Penalty reduced for person responsible to comply from Rs. 1,00,000/- to Rs.10,000/-.</p> <p>Maximum penalty reduced from Rs. 5,00,000/- to Rs.50,000/- for person responsible to comply.</p>
28	CHAPTER X- Section 140(3): Removal, resignation of auditor and giving of special notice	Reduced maximum penalty from Rs. 5,00,000/- to Rs.2,00,000/-.
29	CHAPTER X- Section-143(15): Powers and Duties of Auditors	Specified the penalty separately for listed company and other company in case fraud is noticed during the course of audit and Auditor does not report it to Central Government or Audit committee. This step is judicious since listed companies involve public funds.
30	CHAPTER X- Section-147(1)(2): Punishment for Contravention	Imprisonment removed without any change in penalty. Penalty under this section u/s 143 removed.
31	CHAPTER XI Section-149(9): Remuneration of Independent Director	This proviso allows the Independent Director to take remuneration in case of no profit or inadequate profit as per Schedule-V, thereby aligning it with existing provisions applicable to Executive Directors.
32	CHAPTER XI Section-165(6): Number of Directorship	<p>Reduced penalty from Rs. 5000/- per day to Rs. 2,000/-</p> <p>Maximum limit prescribed for penalty Rs.2,00,000/-</p>
33	CHAPTER XI Section-167(2): Vacation of Office of Director	Imprisonment removed; penalty amount remains the same
34	CHAPTER XI Section-172: Punishment	Reduced maximum penalty from Rs. 5,00,000/- to Rs. 3,00,000/- for company and Rs. 1,00,000/- for officer in default.
35	CHAPTER XII Section-178(8) Nomination & Remuneration Committee and Stakeholder Grievance Committee	Removed imprisonment and penalty fixed at Rs 1,00,000/- for Officer in Default and Rs 500,000/- for company.
36	CHAPTER XII Section-184(4): Disclosure of Interest by Director	Imprisonment removed, penalty remains the same.

37	CHAPTER XII Section-187(4) Investment by company to be held on its own name	Imprisonment removed. Penalty reduced from Rs. 25,00,000/- to Rs. 5,00,000/- in case of company and from Rs. 1,00,000/- to Rs. 50,000/- in case of officer in default.
38	CHAPTER XII Section-188(5) Related Party Transactions	Removed imprisonment Increased the amount of penalty from Rs. 5,00,000/- to Rs. 25,00,000/- in case of listed co. In case of any other Company fixed penalty of 5,00,000/-
39	CHAPTER XIII Section-197: Overall maximum managerial rem and mgr. rem. In case of absence or inadequate profits	Included independent director and any other Non-Executive Director to align with amendment made for payment of remuneration to NEDs and IDs u/s Section 149(9)
40	CHAPTER XIII Section-204(4): Secretarial Audit	Reduced the penalty from Rs.5,00,000/- to Rs.2,00,000/- in case of non compliance of conducting secretarial audit/cooperation with secretarial auditor or explaining the qualifications or remarks made in report.
41	CHAPTER XV Section 232(8): Merger and Amalgamation of Companies	Removed imprisonment. Fixed the penalty for company and officer reducing the maximum limit for companies from Rs. 25,00,000/- to Rs. 3,00,000/-.
42	CHAPTER XVI Section-242(8): Powers of Tribunal	Removed imprisonment, fine remains the same.
43	CHAPTER XVI Section-243(2): Consequence of termination or modification of certain agreements.	Removed imprisonment fine remains the same.
44	CHAPTER XVII Section-247(3): Valuation by registered valuer	Reduced penalty from Rs.1,00,000/- to Rs. 50,000/-.
45	CHAPTER XX Section-284(2)(3): Promoters, directors etc to cooperate with company liquidator	Removed imprisonment & Fine, addition of clause allowing Liquidator to make application to Tribunal for directions in case of non-cooperation. Tribunal by order will direct the Company or its Directors to cooperate.

46	CHAPTER XX Section-302(3)(4): Dissolution of company by Tribunal	Now copy of the order of dissolution will be forwarded by tribunal to Registrar and tribunal will also direct the company liquidator to send the order to Registrar. Sub Section (4) omitted, therefore fine removed
47	CHAPTER XX Section-342(6): Prosecution of Delinquent Officers and Members of Company	Penalty provision omitted.
48	CHAPTER XX Section-347(4): Disposal of Books and Papers of Company	Removed imprisonment and penalty remains the same.
49	CHAPTER XX Section-348(6)(7): Information as of pending litigation	Removal of penalty but provisions added that non compliance to be treated as under the Code Sub section deleted since amended (6) already covers non compliance of this Section
50	CHAPTER XX Section-356(2): Powers of Tribunal to Declare Dissolution of Company Void	Sub-section (2) has been substituted to provide that NCLT shall forward a copy of the order to the Registrar, and direct the Company Liquidator or the person on whose application such order was made to also file a certified copy of the order with the Registrar within thirty days of the order. Now copy of the order of dissolution will be forwarded by tribunal to Registrar and tribunal will also direct the company liquidator to send the order to Registrar.
51	CHAPTER XXIA Section 378 A, 378B to 378ZU Producer Company	New Chapter specifically for producer companies inserted on the lines of Companies Act 1956. Covers process relating to its incorporation, management, general meetings, share capital, accounts and audit, loan to members and investment, amalgamation, merger and division, resolution of disputes, penalties and miscellaneous provisions. It also provides for re-conversion of the Producer Company to the inter-state co-operative society.
52	CHAPTER XXII Section 379 Companies incorporated outside India	Omitted since a new provision has been inserted to provide the Central Government with power related to granting exemption to foreign companies.

53	CHAPTER XXII Section 392 Punishment for contravention	Imprisonment is omitted
54	CHAPTER XXII Section 393A	Central Government empowered to exempt any class of foreign companies from any of the provisions of Chapter XXII
55	CHAPTER XXIV Third proviso to Section 403 Fee for filling	It empowers to the Central Govt. to prescribe additional fees
56	CHAPTER XXV Section 405(4) Companies to furnish Information and statistics	Company and every officer of the company who is in default shall be liable to a penalty of Rs. 20 thousand and in case of continuing failure, with a further penalty of Rs. 1,000 for each day after the first during which such failure continues, subject to a maximum of Rs. 3 lakh.
56	CHAPTER XXVII Section 410 Constitution of Appellate Tribunal	Maximum strength of NCLAT of 11 members removed.
57	CHAPTER XXVII Section 418A Benches of Appellate Tribunal	A new section 418A has been inserted to provide for constitution of additional Benches of NCLAT and related provisions.
58	CHAPTER XXVIII Section 435 Establishment of Special Courts	It provides that the offence under section 452 i.e. punishment for wrongful withholding of property, will be excluded from the applicability of the Special Court.
59	CHAPTER XXVIII Section 441(5) Compounding of certain offences	Imprisonment removed. Fine: Maximum- twice the amount provided in the corresponding section in which punishment for such offence is provided.
60	CHAPTER XXVIII Section 446B Lesser penalties for One person Companies or small company	Section 446B has been substituted to provide for payment of lesser monetary penalty by a start-up company, Producer Company, One Person Company or small company on failure to comply with provisions of the Act which attract monetary penalties. Producer and Start up company defined
61	CHAPTER XXIX Section 450 Punishment where no specific penalty or punishment is provided	Maximum Limit of fine fixed for Company of Rs 200,000/- and Officer in default Rs 50,000/- .
62	CHAPTER XXIX Section 452-(2) Punishment for wrongful withholding of property	Refund of cash or property wrongfully withheld not to be ordered by the Court if statutory dues are recoverable from the company.

63	CHAPTER XXIX Section 454(3) Adjudication of Penalties	A window has been provided within which penalties shall not be levied for delay in filing annual return and financial statements in certain cases. It will reduce the chances of monetary penalty being levied where the default is made good within a defined time.
64	CHAPTER XXIX First, Second and Third proviso to Section 465 Repeal of certain enactments and savings	New chapter introduced for 'producer companies, therefore omitted. Since first proviso deleted, relevant change made in second and third.

Conclusion

Decriminalisation of offences is indeed a welcome step to declog the judicial system which is need of the hour. Most of the offences which have been decriminalised are procedural and technical in nature. There are more than 4 million cases pending as of now in High Courts and more than 33 million in Taluka and District levels. However, a proper balance needs to be maintained to make corporates accountable and not make the legislation toothless thereby encouraging habitual offenders.

The Decriminalization exercise is not just limited to Companies Act. The Government is revisiting all economic laws to find the statues where criminality can be done away with. This will further strengthen India's position in terms of ease of doing business and Investor sentiment.

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