

CNK & Associates LLP

The Companies (Amendment) Bill, 2020 – A Synopsis

In Brief

On 22nd September 2020, the Parliament passed a bill to further amend the Companies Act, 2013 and decriminalise various compoundable offences under 48 Sections of the Companies Act, 2013 as well as to promote ease of doing business in the country.

Introduction

The Companies (Amendment) Bill, 2020 (**the Bill**) was introduced in Lok Sabha by the Minister for Corporate Affairs, Ms. Nirmala Sitharaman, on 17th March 2020. The Bill proposed 72 changes to remove criminality from host of offences under the Companies Act, 2013 (**the Act**) and paving the way for direct overseas listing of Indian companies. Proposed changes include reduction in penalties for certain offences as well as in timeline for rights issues, relaxation in CSR compliance requirements and creation of separate benches at the National Company Law Appellate Tribunal (NCLAT). The proposed amendments under the Bill are based on the recommendations submitted by the Company Law Committee, which was formed with representatives from the Ministry, industry chambers, professional institutes and legal fraternity.

The Lok Sabha gave its approval to the bill on 19th September 2020 and the Rajya Sabha gave its approval on 22nd September 2020.

Synopsis

Abstract of the amendments proposed by the Companies (Amendment) Bill, 2020 are given below-

▲ Section 2(52)- Definition of Listed Company

Exclude certain companies which have listed or intend to list certain class of securities from the definition of Listed Companies.

▲ Section 23-Public Offer and Private Placement

Permit certain class of public companies to issue certain class of securities for being listed on stock exchanges in foreign jurisdictions

▲ Section 62- Further Issue of Share Capital

Reduce the time period (*earlier 15 to 30 days*) for providing the offer letter to the existing shareholders under rights issue.

▲ Section 89-Declaration in respect of beneficial interest in any share

The Central Government (**CG**) may by notification, exempt any class or classes of persons from complying with any of the requirements of this section relating to declaration of beneficial interest in shares if it is considered necessary to grant such exemption in the public interest and any such exemption may be granted either unconditionally or subject to such conditions as may be specified in the notification.

▲ Section 117-Resolutions and agreements to be filed

As per the Act, companies are required to file with the Registrar of Companies (**RoC**), certain resolutions including resolutions of the Board of Directors (**BoD**) to borrow money or grant loans. Exemption granted to - (a) a banking company; (b) any class of non-banking financial company (NBFC) registered under the

Reserve Bank of India Act, 1934; (c) any class of housing finance company registered under the National Housing Bank Act, 1987 from filing resolution passed to grant loans or give guarantee or provide security.

Earlier the exemption was granted only to banking companies

▲ Section 129A- Periodic Financial Statement (New Section)

The CG requires the certain class or classes of unlisted companies to -

- to prepare the financial results of the company on periodical basis;
- to obtain approval of the BoD and complete audit or limited review of such periodical financial results in a prescribed manner;
- file a copy with the RoC within a period of 30 days of completion of the relevant period with prescribed fees.

CNK Comments: *This provision would increase compliance for such companies since besides annual financial statements, they will also be required to prepare additional periodic financial statements and get them audited or a limited review carried out.*

▲ Section 135- Corporate Social Responsibility (CSR)

- Companies which spend any amount in excess of their CSR obligation in a financial year (FY) can set off the excess amount towards their CSR obligations in subsequent FYs as may be prescribed
- If a company fails to transfer the unspent amount to the Fund specified in Schedule VII or Unspent CSR Account, following penalty will be imposed-
 - a. twice the amount required to be transferred or Rs. 1 crore whichever is less; and
 - b. 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 or Rs. 2 lakh rupees, whichever is less;
- Where the amount to be spent by a company towards CSR does not exceed Rs. 50 lakh, exemption is granted from constitution of the CSR Committee and functions of such Committee will be discharged by the BoD of such company.

CNK Comments: *The provision for adjustment of excess spending in 1 FY against spending in subsequent FY and non-constitution of CSR Committee where spending is less than 50 lakhs is welcome. Penalties introduced for unspent CSR on the company and its officers are stringent and would require companies to be more vigilant in ensuring that amount on CSR is spent within time.*

▲ Section 149- Company to have BoD

As per the Act, an independent director (ID) is not entitled to any stock option and is permitted to receive remuneration by way of fee, reimbursement of expenses for participation in the Board and other meetings and profit related commission as may be approved by the members.

The amendment provides that if a company has no profit or its profits are inadequate, an ID may receive remuneration which is exclusive of any fees payable as mentioned above in accordance with the provisions of Schedule V.

▲ Penalty

The Bill seeks 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

CNK Comments: *This is a welcome and much awaited change for ‘ease of doing business’.*

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