

**KEY CHANGES PROPOSED UNDER THE COMPANIES (AMENDMENT)
BILL 2020**

The Companies (Amendment) Bill 2020 was introduced in the Lok Sabha on 17th March 2020, with the primary objective of facilitating “ease of doing ethical business and ease of doing honest business”, following the recommendations in the report (of November 2019) of the Company Law Committee that was constituted on the 18th September, 2019. The Bill proposes 72 changes to the Companies Act 2013.

HIGHLIGHTS OF THE BILL

Some of the key changes suggested to the Companies Act, through this bill, are as follows-

- Producer Companies

The Bill seeks to insert Chapter XXIA on ‘Producer Companies’ to the Companies Act 2013. This Chapter shall include provisions relating to their incorporation, management, membership, conduct of meetings, maintenance of accounts etc. Provisions pertaining to Producer Companies were earlier a part of Companies Act 1956.

A Producer Company is a company that, could inter alia, be engaged in production, harvesting, procurement, grading, pooling, handling, marketing, selling, export of primary produce of its members or import of goods or services for their benefit; processing of produce of its members; manufacture, sale or supply of machinery, equipment or consumables mainly to its members; rendering technical services, consultancy services, training, research and development and all other activities for the promotion of the interests of its members; etc.

Once registered, a Producer Company shall become a body corporate as if it is a private limited company without any limit to the number of members.

It is interesting to note that the share capital of a Producer Company would consist of equity shares only and the shares held by a member in a Producer Company, shall as far as may be, be in proportion to the patronage of that company.

- Recategorization of Offenses

One of the main objectives of the Bill appears to be decriminalising certain offences under the Companies Act 2013, in case of defaults which can be determined objectively, and which otherwise lack any element of fraud or do not involve larger public interest.

This includes:

- Removal of penalty for certain offenses
- Removal of imprisonment for certain offenses
- Reduction of fine payable in certain offenses.

The Act also provides that in case of certain offenses by One Person Company (OPC) or Small Companies, they are liable to pay only 50% of the penalty for such offenses.

The Bill, with respect to the above, proposes the following changes:

- To extend the provision to all producer and start-up Companies.
- To extend the provision to apply to violation of any provisions of the Act, and,
- To limit the maximum penalty to Two Lakh Rupees for the company and One Lakh Rupees for the defaulting officer.

One of the main objectives of the Bill is to provide for a window within which penalties shall not be levied for delay in filing annual returns and financial statements in certain cases.

- Listing of securities in Foreign Jurisdiction

At present, Indian companies are not permitted to list their equity shares on foreign stock exchanges.

Under Section 23(1) of the Companies Act 2013, a public company may issue securities:

- (a) to public through prospectus (herein referred to as "public offer"); or
- (b) through private placement; or
- (c) through a rights issue or a bonus issue.

For companies listed or intending to get their securities listed, the provisions of the Securities and Exchange Board of India Act, 1992 and the rules and regulations made thereunder would be applicable.

The Bill seeks to allow specified classes of public companies to issue such class of securities for the purposes of listing on permitted stock exchanges in permissible foreign jurisdictions or such other jurisdictions, as may be prescribed.

- Exemptions from filing resolutions

Under the Companies Act 2013, copies of certain resolutions, along with explanatory notes are to be filed with the Registrar within 30 days of passing. These resolutions include, inter alia, special resolutions; resolutions which have been agreed to by all the members of a company, but which, if not so agreed to, would not have been effective for their purpose unless they had been passed as special resolutions; any resolution relating to the appointment, re-appointment or renewal of the appointment,

or variation of the terms of appointment, of a managing director; resolutions requiring a company to be wound up voluntarily; etc.

On failure of a company to file such resolutions with additional fee, the company shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default, including liquidator of the company, if any, shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

The Bill seeks to reduce the penalty for such failure to file the resolutions within the prescribed period, to ten thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of two lakh rupees and every officer of the company who is in default including liquidator of the company, if any, shall be liable to a penalty of ten thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of fifty thousand rupees.

The Bill also seeks to introduce exemptions in respect of filing resolutions passed by a banking company or non-banking financial company or housing finance company, for granting loans, or giving guarantee or providing security in respect of loans in the ordinary course of its business.

- Corporate Social Responsibility

Under Section 135 of the Companies Act 2013, every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during any financial year is required to constitute a Corporate Social Responsibility Committee.

In every financial year, a company within the said category would be required to spend at least two per cent of the average net profits made by the company during the three immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy.

The Bill seeks to insert a proviso to this clause, wherein, if the company spends an amount in excess of these requirements, such company may set off such excess amount against the requirement to spend in pursuance of its Corporate Social Responsibility Policy, for such number of succeeding financial years and in such manner, as may be prescribed.

The Bill also states that where the prescribed amount required to be spent by the company for its Corporate Social Responsibility does not exceed fifty lakh rupees, a Corporate Social Responsibility Committee need not be constituted and the functions of such Committee would be discharged by the Board of Directors of such company.

- Remuneration of Non-Executive Directors

A special provision has been made for allowing adequate remuneration to Non-Executive Directors in case of inadequacy or no profits. It also extends to Independent Directors. This implies that 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 Companies Act 2013, i.e. as per the limits stated for the yearly remuneration payable, vis a vis the effective capital.

- Benches of NCLT

The Bill seeks to establish Benches of National Company Law Appellate Tribunal (NCLAT). These shall ordinarily sit at New Delhi or any other notified place.

- Periodic Financial Results

The Bill empowers the Central Government to notify specified classes of Unlisted Companies to prepare and file their financial results periodically.

- Exclusion of certain Companies as 'Listed Companies'

Presently, under the Companies Act 2013, Section 2 (52) states defines a listed company as a company which has any of its securities listed on any recognised stock exchange.

The Bill aims at empowering the Central Government to exclude, in consultation with SEBI, certain companies from the definition of 'Listed Companies', mainly those listing only debt securities.

- Applying for Right Issues

Under Section 62 of the Companies Act 2013, when a company proposes to increase its subscribed capital by the issue of further shares, such shares shall be offered to holders of equity shares of the company and such offer shall be made by notice specifying the number of shares offered and limiting a time not being less than fifteen days 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. The Bill seeks to reduce the timelines to apply for Right Issues, which would help speed up the process.

CONCLUSION

The above changes proposed under the Bill certainly indicate that the primary objective behind it is encouraging honest and ethical business practises within various corporate entities

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in the country. However, what remains to be seen is whether these revamped provisions, if the Bill is passed, would actually improve the overall ease of doing ethical business, or if considerable parallel amendments would be required in other legislations to help achieve the same.

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