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Newsflash: Lok Sabha Passes The Companies (Amendment) Bill, 2019

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1.0 Background

The Lok Sabha has on July 25, 2019, passed the Companies (Amendment) Bill, 2019 (“the Bill”), which largely contains the provisions which are already in force on account of being promulgated by way of Presidential Ordinance; additionally, the Bill, also brings some interesting amendments in the existing Companies Act, 2013.

Some of the key features of the Bill include giving powers to MCA to decide on compulsory dematerialization of shares of unlisted Companies, Re-Categorization of Certain Offences to remove the Criminal Liability on Directors in case of default, mandatory transfer of unspent CSR expenses to CSR fund, more powers to National Financial Reporting Authority including debarring an Auditor from undertaking Audits, Internal audits as well as Valuations, additional compliances before commencement of business by a newly incorporated Company, additional responsibility on Company to identify its Significant beneficial owners and Unlimited Liability of Officer in Default in case of Fraud.

2.0 Salient Features

Some of the key highlights of certain important amendments prescribed under the proposed Bill are as follows:

- **Holding / transferring of securities only in dematerialized form:** Under the Act, certain classes of public companies are required to issue shares in dematerialized form only. The Bill has now delegated the power to MCA to prescribe other classes of unlisted companies as well for whom holding / transfer of shares in dematerialized form can be made mandatory. This means the MCA may now mandate dematerialization of shares of Private Companies as well.

- **Re-categorization of certain Offences**: The Companies Act, 2013, contains 81 compoundable offences punishable with fine or imprisonment, or both. These offences are heard by courts. The Bill re-categorizes 16 of these offences as only civil defaults, where adjudicating officers (appointed by the central government) may now levy penalties instead. These offences include: (i) issuance of shares at a discount, and (ii) failure to file annual return. Further, the Bill amends the penalties for some other offences.

- **Corporate Social Responsibility (CSR):** Under the Act, if companies which have to provide for CSR, do not fully spent the funds, they must disclose the reasons for non-spending in their annual report.

  Under the Bill, any unspent annual CSR amounts must be mandatorily transferred to one of the funds prescribed under Schedule 7 of the Act (e.g., PM Relief Fund) within six months of the end of financial year.

  However, if the CSR funds are committed to certain ongoing projects, then the unspent funds will have to be transferred to an Unspent CSR Account within 30 days of the end of the financial year and they have to be mandatorily utilized for those projects within three years. Any funds remaining unspent after three years will have to be transferred to one of the prescribed funds under Schedule 7 of the Act.

  Any violation of the above CSR provisions may attract a fine between Rs 50,000 and Rs 25,00,000 and every defaulting officer may be punished with imprisonment of up to three years or fine between Rs 50,000 and Rs 25,00,000, or both.

- **Debarring auditors:** Under the Act, the National Financial Reporting Authority debars a member or firm from practicing as a Chartered Accountant for a period between six months to 10 years, for proven misconduct. The Bill amends the punishment to provide for debarment from appointment as an auditor or internal auditor of a company, or performing a company's valuation, for a period between six months to 10 years.

- **Commencement of business:** The Bill states that a company may not commence business, unless it (i) files a declaration within 180 days of incorporation, confirming that every subscriber to the Memorandum of the company has paid for the shares agreed to be taken by him, and (ii) files a verification of its registered address with the ROC within 30 days of incorporation. If it fails to comply with these provisions and is found not to be carrying out business, its name of the company may be removed from the Register of Companies**.**

- **Registration of charges**: The Act requires companies to register charges (e.g., mortgages) on their property within 30 days of creation of charge, extendable upto 300 days with the permission of the RoC. The Bill changes the deadline to 60 days (extendable by 60 days).

- **Transfer of Authority from NCLT to CG**: Under the Act, change in period of financial year for a company associated with a foreign company has to be approved by the National Company Law Tribunal. Similarly, any alteration in the incorporation document of a public company which has the effect of converting it to a private company has to be approved by the Tribunal. Under the Bill, these powers have been transferred to the central government.

- **Compounding:** Under the Act, a regional director can compound (settle) offences with a penalty of up to five lakh rupees. The Bill increases this ceiling to Rs 25 lakh.

- **Bar on holding office**: Under the Act, the central government or certain shareholders can apply to the NCLT for relief against mismanagement of the affairs of the company. The Bill states that in such a complaint, the government may also make a case against an officer of the company on the ground that he is not fit & proper to hold office in the company, for reasons such as fraud or negligence. If the NCLT passes an order against the officer, he will not be eligible to hold office in any company for five years.

- **Unlimited Liability of Officer in Default in case of Fraud**: The Bill provides that in case any fraud has taken place in a company and due to such fraud any director, key managerial personnel, other officer of the company or any other person or entity, has taken undue advantage or benefit, whether in the form of any asset, property or cash or in any other manner, the Central Government may file an application before the Tribunal for appropriate orders with regard to disgorgement of such asset, property or cash and also for holding such director, key managerial personnel, other officer or any other person liable personally without any limitation of liability."

3.0 Disclaimer:

In this newsflash, we have summarized certain important amendments proposed under the Companies (Amendment) Bill, 2019, as passed by Lok Sabha on 25th July 2019. It may be noted that nothing contained in this newsflash should be regarded as our opinion and the Government or judicial authorities may or may not subscribe to the views expressed therein. We are not responsible for any liability arising from any statements or errors contained in this newsflash.

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In this newsflash, we have summarized the salient features of the proposed amendments to the in the existing Companies Act, 2013.

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