

Newsflash:

Overview of Companies Amendment Bill, 2020

23 September 2020



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For Client Circulation

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1.0 Background

The Companies (Amendment) Bill, 2020 (CAA 2020) was introduced in Lok Sabha by Ms. Nirmala Sitharaman (Minister for Corporate Affairs) on 17th March, 2020. The Bill seeks to amend the Companies Act, 2013 (CA 2013). It was passed in the Lok Sabha on 19th September 2020 and in the Rajya Sabha on 22nd September 2020. The bill is yet to receive the assent of President of India to become the Companies (Amendment) Act, 2020.

2.0 Major Changes / Salient Features

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

2.1 Certain Listed Securities to be considered as Unlisted:

The Bill empowers the central government, in consultation with the Securities and Exchange Board of India (SEBI), to exclude companies issuing specified classes of securities from the definition of a "listed company".

2.2 Decriminalization of certain offences:

The Bill intends to omit the punishment of imprisonment in relation to an officer who is in default in complying with certain provisions of the Act.

2.3 Reduction in time limit to change the name of the company on directions issued by Central Government:

Where the name of a company is identical with or too nearly resembles to an existing trade mark in the opinion of the Central Government (powers delegated to Regional Directors), it may issue a direction to change its name or new name of the company after the receipt of an application by a registered proprietor of a trade mark within a period of 3 months from the issue of such direction.

2.4 Power to the Central Government to allot new name to the defaulting company:

In case default is made in complying with the directions issued by the central government to change the name of the company, the Central Government shall allot a new name to the company in such manner as may be prescribed and the Registrar shall enter the new name in the register of companies in place of the old name and issue a fresh certificate of incorporation with the new name, which the company shall use thereafter:

2.5 Direct listing in foreign jurisdictions:

The Bill empowers the central government to allow certain classes of public companies to list classes of securities (as may be prescribed) in foreign jurisdictions.

2.6 Reduction in offer period for Rights Issue:

The Bill empowers the Central Government to provide by rules such days lesser than fifteen for deeming the decline of the offer for rights issue, made under the said provision.

2.7 Periodic financial results for unlisted companies:

The Bill empowers the central government to require classes of unlisted companies (as may be prescribed) to prepare and file periodical financial results, and to complete the audit or limited review of such results.

2.8 Remuneration to non-executive directors:

The Act makes special provisions for payment of remuneration to executive directors of a company (including managing director and other whole-time directors) if the company has inadequate or no profits in a year. For example, if a company has an effective capital of up to five crores rupees, the annual remuneration to its executive directors cannot exceed 60 lakh rupees. The Bill extends this provision to non-executive directors, including independent directors.

2.9 Exemption from filing resolutions:

The Act requires companies to file certain resolutions with the Registrar of Companies. These include resolutions of the Board of Directors of the company to borrow money, or grant loans. However, banking companies are exempt from filing resolutions passed to grant loans, or to provide guarantees or security for a loan. This exemption has now been extended to registered non-banking financial companies (NBFCs) and housing finance companies (HFCs).

2.10 Corporate Social Responsibility (CSR):

Under the Act, companies with net worth, turnover or profits above a specified amount are required to constitute CSR Committees and spend 2% of their average net profits in the last three financial years, towards its CSR policy.

- The CAB 2020 exempts companies with a CSR liability of up to Rs 50 lakh a year from setting up CSR Committees and their functions can be discharged by the Board of Directors of such company.
- Further, companies which spend any amount in excess of their CSR obligation in a financial year can set - off the excess amount towards their CSR obligations in subsequent financial years.
- Also the CAB 2020 introduces monetary penalty on defaulting company and every officer of such company who is in default, for violation of the CSR provisions.

2.11 Changes relating to offences:

The Bill makes three changes:

- a) First, it removes the penalty for certain offences. For example, it removes the penalties which apply for any change in the rights of a class of shareholders made in violation of the Act. Note that where a specific penalty is not mentioned, the Act prescribes a

penalty of up to Rs 10,000 which may extend to Rs 1,000 per day for a continuing default.

- b) Second, it removes imprisonment in certain offences. For example, it removes the imprisonment of three years applicable to a company for buying back its shares without complying with the Act.

Sections for which Offence has been de-criminalized:

1.	Section 8(11): Formation of Companies with Charitable Objects, etc.
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' Rights.
5.	Section 59(5): Rectification of Register of Members.
6.	Section 68(11): Power of Company to Purchase its Own Securities
7.	Section 71(11): Debentures
8.	Section 86(1): Punishment for Contravention.
9.	Section 90(10): Register of significant beneficial owners in a company
10.	Section 128(6): Books of Account, etc., to be kept by Company
11.	Section 134(8): Financial Statement, Board's Report, etc.
12.	Section 147(1): Punishment for Contravention
13.	Section 167(2): Vacation of Office of Director
14.	Section 178(8): Nomination and Remuneration Committee and Stakeholders Relationship Committee
15.	Section 184(4): Disclosure of Interest by Director
16.	Section 188(5): Related Party Transactions
17.	Section 242(8): Powers of Tribunal
18.	Section 243(2): Consequence of Termination or Modification of Certain Agreements
19.	Section 342(6): Prosecution of Delinquent Officers and Members of Company
20.	Section 347(4): Disposal of Books and Papers of Company.
21.	Section 348(7): Information as to Pending Liquidations.
22.	Section 392: Punishment for contravention.
23.	Section 405(4): Power of Central Government to Direct Companies to Furnish Information or Statistics.

- c) Third, it reduces the amount of fine payable in certain offences. For example, it reduces the maximum fine for failure to file annual return with the Registrar of Companies from five lakh rupees to two lakh rupees.

Under the Act, one person companies (i.e., companies with only one member) or small companies (i.e., with lower paid-up share capital and turnover thresholds) are only liable to

pay up to 50% of the penalty for certain offences (such as failing to file annual return). The Bill:

- (i) extends this provision to all producer companies and start-up companies,
- (ii) extends this provision to apply to violation of any provision of the Act, and
- (iii) limits the maximum penalty to two lakh rupees for the company and one lakh rupees for a defaulting officer.

3.0 Key changes introduced in the CAB,2020, at a glance:

3.1 Changes in substantive provisions of law:

Section		Amended Provision	Impact
Section 2(52)- Definition of "listed company"		<p>"listed company" means a company which has any of its securities listed on any recognised stock exchange</p> <p>Provided that such class of companies, which have listed or intend to list such class of securities, as may be prescribed in consultation with the Securities and Exchange Board, shall not be considered as listed companies."</p>	This empowers Central Government, in consultation with SEBI, to exclude certain companies from the definition of listed companies.
Section 16- Rectification of name	16(1)(b)	<p>If, through inadvertence or otherwise, a company on its first registration or on its registration by a new name, is registered by a name which,—</p> <p>(b) on an application by a registered proprietor of a trade mark that the name is identical with or too nearly resembles to a registered trade mark of such proprietor under the Trade Marks Act, 1999, made to the #Central Government within three years of incorporation or registration or change of name of the company, whether under this Act or any previous company law, in the opinion of the #Central Government, is identical with or too nearly resembles to an existing trade mark, it may direct the company to change its name and the company shall change its name or new name, as the case may be, within a period of six three months from the issue of such direction, after adopting an ordinary resolution for the purpose.</p>	This will enable the Central Government to allot new name to the defaulting company who fails to comply with directions of Central Government and whose name is identical with or too nearly resembles with the name of any existing company.
	16(3)	If a company makes default in complying with any direction given under sub-section (1), the company shall be punishable with fine of one thousand rupees for every day during which the default continues and every officer who is	

		<p>in default shall be punishable with fine which shall not be less than five thousand rupees but which may extend to one lakh rupees.</p> <p>" If a company is in default in complying with any direction given under sub-section (1), the Central Government shall allot a new name to the company in such manner as may be prescribed and the Registrar shall enter the new name in the register of companies in place of the old name and issue a fresh certificate of incorporation with the new name, which the company shall use thereafter: Provided that nothing in this sub-section shall prevent a company from subsequently changing its name in accordance with the provisions of section 13."</p>	
Section 62- Further issue of shares (Rights Issue)	<p>(1) Where at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares shall be offered—</p> <p>(a) to persons who, at the date of the offer, are holders of equity shares of the company in proportion, as nearly as circumstances admit, to the paid-up share capital on those shares by sending a letter of offer subject to the following conditions, namely:—</p> <p>(i) the offer shall be made by notice specifying the number of shares offered and limiting a time not being less than fifteen days or such lesser number of days as may be Prescribed 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;</p>	Reduction in offer period for rights issue shall speed up fund raising of a company, even for public/listed companies, since this benefit was already available to private companies	
Section 117(3)- Resolutions and agreements to be filed	<p>The provisions of this section shall apply to—</p> <p>(a) special resolutions;</p> <p>(b) 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</p>	This will significantly reduce filing compliances for the registered NBFCs and HFCs.	

	<p>resolutions;</p> <p>(c) any resolution of the Board of Directors of a company or agreement executed by a company, relating to the appointment, re-appointment or renewal of the appointment, or variation of the terms of appointment, of a managing director;</p> <p>(d) resolutions or agreements which have been agreed to by any class of members but which, if not so agreed to, would not have been effective for their purpose unless they had been passed by a specified majority or otherwise in some particular manner; and all resolutions or agreements which effectively bind such class of members though not agreed to by all those members;</p> <p>(e) ¹²[Omitted]</p> <p>(f) resolutions requiring a company to be wound up voluntarily passed in pursuance of "section 59 of the Insolvency and Bankruptcy Code, 2016"</p> <p>(g) resolutions passed in pursuance of sub-section (3) of section 179</p> <p>Provided that no person shall be entitled under section 399 to inspect or obtain copies of such resolutions;³</p> <p>Provided further that nothing contained in this clause shall apply to a banking company in respect of a resolution passed to grant loans, or give guarantee or provide security in respect of loans under clause (f) of sub-section (3) of section 179 in the ordinary course of its business; and.]</p> <p>"Provided further that nothing contained in this clause shall apply in respect of a resolution passed to grant loans, or give guarantee or provide security in respect of loans under clause (f) of sub-section (3) of section 179 in the ordinary course of its business by,—</p> <p>(a) a banking company;</p>	
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		<p>(b) any class of non-banking financial company registered under Chapter IIIB of the Reserve Bank of India Act, 1934, as may be prescribed in consultation with the Reserve Bank of India;</p> <p>(c) any class of housing finance company registered under the National Housing Bank Act, 1987, as may be prescribed in consultation with the National Housing Bank; and</p> <p>(h) any other resolution or agreement as may be prescribed and placed in the public domain.</p>	
Section 129A- Periodical financial results (new provision inserted by CAB 2020)		<p>The Central Government may, require such class or classes of unlisted companies, as may be prescribed,—</p> <p>(a) to prepare the financial results of the company on such periodical basis and in such form as may be prescribed;</p> <p>(b) to obtain approval of the Board of Directors and complete audit or limited review of such periodical financial results in such manner as may be prescribed; and</p> <p>(c) file a copy with the Registrar within a period of thirty days of completion of the relevant period with such fees as may be prescribed.</p>	<p>This introduction would increase the cost and time for the prescribed unlisted public companies.</p>
Section 135- Corporate Social Responsibility	<u>135(5)</u>	<p>The Board of every company referred to in sub-section (1), shall ensure that the company spends, in every financial year, at least two per cent. of the average net profits of the company made during the three immediately preceding financial years or where the company has not completed the period of three financial years since its incorporation, during such immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy:</p> <p>Provided that the company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for Corporate Social Responsibility activities:</p>	<p>This will enable the companies to set off excess amount spend on CSR in subsequent years.</p> <p>Provides huge relief to certain companies from constitution of CSR committees</p> <p>Also the penalties have been amended to remove the imprisonment, thus making the companies and their OIDs liable to only pecuniary fines.</p>

		<p>Provided further that if the company fails to spend such amount, the Board shall, in its report made under clause (o) of sub-section (3) of section 134, specify the reasons for not spending the amount and, unless the unspent amount relates to any ongoing project referred to in sub-section (6), transfer such unspent amount to a Fund specified in Schedule VII, within a period of six months of the expiry of the financial year.</p> <p>"Provided also that if the company spends an amount in excess of the requirements provided under this sub-section, such company may set off such excess amount against the requirement to spend under this sub-section for such number of succeeding financial years and in such manner, as may be prescribed.";</p>	
	135(7)	<p>If a company contravenes the provisions of sub-section (5) or sub-section (6), the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to twenty-five lakh rupees and every officer of such company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both. If a company is in default in complying with the provisions of sub-section (5) or sub-section (6), the company shall be liable to a penalty of twice the amount required to be transferred by the company to the Fund specified in Schedule VII or the Unspent Corporate Social Responsibility Account, as the case may be, or one crore rupees, whichever is less, and every officer of the company who is in default shall be liable to a penalty of one-tenth of the amount required to be transferred by the company to such Fund specified in Schedule VII, or the Unspent Corporate Social Responsibility Account, as the case may be, or two lakh rupees, whichever is less.</p>	

	135(9)	Where the amount to be spent by a company under sub-section (5) does not exceed fifty lakh rupees, the requirement under sub-section (1) for constitution of the Corporate Social Responsibility Committee shall not be applicable and the functions of such Committee provided under this section shall, in such cases, be discharged by the Board of Directors of such company.	
Section 149 (9)- Company to have Board of Directors (Independent Directors)		Notwithstanding anything contained in any other provision of this Act, but subject to the provisions of sections 197 and 198, an independent director shall not be entitled to any stock option and may receive remuneration by way of fee provided under sub-section (5) of section 197, reimbursement of expenses for participation in the Board and other meetings and profit related commission as may be approved by the members. "Provided that if a company has no profits or its profits are inadequate, an independent director may receive remuneration, exclusive of any fees payable under sub-section (5) of section 197, in accordance with the provisions of Schedule V."	This will now enable even the Independent directors to receive remuneration other than sitting fees, in case of absence or inadequacy of profits.
Section 197(3)- Overall Maximum Managerial Remuneration and Managerial Remuneration in Case of Absence or Inadequacy of Profits		Notwithstanding anything contained in sub-sections (1) and (2), but subject to the provisions of Schedule V, if, in any financial year, a company has no profits or its profits are inadequate, the company shall not pay to its directors, including any managing or wholetime director or manager or any other non-executive director, including an independent director, by way of remuneration any sum exclusive of any fees payable to directors under sub-section (5) hereunder except in accordance with the provisions of Schedule V.	This enables a company to pay remuneration to any non-executive director of such company, including an independent director in case of absence or inadequacy of profits in accordance with Schedule V of the Act.

Click here for complete text of Companies Amendment Bill 2020:
http://164.100.47.4/BillsTexts/LSBillTexts/Asintroduced/88_2020_LS_Eng.pdf

For complete text of comparative analysis of penal provisions: **click here**

4.0 Disclaimer

In this newsflash, we have summarized certain important amendments proposed under the Companies (Amendment) Bill, 2020, as passed by Lok Sabha and Rajya Sabha on 19th September, 2020 and 22nd September 2020 respectively. The bill is yet to receive the assent of President of India to become the Companies (Amendment) Act, 2020. 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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