

# LAW & POLICY UPDATE

## CORPORATE & COMMERCIAL



## 10 key takeaways from Companies (Amendment) Act, 2020

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Continuing with Government of India's recent spate of reforms meant to bolster economic activity and investment in the country, the Companies Amendment Bill, 2020 was introduced to amend the Companies Act, 2013 (Act) with the intent of improving the ease of doing business in India, de-criminalizing various minor offences and regulating producer companies, amongst other aspects. This Bill received the President's assent and was notified in the official gazette as the Companies (Amendment) Act, 2020 (**Amendment**) on September 28, 2020, and will come into effect on such date(s) as may be notified by the Central Government.

Key changes in this Amendment are enumerated here below:

- **De-criminalization of minor offences:** By way of the Amendment, imprisonment as a consequence of contravention of certain provisions of the Act has been done away with for over 46 offences under the Act, in addition to reducing, modifying and omitting the fines/penalties for these offences. By way of example, imprisonment has been removed as a punishment for contravention of provisions in relation to buyback of securities, disclosure of interest by directors, financial statements and Boards' report, formation of companies with charitable objects, disqualification of directors and constitution of audit, stakeholder relationship and nomination and remuneration committee. Similarly, penalties and fines have been omitted/modified/reduced for contravention of provisions in relation to filing of annual return with Registrar, variation of shareholder rights, transfer of securities, alteration of share capital and reduction of share capital, among others.
- **Definition of listed companies:** Prior to the Amendment, a company with 'any of its securities listed on a recognised stock exchange' was qualified as a listed company and resulted in such companies having to comply with the Securities Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR) in addition to compliances under the Act. The Amendment, however, empowers the Central Government to exempt certain class of companies and securities (which are yet to be prescribed) from being considered as a listed company, in consultation with the Securities Exchange Board of India (SEBI). This exclusion of certain class of securities will ease the burden on companies from rigorous compliance and procedural requirements under the LODR and the Act.
- **Foreign listing:** Pursuant to the addition of a new sub-section to Section 23 of the Act, certain classes of public companies incorporated in India, as may be prescribed by the Central Government, are permitted to issue securities for listing on stock exchanges in permissible foreign jurisdiction, without requiring compulsory listing in India. The Central Government is also empowered to exempt such class of public companies from complying with certain provisions of the Act, namely, provisions relating to private placement and public offer of securities, beneficial ownership, share capital and debentures or punishment for failure to distribute dividend, by way of issuing a notification, which has to be placed before both Houses of Parliament.
- **Declaration of Beneficial Ownership:** As per the previous norms under the Act, persons holding beneficial interest in the shares of a company are required to submit declarations to this effect and the company is required to file returns with the Registrar intimating such beneficial ownership. The Amendment empowers the Central Government to exempt, unconditionally or subject to conditions, certain classes of person(s) from the aforesaid requirements if it is considered necessary to grant such exemption in the public interest.

- **Periodic financial results:** Section 129A of the Amendment empowers the Central Government to require a certain class of unlisted public companies (which is yet to be prescribed) to prepare periodic financial results. Such periodic financial results are in addition to preparation of annual financial results prescribed under the Act and would need to be approved by the Board of Directors and audited (or subjected to a limited review) by the statutory auditors, in addition to filing periodic financial results with the Registrar. This requirement appears to have been introduced in alignment with similar provisions prescribed for listed companies under the LODR. Given that certain class of public companies will be permitted to list their securities in foreign jurisdictions, without listing on Indian stock exchanges, it is no surprise that the Amendment imposes an additional requirement on unlisted public companies to prepare periodic financial results thereby allowing the Central Government or the Ministry of Corporate Affairs (MCA) to keep a close watch on the functioning of such companies on a periodic basis and not just on an annual basis as per existing provisions of the Act.
- **Reduced timelines for rights issue:** Previously, as per the provisions of the Act, in case of a rights issue by a company, the offer period was required to remain open for a period of at least 15 days with an exemption granted to private companies for reduction in offer period subject to approval of 90% of its shareholders. The Amendment seeks to reduce the existing timeline of 15 days and empowers the Central Government to prescribe a timeframe of less than 15 days for the rights issue offer period. This will allow companies a quicker access to funds, without requiring the approval of majority shareholders.
- **Reduced timeframe for rectification of name and powers granted to the Central Government thereunder:** Prior to the Amendment, if the Central Government is of the opinion, on an application made to it by a registered proprietor of a trademark, that the name of a company is identical with or too closely resembles an existing trade mark, the company is required to change its name within a period of 6 months from date of directions issued by the Central Government in this regard. The Amendment now reduces this timeframe to 3 months. Additionally, Central Government is now empowered to allot a new name to the company (manner to be prescribed) if the company defaults in complying with directions issued by it and the Registrar is entitled to enter such 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 must use thereafter. However, none of the above changes restrict a company from subsequently changing its name, in accordance with the provisions laid down in the Act.
- **Corporate Social Responsibility (CSR):** Pursuant to the Amendment, companies that have spent an amount in excess of the requirements prescribed under the Act (i.e., at least 2% of the average net profits of the company made during the 3 immediately preceding financial years) are now permitted to set off such excess amount in succeeding financial years as may be prescribed by the Central Government. Further, companies that are not required to spend more than INR 50,00,000 towards CSR under the provisions of the Act, are now exempted from constituting a CSR Committee and the Board of Directors may discharge the functions of such Committee.
- **Exemption to NBFCs:** Under the Act, a banking company is exempted from filing the resolutions passed to grant loans or give guarantee or provide security in respect of loans in the ordinary course of its business, with the registrar. The Amendment extends such exemption to a registered non-banking finance company and a housing finance company.
- **Remuneration of Independent Directors:** Prior to the Amendment, in case of inadequate profits, only executive directors/managing director of a company were entitled to receive remuneration subject to limits prescribed in the Act. The Amendment seeks to align the aforesaid provisions to independent directors/non-executive directors to the effect that in case a company has no profits or its profits are inadequate, then non-executive directors, including an independent director, will be entitled to receive remuneration up to the extent permissible under the Act.

## Conclusion

The benefits of amendments with respect to overseas listing, scope of listed companies, beneficial ownership and other aspects will be tested once the Central Government notifies and prescribes corresponding rules in this regard. Needless to state, de-criminalization of menial offences revolving around procedural requirements and having no negative impact on the public interest will definitely go a long way on easing the burden on corporates from being criminalized for offences that are a product of inadvertent lapses and minor non-compliances with no intent to defraud the authorities or the public at large. All in all, this is a welcome move towards India's goal to improve the ease of doing business in the country.

