



Companies (Amendment) Bill, 2020 passed by the Parliament | Aimed to promote greater ease of doing business & decriminalization

September 23, 2020

As you are aware, to promote greater ease of doing business, the Companies (Amendment) Bill, 2020 (**CAB2020**) was introduced in Lok Sabha on March 17, 2020, to amend the provisions of Companies Act, 2013 (**Act**). CAB2020 has now been passed in Lok Sabha on September 19, 2020 and by the Rajya Sabha yesterday (September 22, 2020). It will now need Presidential assent to become a legislation. Some of the key amendments are summarized below:

1. Decriminalize offences

To decriminalize 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. Offences such as shortcomings in reporting related to corporate social responsibility (CSR), inadequacies in board's report, filing defaults, delay in holding annual general meetings (AGMs) are covered under this category.

2. Relaxation in CSR obligations

To provide that the companies which have CSR spending obligation up to fifty lakh rupees shall not be required to constitute the CSR Committee and to allow eligible companies under section 135 to set off any amount spent in excess of their CSR spending obligation in a particular financial year towards such obligation in subsequent financial years.

3. Direct listing of securities of Indian companies

To allow direct listing of securities by Indian companies in permissible foreign jurisdictions as per rules to be prescribed.

4. Exclusion from class of listed companies

To empower the Central Government to exclude, in consultation with the Securities and Exchange Board of India (**SEBI**), certain class of companies from the definition of "listed company", mainly for listing of debt securities.

5. Adequate remuneration to non-executive directors

To make provisions for allowing payment of adequate remuneration to non-executive directors in case of inadequacy of profits, by aligning the same with the provisions for remuneration to executive directors in such cases.

6. Speedy rights issue

To reduce timelines for applying for rights issues so as to speed up such issues under section 62.

7. Exemptions from compliance with beneficial ownership related provisions

To exempt any class of persons from complying with the requirements of section 89 relating to declaration of beneficial interest in shares and exempt any class of foreign companies or companies incorporated outside India from the provisions of Chapter XXII relating to companies incorporated outside India.

8. Exemptions from filing resolutions

To extend exemptions to certain classes of non-banking financial companies and housing finance companies from filing certain resolutions under section 117.

9. Relaxation of fees in case of default in filing

To relax provisions relating to charging of higher additional fees for default on two or more occasions in submitting, filing, registering or recording any document, fact or information as provided in section 403.

10. Applicability of lesser penalty provisions to extend

To extend applicability of section 446B, relating to lesser penalties for small companies and one person companies, to all provisions of the Act which attract monetary penalties and also extend the same benefit to Producer Companies and start-ups.

11. New benches of NCLAT

To set up benches of the National Company Law Appellate Tribunal.

12. No penalty for delay in filing financials for a certain period

To provide for a window within which penalties shall not be levied for delay in filing annual returns and financial statements in certain cases.

13. Periodical filings of financials

To provide for specified classes of unlisted companies to prepare and file their periodical financial results.

14. Clarify the jurisdiction of trial court

To clarify the jurisdiction of trial court on the basis of place of commission of offence under section 452 of the Act for wrongful withholding of property of a company by its officers or employees, as the case may be.

15. New chapter on Producer companies

To incorporate a new Chapter XXIA in the Act relating to Producer Companies, which was earlier part of the Companies Act, 1956.

A copy of CAB2020 detailing the aforementioned changes with the explanatory notes is [available here](#).

ELP Comments

'Ease of doing business' has been one of the key agendas of the present Government. The amendments such as decriminalization, speedy rights issue, listing overseas, etc. in CAB2020 are a big step towards achieving this objective. One of the biggest takeaways from CAB2020 is to decriminalize the offences in case of defaults which can be determined objectively and which, otherwise, lack the element of fraud or do not involve larger public interest. These provisions were taken on board from the recommendations made by the Company Law Committee formed for the purpose which had submitted its report on November 14, 2019. In addition to the Companies Act, 2013, the Government is also proposing to decriminalize minor offences under various other statutes. These are laudable efforts and will surely be welcomed by the industry.

We trust you will find this an interesting read. For any queries or comments on this update, please feel free to contact us at insights@elp-in.com

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