



Ministry of Corporate Affairs (MCA) enforces substantial provisions of the Companies (Amendment) Act, 2020 & revamped CSR norms

INSIGHTS

January 23, 2021

MCA has enforced various other provisions of the Companies (Amendment) Act, 2020 (CAA), with effect from January 22, 2021. Additionally, in the context of corporate social responsibility (CSR) norms: (a) amendments introduced under the Companies (Amendment) Act, 2019 in section 135 have been enforced with effect from January 22, 2021; and (b) Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021 have been notified. Following is the summary of the afore-mentioned changes:

1. **Certain companies not to be treated as listed companies - Proviso to section 2(52)**: Certain classes of companies can be prescribed which shall not be considered as listed companies;
2. **Expedited rights issue – Section 62(1)(a)**: Section 62 required that the rights offer should be kept open for a minimum 15 days and not exceeding 30 days from the date of offer, and if no response is received during that period, the offer shall be deemed to have been declined. The amendment will now enable the Central Government to prescribe lesser number of days;
3. **Exemptions from compliance with beneficial ownership related provisions – new section 89(11)**: Certain class of persons can be exempted from complying with the requirements of section 89 relating to declaration of beneficial interest in shares, if it is considered necessary to grant such exemption in the public interest;
4. **Exemptions from filing resolutions for banking/ NBFCs/ housing finance companies – section 117(3)(g)**: Exemptions given to banking companies, certain prescribed classes of NBFCs and housing finance companies from filing resolution passed to grant loans, or give guarantee or provide security in respect of loans under section 179 (3)(f) in the ordinary course of its business, under section 117;
5. **Periodical filings of financials for certain unlisted companies – new section 129A**: The Central Government now requires certain prescribed classes of unlisted companies: (a) to prepare the financial results of the company on such periodical basis and in prescribed form; (b) to obtain approval of the Board of Directors and complete audit or limited review of such periodical financial results in prescribed manner; and (c) file a copy with the ROC within a period of 30 days of completion of the relevant period;
6. **Treatment of unspent amount, relaxed CSR provisions & stringent CSR penalties – section 135**:
 - A. **Provisions under Companies (Amendment) Act, 2019**: Following provisions have been enforced wef January 22, 2021: (i) in case the unspent amount does not relate to any ongoing project, unspent amounts to be transferred to a Fund specified under Schedule VII within 6 months of the expiry of the financial year; (ii) in case the unspent amount relates to any ongoing project, it should be transferred by the company within 30 days from the end of the financial year to a special account to be opened by the company in that behalf for that financial year in any scheduled bank to be called the Unspent Corporate Social Responsibility Account; (iii) such amount shall be spent by the company in pursuance of its obligation towards the Corporate Social Responsibility Policy within a period of 3 financial years from the date of such transfer, failing which, the company shall transfer the same to a Fund specified in Schedule VII, within 30 days from the date of completion of the third financial year; (iv) Central Government given the power to issue directions to a company or class of companies as it considers necessary to ensure compliance of provisions of section 135; (v) Penal provisions – these have been replaced by the changes introduced under the Companies (Amendment) Act, 2020, as mentioned below;
 - B. **Provisions under Companies (Amendment) Act, 2020**: Following provisions have been enforced wef January 22, 2021: (i) if a company has spent excess amount in any financial year, beyond the 2% statutorily mandated CSR contribution, then such company can set-off excess amount of CSR spent for 3 immediate succeeding financial years; (ii) requirement of constituting a CSR Committee is exempted in case the amount to be spent by the company does not exceed Rs. 50,00,000; (iii) stringent penalty provisions for breach of section 135 requirements are enforced against the company as well as officer in default. Now, if a company is in default in complying with the provisions of section 135(5) and 135(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, or Rs. 1,00,00,000, 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, or the Unspent Corporate Social Responsibility Account, or Rs. 2,00,000, whichever is less;

C. Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021:

- (a) **New definitions:** New definitions of terms such as administrative overheads, CSR, CSR Policy, International Organisation, Net Profit, Ongoing Project, Public Authority, have been introduced;
 - (b) **Implementation of CSR Policy:** CSR activities to undertaken by the company itself or through: (i) a company established under section 8, or a registered public trust or a registered society, registered under section 12A and 80 G of the Income-tax Act, 1961, established by the company, either singly or along with any other company, or (ii) a company established under section 8 or a registered trust or a registered society, established by the Central Government or State Government; or (iii) any entity established under an Act of Parliament or a State legislature; or (iv) a company established under section 8, or a registered public trust or a registered society, registered under section 12A and 80G of the Income-tax Act, 1961, and having an established track record of at least three years in undertaking similar activities.
 - (c) **Registration of entities with the Central Government:** Every entity, which intends to undertake any CSR activity, shall register itself with the Central Government by filing the form CSR-1 electronically with the ROC, with effect from the April 1, 2021, Provided that this shall not affect the CSR projects or programmes approved prior to the April 1, 2021.
 - (d) **Certification:** The Board of a company shall satisfy itself that the funds so disbursed have been utilised for the purposes and in the manner as approved by it and the CFO or the person responsible for financial management shall certify to the effect;
 - (e) **Annual action plan by CSR Committee:** The CSR Committee shall formulate and recommend to the Board, an annual action plan in pursuance of its CSR policy, which shall include: (a) the list of CSR projects or programmes that are approved to be undertaken in areas or subjects specified in Schedule VII; (b) the manner of execution of such projects or programmes; (c) the modalities of utilisation of funds and implementation schedules for the projects or programmes; (d) monitoring and reporting mechanism for the projects or programmes; and (e) details of need and impact assessment, if any, for the projects undertaken by the company;
 - (f) **CSR expenditure:** (i) administrative overheads cannot exceed 5% of total CSR expenditure of the company for the financial year; (ii) any surplus arising out of the CSR activities shall not form part of the business profit of a company and shall be ploughed back into the same project or shall be transferred to the Unspent CSR Account or transfer such surplus amount to a Fund specified in Schedule VII, within a period of 6 months of the expiry of the financial year; (iii) where a company spends an amount in excess, such excess amount may be set off up to immediate succeeding three financial years subject to certain conditions; (iv) CSR amount may be spent by a company for creation or acquisition of a capital asset, subject to certain conditions;
 - (g) **CSR Reporting:** (a) an annual report on CSR containing detailed particulars; (b) in case of a foreign company, the balance sheet shall contain an annual report on CSR containing detailed particulars; (c) every company having average CSR obligation of Rs. 10,00,00,000 or more, in the three immediately preceding financial years, shall undertake impact assessment, through an independent agency, of their CSR projects having outlays of Rs. 1,00,00,000 or more, and which have been completed not less than one year before undertaking the impact study;
 - (h) **Disclosure on website:** Composition of the CSR Committee, CSR Policy and Projects approved by the Board are required to be disclosed website, if any, for public access;
 - (i) **Unspent fund:** Until a fund is specified in Schedule VII for the purposes of section 135(5) and (6), the unspent CSR amount shall be transferred by the company to any fund included in schedule VII.
7. **Exemption from penalty in case of annual returns and financial statements – section 454:** In case the default relates to non-compliance of section 92(4) (*statutory timelines to file annual return*) or section 137(1) and (2) (*statutory timelines to file financial statements*) and such default has been rectified either prior to, or within 30 days of, the issue of the notice by the adjudicating officer, no penalty shall be imposed in this regard and all proceedings in respect of such default shall be deemed to be concluded;
 8. **Lesser penalty for start-ups, one-person companies, small companies and producer companies – section 446B:** Applicability of section 446B relating to lesser penalties extended to start-ups and producer companies;
 9. **Exemption to foreign companies or companies incorporated outside India from complying with certain provisions of Chapter XXII – section 379, and new section 393A:** The Central Government can now by notification, exempt any class of: (a) foreign companies; or (b) companies incorporated or to be incorporated outside India, whether the company has or has not established, or when formed may or may not establish, a place of business in India, from any of the provisions of Chapter XXII (*Chapter applicable to Companies incorporated outside India*);
 10. **Constitution of NCLAT – restrictions on number removed – section 410:** The restriction on the appointment of the number of judicial and technical members in the National Company Law Appellate Tribunal (**NCLAT**) by the Central Government has been removed;
 11. **New benches of NCLAT – new section 418A:** The powers of NCLAT may be exercised by the benches thereof to be constituted by the Chairperson. The benches of the NCLAT shall ordinarily sit at New Delhi or such other places as the Central Government may, in consultation with the Chairperson, notify and the Central Government may, by notification, after consultation with the Chairperson,

establish such number of benches of the NCLAT, as it may consider necessary, to hear appeals against any direction, decision or order referred to in section 53A of the Competition Act, 2002 and under section 61 of the Insolvency and Bankruptcy Code, 2016;

12. **Special Court jurisdiction excluded for wrongful withholding of property – section 435:** The Central Government may, for the purpose of providing speedy trial of offences under the Companies Act, 2013, except under section 452 (punishment for wrongful withholding of property), establish or designate as many Special Courts as may be necessary;
13. **Changed penalty requirements for wrongful withholding of property – section 452:** Imprisonment under section 452 will not be ordered for wrongful possession or withholding of a dwelling unit, if the company has not paid certain statutory dues to that officer or employee,;

Enforcement notifications dated January 22, 2021 for enforcing provisions of the Companies (Amendment) Act, 2020 and Companies (Amendment) Act, 2019 are available [here](#) and [here](#), respectively. The Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021 dated January 22, 2021 is [available here](#).

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

Disclaimer: The information provided in this update is intended for informational purposes only and does not constitute legal opinion or advice. Readers are requested to seek formal legal advice prior to acting upon any of the information provided herein. This update is not intended to address the circumstances of any particular individual or corporate body. There can be no assurance that the judicial/quasi-judicial authorities may not take a position contrary to the views mentioned herein.



ECONOMIC
LAWS
PRACTICE
ADVOCATES & SOLICITORS

MUMBAI | NEW DELHI | BENGALURU | AHMEDABAD | PUNE | CHENNAI

Email: Insights@elp-in.com

© Economic Laws Practice 2021