

COMPANIES (AMENDMENT) ACT, 2020

Introduction:

The Companies (Amendment) Act, 2020 (“**Amendment Act**”) has received the consent of Hon’ble President on 28th September 2020 and shall come into force from the date of its publication in the official gazette i.e. on 28th September 2020.

The Amendment Act provides for (i) decriminalization of various penal provisions by removing imprisonment for various offences; (ii) substitution of fine with penalty; (iii) empowering Central Government to exclude, in consultation with the Securities and Exchange Board of India, certain class of companies from the definition of listed companies, mainly for listing of debt securities; (iv) 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 case; (v) to exempt any class or classes of persons from complying with the requirement of section 89 in relation to declaration of beneficial interest in shares; (vi) reduction of timeline for applying for rights issue of shares as per section 62 of the Companies Act, 2013 (“**Act**”); (vii) to extend exemptions to certain classes of non-banking finance companies and housing finance companies from filing resolutions under section 117 of the Act; (viii) to amend provisions relating to CSR; and (ix) introduction of section 378A to 378U to ensure compliances and governance framework in relation to Producer companies.

Overview of the Amendment Act:

Some of the key changes introduced in the Amendment Act are as follows:

1. Decriminalization of certain offences:

The following 16 sections where imprisonment provisions in case of default is deleted are as follows:

- a. Section 8(11) – Formation of company for charitable objects
- b. Section 26(9) – Matters to be stated in prospectus
- c. Section 40(5) – Securities to be dealt in stock exchange
- d. Section 48(5) – Variation of shareholders right
- e. Section 59(5) – Rectification of register of members
- f. Section 68(11) – Power of company to purchase its own securities
- g. Section 71(11) – Debentures
- h. Section 128(6) – Books of accounts etc.
- i. Section 147(1) & (2) – Punishment for contravention of section 139 to 146
- j. Section 167(2) – Vacation of office of director
- k. Section 242(8) – Power of Tribunal
- l. Section 243(2) – Consequence of termination or modification of certain agreement

- m. Section 302(3) – Dissolution of company by Tribunal
- n. Section 347(4) – Disposal of books and papers of the company
- o. Section 392 – Punishment for contravention of Chapter XXII, company incorporated outside India
- p. Section 441(5) – Compounding

The Amendment Act has further revised the provisions of 21 sections as provided hereinbelow in which certain offences wherein fine was levied has been revised to penalty and such default will be dealt in by the Registrar or Regional Director:

- a. Section 56 – Transfer or Transmission of Shares
- b. Section 86 – Punishment for Contravention on Share Capital
- c. Section 88 – Register of Members
- d. Section 89 – Beneficial Interest
- e. Section 90 – Register of SBO
- f. Section 92 – Annual Return
- g. Section 105 – Proxies
- h. Section 124 – Unpaid Dividend Account
- i. Section 134 – Financial Statement/ Board’s Report
- j. Section 135 – Corporate Social Responsibility
- k. Section 143 – Auditors Liability
- l. Section 172 – Punishment for contravention of chapter XI
- m. Section 178 – Nomination and Remuneration Committee
- n. Section 184 – Disclosure of Interest of Director
- o. Section 187 – Investment of Company in its own name
- p. Section 188 – Related Party Transaction
- q. Section 204 – Secretarial Audit Liability
- r. Section 232 – Merger and Acquisition
- s. Section 247 – Registered Valuer
- t. Section 405 – Power of Central Government to direct company to furnish information
- u. Section 450 – Punishment where no specific penalty or punishment provided

2. Corporate Social Responsibility

- a. The Amendment Act exempts companies from the requirement of constitution of the CSR committee whose spending does not exceed fifty lakh rupees; and
- b. The amount spent in excess of the requirements may be allowed for set off for such number of subsequent financial years as may be prescribed.

3. Section 62 - Further issue of shares

As per the existing provisions of the Act, the time period for providing offer letter to the existing shareholders under rights issue process is 15 days to 30 days within which the offer, if not accepted, shall be deemed to have been declined.

The Amendment Act lays down such other time period which may be less than the timeliness prescribed.

4. Section 129A - Periodical financial results

This section has been newly introduced which prescribes specified classes of unlisted companies to prepare and file their periodical financial results at a frequency, as may be notified from time to time.

5. Section 149 - Company to have board of directors

The existing provisions provide that an independent director are not subject to stock options and are entitled to sitting fees, profit related commission and reimbursement of expenses incurred in attending meetings as per section 197(5) of the Act.

The Amendment Act has inserted a proviso which states that an independent director may receive remuneration in accordance with the provisions of Schedule V.

6. Section 197 - Overall Maximum Managerial Remuneration and Managerial Remuneration in Case of Absence or Inadequacy of Profits

The Amendment Act has aligned Section 197(3) of the Act with Section 149(9) of the Act to include non-executive directors and independent directors within the ambit of remuneration payable as per Schedule V in case of no profits or inadequate profits.

Conclusion:

The Amendment Act aims to relax various provisions of the Act thereby focusing on ease of doing business and a flexible framework for corporates and various stakeholders.

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