

## Companies Act Amended – Further Advances In The Ease Of Doing Business

written by Pranati Pandit | February 16, 2021



*“There has been a debate about building into statutes, criminal liability for acts that are civil in nature. Hence, for Companies Act, certain amendments are proposed to be made that will correct this.”* <sup>[1]</sup>

The views expressed in this excerpt from India's 2020-2021 Union Budget Speech have been incorporated in the Ministry of Corporate Affairs' ("MCA") Companies Act 2020 Amendment, 2013. The MCA has facilitated the ease of doing business in India by introducing significant compliance and other relaxations to companies, as well as to their officers and employees.

### Background

On the 28<sup>th</sup> of September 2020, the MCA introduced the Companies Act 2020 Amendment<sup>[2]</sup> ("Amendment") to amend the Companies Act, 2013 ("Act"). On the 26<sup>th</sup> of January, 2021, the MCA notified,<sup>[3]</sup> and thus brought into force, certain provisions under the Amendment with effect from the 22<sup>nd</sup> of January, 2021. The notified amendments to the Act are as follows:

- New Definition of "listed company"

The newly amended Section 2(52) of the Act specifically excludes certain classes of companies, listing certain classes of securities<sup>[4]</sup> from the definition of "listed companies" under the Act. This provides such exempted, unlisted companies with an opportunity to publicly list certain securities without being classified as "listed companies." Further, such unlisted companies will not be burdened with the plethora of compliances applicable to listed companies under the SEBI<sup>[5]</sup> Act, 1992, and Rules and Regulations thereunder, despite having publicly listed their securities.

- Additional Compliances for Unlisted Companies

The insertion of a new Section 129A in the Act has placed a requirement on certain classes of companies to prepare, attain board approval for, and audit the financial results of such companies on a periodical basis. These companies will further be required to file a copy of such periodical financial results with the Registrar of Companies ("RoC") within the prescribed period.<sup>[6]</sup>

- Modification of Rights Issue Timeline:

An amendment to Section 62(1)(a)(i) of the Act provides for a company to increase its share capital giving its existing shareholders a period of less than 15 days to subscribe to such further issue of shares. The MCA is yet to prescribe this reduced period within which the offer, if not accepted by such

shareholder(s), shall be deemed to have been declined by such shareholder(s).

- **Respite from Filing Requirements for Companies:**

An amendment to Section 117(3) of the Act has exempted banking companies from filing requirements with the RoC in respect of a resolution passed to grant loans, give a guarantee, or provide security for loans in the ordinary course of business. This exemption from filing compliances may further be extended to Non-Banking Financial Companies ("NBFC") registered under Chapter IIIB of the Reserve Bank of India Act, 1934, and to housing finance companies registered under the National Housing Bank Act, 1987.[7]

The insertion of a new clause (11) to Section 89 of the Act has empowered the central government to exempt any class or classes of persons holding beneficial interest in the shares of a company from being required to file declarations to that effect with the company.

In the event a company defaults in holding its Annual General Meeting ("AGM"), and subsequently does not file financial statements and other requisite documents with the RoC, in accordance with the respective timelines for the same prescribed by Sections 92(4) and 137(1) and (2) of the Act, but rectifies these defaults within 30 days of a notice issued in respect of such violations by an Adjudicating Officer under Section 454 of the Act, then such company shall not be liable for any penalties imposed by the Adjudicating Officer, and any proceedings initiated against these companies under Section 454 shall be deemed to be concluded.

- **Corporate Social Responsibility ("CSR"): Decriminalization of Offences and other Relaxations**

An amendment to Section 135 of the Act permits companies to set-off their excess CSR spending[8] unto succeeding financial years. This shall bring significant relief to companies unable to adjust their CSR spending, thereby providing monetary relief. Further, the Amendment has substantially altered the penalties applicable to companies that have not complied with their CSR obligations. Companies are now liable to a penalty of twice the amount statutorily required to be spent on CSR activities, or Rs. 1 crore, whichever is less.

The Amendment has dispensed with the penalty of imprisonment applicable to officers of a company in default of its CSR obligations and has limited such officers' liability to a fine amounting to 1/10<sup>th</sup> of the sum required to be spent on the company's CSR activities, or Rs. 2 lakhs, whichever is less. Additionally, companies that spend Rs. 50 lakhs and less in respect of their CSR activities are no longer required to constitute a CSR Committee. Directors of such companies may now discharge the functions normally performed by a CSR Committee.

- **Reduction in Penalties for Certain Offences, Companies under the Act**

An amendment to Section 452 of the Act has exempted officers and employees wrongfully withholding property belonging to a company from the penalty of imprisonment if the following conditions are satisfied:

1. The property is a dwelling unit; and
2. The company has not made payments or contributions, in respect of such offending officer or employee for:
  3. provident fund; or
  4. gratuity; or
  5. pension fund; or
  6. any other fund for the welfare of the company's officers or employees; or

7. compensation under the Workmen's Compensation Act, 1923 in respect of death or disablement.

Further, an amendment to Section 435 of the Act has excluded officers and employees wrongfully withholding monetary or other property belonging to a company from the jurisdiction of Special Courts.<sup>[9]</sup>

Section 446B of the Act has been substituted in its entirety by the Amendment. The new Section 446B has significantly reduced penalties for offences and/or non-compliances by one person companies, small companies, start-up companies, producer companies, and their respective officers. Fines imposed on such classes of companies and their officers have been limited to one-half of the penalty specified in the Act for the offence. Any fine imposed on such companies is subject to a maximum amount of Rs. 2 Lakh, and officers' liability has been capped at a maximum amount of Rs. 1 Lakh.

- Extension of Central Government's Power to Exempt Foreign Companies from Companies Act Applicability

An amendment to Section 379 of the Act and the insertion of a new Section 393A has empowered the central government to exempt any class of foreign companies from any or all of the provisions under Chapter XXII of the Act.

- Amendments in Respect of the NCLAT

An amendment to Section 410 of the Act empowers the National Company Law Appellate Tribunal ("NCLAT") to hear appeals against decisions of the Competition Commission of India ("CCI") in respect of matters specified in Section 53A of the Competition Act, 2002 ("Competition Act"). Earlier, the jurisdiction of the NCLAT in this regard was restricted to appeals against the CCI's decisions under Section 53N<sup>[10]</sup> of the Competition Act. Further, the Amendment has done away with the maximum limit of 11 judicial and technical members who may constitute the NCLAT.

Further, a new section 418A has been inserted in the Act, whereby the Chairperson of the NCLAT may constitute additional benches of the NCLAT, which will ordinarily sit in New Delhi. Each additional NCLAT bench shall be constituted by at least one Technical Member and one Judicial Member.

#### Observations

The Amendment brings in both, pros and cons.

Some of the pros are as follows:

- Certain private companies may now list their securities without being classified and regulated as publicly listed companies.
- A modification in the rights issue timeline should effectively accelerate the process of increasing the share capital of a company. This in turn will facilitate the ease of doing business for companies increasing their share capital.
- Amendments in respect of the NCLAT, and in particular, the proposed increase in the number of NCLAT benches should lessen the caseload burden faced by existing benches of the NCLAT. These additional benches should also be able to sufficiently accommodate the newly expanded jurisdiction of the NCLAT in respect of appeals against CCI decisions under Section 53A of the Competition Act.
- Foreign companies carrying out business in India may now, if so directed by the Central Government, be wholly exempted from compliance requirements and penalties applicable to them under Chapter XXII of the Act. This move by the Central Government should incentivize foreign companies to invest in India.
- Amendments in respect of CSR, and in particular the reduction in penalties

for companies and officers in default of their CSR obligations may prove to be greatly beneficial from a company-centric perspective. The most significant aspect of the Amendment in this regard is the removal of imprisonment as a penalty for the officers of non-compliant companies.

Some of the cons of the Amendment are as follows:

- The Amendment has placed additional compliance burdens on certain companies, such as the filing of financial results on a periodical basis with the RoC.
- The reduction in penalties for one-person companies, small companies, start-up companies, producer companies, and their respective officers may increase the volume of non-compliances of the provisions of the Act by such classes of companies.
- The introduction of reduced penalties for CSR non-compliances by companies may result in more companies and their officers defaulting on their CSR obligations under the Act.

#### Conclusion

The newly amended provisions of the Act have provided significant advantages to companies, as well as to their officers and employees. These advantages, which range from reduced reporting and filing requirements, to lower penalties for a myriad of offences under the Act, will facilitate the ease of doing business for companies incorporated in, as well as outside India. Further, the proposed constitution of additional NCLAT benches will, in addition to accommodating the increasing caseload of the Appellate Tribunal, aid in the speedy disposal of appeals preferred by companies and their officers before this Hon'ble Tribunal.

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- [1] Budget Speech for FY 2020-2021, dated 1<sup>st</sup> February, 2020: <https://www.indiabudget.gov.in/doc/bspeech/bs202021.pdf>
  - [2] [https://www.mca.gov.in/Ministry/pdf/AmendmentAct\\_29092020.pdf](https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf)
  - [3] [http://www.mca.gov.in/Ministry/pdf/CommencementNotification\\_23012021.pdf](http://www.mca.gov.in/Ministry/pdf/CommencementNotification_23012021.pdf)
  - [4] Classes of Companies and Securities yet to be prescribed by the Central Government
  - [5] Securities and Exchange Board of India Act, 1992
  - [6] Within a period of 30 days from the completion of the relevant period for which the periodical financial results are required to be filed.
  - [7] As may be prescribed in consultation with the RBI (NBFCs) and the National Housing Bank (housing finance companies)
  - [8] An amount in excess of 2% of the company's average net profits made during the three immediately preceding financial years.
  - [9] Special courts have been established by the Central Government to conduct speedy trials for offences under the Companies Act and Rules thereunder.
  - [10] Awarding of compensation by the Competition Commission of India
  - [11] companies act 2020 amendment

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