

Highlights of amendments under The Companies (Amendment) Bill, 2020

September, 23 2020

In brief

the Lok Sabha on 19th September, 2020 passed a bill to further amend around 48 sections of the Companies Act, 2013 by decriminalizing various non-compoundable offences in case of defaults, but not involving frauds, omitting imprisonment for various offences which were considered procedural and technical in nature.

The bill comes at a time when companies are reeling under stress due the coronavirus pandemic.

The Companies (Amendment) Bill, 2020 was passed by the Lower House through voice vote. The (4th amendment) Bill was introduced in the lower house in May, 2020 by Finance and Corporate Affairs Minister Nirmala Sitharaman.

Relevant provisions

The Companies (Amendment) Bill, 2020 and rules framed thereof.

In detail

The bill removes the penalty, imprisonment for 9 offenses which relate to non-compliance with orders of the national company law tribunal (NCLT), and reduces the amount of fine payable in certain cases. These include matters relating to winding-up of companies, default in publication of NCLT order relating to reduction of share capital, rectification of registers of security holders, variation of rights of shareholders and payment of interest and redemption of debentures.

The CAB, 2020 based on the CLC Report provides majorly for the following:

1. Decriminalize certain offences under the Companies Act, 2013 in case of defaults which can be determined objectively and which otherwise lack any element of fraud or do not involve larger public interest;
2. To empower the CG to exclude, in consultation with the SEBI, certain class of companies from the definition of "listed company", mainly for listing of debt securities
3. 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;
4. To exempt any class of persons from complying with the requirements of section 89 relating to declaration of beneficial interest in shares;
5. To reduce timelines for applying for rights issues so as to speed up such issues under section 62 to extend exemptions to certain classes of non-banking financial companies and housing finance companies from filing certain resolutions under section 117;
6. To further amend provisions relating to CS

Here is a quick snapshot of the major highlights of the CAB, 2020:

Clause No. of the Bill	Section of the Act and Title	Proposed Amendment
Clause 2	Definition of Listed company Clause (52) of section 2	To insert a new proviso that enables the Central Government to exclude certain class of companies, which have listed or intend to list such class of securities, as may be prescribed in consultation with SEBI, from the definition of listed companies.
Clause 3	Formation of Companies with Charitable Objects, etc. Sub-section (11) of section 8	To omit the punishment of imprisonment in relation to an officer who is in default for the offence mentioned therein.
Clause 4	Rectification of Name of Company Clause (b) of sub-section (1) of section 16 Sub-section (3) of section 16	To reduce the time limit of compliance of change in name of company in case of resemblance of name to a registered trade mark from six months to three months for the direction provided by the Central Government in the provision. The amendment proposes to provide for allotment of a new name to the company by the Central Government, in case the company is in non-compliance of section 16(1) of the Act. The amendment proposes deletion of imposing fine for non-compliance for such default.
Clause 5	Public Offer and Private Placement. To insert new sub-sections (3) and (4) in section 23	To allow a class of public companies to list certain class of securities on stock exchanges in permissible foreign jurisdictions . To empower the Central Government to exempt, by notification, any class or classes of public companies referred to in above inserted section from any of the provisions of Chapter III, Chapter IV, section 89, section 90 or section 127 of the Act.
Clause 6	Matters to be Stated in Prospectus sub-section (9) of section 26	To omit the punishment of imprisonment in relation to every person who is knowingly a party to the issue of prospectus in contravention of the said section.
Clause 7	Securities to be Dealt with in Stock Exchanges sub-section (5) of section 40	To remove punishment of imprisonment in case of any default in complying with the provisions of the said section.
Clause 8	Variation of Shareholders' Rights. Omit sub-section (5) of section 48	To remove the penal provisions in case of any default in complying with said section.

Clause 9	Transfer and Transmission of Securities sub-section (6) of section 56	To amend subsection thereby imposing penalty in place of fine of rupees fifty thousand for company and its officers in default in case of failure to comply with sub-sections (1) to (5).
Clause 10	Rectification of Register of Members to omit sub-section (5) of section 59	To remove the penal provisions in case of any default in complying with the order of the Tribunal under the said section
Clause 11	Further Issue of Share Capital sub-clause (i) of clause (a) of sub-section (1) of section 62	To enable the Central Government to provide by rules, such days lesser than fifteen for deeming the decline of the offer made under the said provision. The amendment reduces the range of time limit from the date of the offer within which the offer, if not accepted, shall be deemed to have been declined.
Clause 12	Notice to be given to Registrar for Alteration of Share Capital sub-section (2) of section 64	To modify the amount of penalty provided therein in case of default made in complying with sub-section (1).
Clause 13	Reduction of Share Capital to omit sub-section (11) of section 66	To remove the penal provisions in case of any default in complying with sub-section (4) relating to publication of order of confirmation of the reduction of share capital by the Tribunal in such manner as the Tribunal may direct.
Clause 14	Power of Company to Purchase its Own Securities sub-section (11) of section 68	To omit the punishment of imprisonment in relation to an officer of the company who is in default for the offence specified therein.
Clause 15	Debentures to omit sub-section (11) of section 71	To remove the penal provisions in case of any default by officer of the company in complying with the order of the Tribunal under the said section.
Clause 16	Punishment for Contravention to substitute sub-section (1) of section 86	To omit the punishment of imprisonment in relation to an officer of the company who is in default and reduced penalty in place of fine, in case of failure to comply with the provisions of Chapter VI of the Act.
Clause 17	Register of Members, etc. to substitute sub-section (5) of section 88 of the Act	To reduce penalty in place of fine, in case of failure to comply with the provisions of sub-sections (1) and (2).
Clause 18	Declaration in Respect of Beneficial Interest in any Share to substitute sub-section (5) and (7) and insert sub-section (11) in section 89	To provide for penalty in place of fine, for failure in making a declaration or in filing of a return, as the case may be, under sub-sections (1), (2), (3) or (6). To insert a new sub-section (11) to enable the Central Government to notify a class or classes of persons who shall be unconditionally or subject to such conditions, as may be specified in such notification, be exempted from complying with the said section, except sub-section (10).

Clause 19	Register of significant beneficial owners in a company to substitute sub-sections (10) and (11) of section 90	To provide for penalty in place of fine , for failure in making a declaration, maintaining register, filing of information, or taking necessary steps, as the case may be, in sub-sections (1), (2), (4) or (4A).
Clause 20	Annual Return to amend sub-section (5) and (6) of section 92	To modify the amount of penalty provided therein in case of default made in complying sub-section (4) of the said section as per amendment to sub-section (5). A PCS certifying annual return not in conformity with the section or rules made thereunder shall be liable to a penalty in place of fine of two lakh rupees as per amendment to sub-section (6).
Clause 21	Proxies sub-section (5) of section 105	To reduce penalty in place of fine in case, invitations for proxies are issued at expense of the company.
Clause 22	Resolutions and Agreements to be Filed to substitute sub-section and amend sub-section of section 117	To modify the amount of penalty for company and its officers in default for failure to comply with sub-section (1) of said section. To substitute the second proviso to clause (g) of sub-section (3) of the said section to enable the Central Government to exempt any class of non-banking financial companies registered under Chapter IIIB of Reserve Bank of India Act, 1934 and any class of housing finance companies registered under the National Housing Bank Act, 1987 from filing of resolutions passed to grant loans or give guarantees or to provide security in respect of loans under clause (f) of sub-section (3) of section 179 of the Act in the ordinary course of their business.
Clause 23	Unpaid Dividend Account to substitute sub-section (7) of section 124	To modify penalty in place of fine for company and its officers in default for failure to comply with the provisions of the said section.
Clause 24	Books of Account, etc., to be kept by Company	To omit the punishment of imprisonment in relation to an officer who is in default for the offence mentioned therein.
Clause 25	Periodical financial results Insertion of a new section 129A	To empower the Central Government to provide by rules such class or classes of unlisted companies to prepare periodical financial results of the company, audit or limited review thereof and their filing with Registrar within thirty days from the end of that period as specified in the rules.
Clause 26	Financial Statement, Board's Report, etc. to substitute sub-section (8) of section 134	To reduce penalty in place of fine on the company and its officer in default and omit the punishment of imprisonment in relation to its officers in default in case of failure in complying with said section.

Clause 27	Corporate Social Responsibility sub-section (5) of section 135 to substitute sub-section (7) of the said section	<p>Proviso inserted thereto to allow companies, which have spent an amount in excess of the requirement provided under the said sub-section, to set off such excess amount out of their obligation in the succeeding financial years in such manner as may be provided by rules.</p> <p>To provide that if a company defaults in complying with sub-sections (5) or (6) of the said section, such company and every officer of such company who is in default shall be liable to a penalty in place of fine.</p> <p>To provide that the requirement of constitution of Corporate Social Responsibility Committee shall not be applicable, in case the amount required to be spent under sub-section (5) of the said section does not exceed fifty lakh rupees.</p>
Clause 28	Copy of Financial Statement to be Filed with Registrar sub-section (3) of section 137	To modify the amount of penalty in case of default made in complying with sub-section (1) or sub-section (2) of the said section.
Clause 29	Removal, Resignation of Auditor and Giving of Special Notice sub-section (3) of section 140	To modify the amount of penalty , in case of default made in complying with sub-section (2) of the said section by the auditor
Clause 30	Powers and Duties of Auditors and Auditing Standards to substitute sub-section (15) of section 143	To modify penalty in place of fine on an auditor, cost accountant or company secretary in practice who fail to comply with sub-section (12) of the said section. Specific penalties proposed for listed and unlisted companies.
Clause 31	Punishment for Contravention sub-section (1) and (2) of section 147	To omit the punishment of imprisonment in relation to an officer who is in default for the offence mentioned therein. To omit the reference of section 143 mentioned in sub-section (2).
Clause 32	Company to have Board of Directors sub-section (9) of section 149	To insert a new proviso in sub-section (9) which provides that an independent director may receive remuneration , if a company has no profits or inadequate profits in accordance with Schedule V of the Act.
Clause 33	Number of Directorships to substitute sub-section (6) of section 165	To modify the amount of penalty , in case of a default committed under the said section.
Clause 34	Vacation of Office of Director to amend sub-section (2) of section 167	To omit the punishment of imprisonment for the offence mentioned therein.
Clause 35	Punishment to substitute section 172	To modify penalty in place of fine , in case of default in complying with the provisions of Chapter XI of the Act for which no specific punishment or penalty has been provided.
Clause 36	Nomination and Remuneration Committee and Stakeholders Relationship Committee sub-section (8) of section 178	To modify penalty in place of fine and omit the punishment of imprisonment in relation to an officer of the company in case of any default in compliance with sections 177.

Clause 37	Disclosure of Interest by Director sub-section (4) of section 184	To reduce penalty in place of fine in case of default of sub-sections (1) and (2) and deletion of provision for imprisonment.
Clause 38	Investments of Company to be Held in its Own Name to substitute sub-section (4) of section 187	To reduce penalty in place of fine in case of default by a company or officer of the company in complying with the provisions of the said section and deletion of provision for imprisonment.
Clause 39	Related Party Transactions clause (i) and (ii) of sub- section (5) of section 188	To replace the punishment for imprisonment or fine with penalty and to amend clause (ii) of the said sub-section for penalty.
Clause 40	Overall Maximum Managerial Remuneration and Managerial Remuneration in Case of Absence or Inadequacy of Profits sub-section (3) of section 197	To make provision that if a company fails to make profits or makes inadequate profits in a financial year, any non-executive director of such company, including an independent director , shall be paid remuneration in accordance with Schedule V of the Act.
Clause 41	Secretarial Audit for Bigger Companies sub-section (4) of section 204	To reduce penalty in place of fine for contravention of the provisions of the said section.
Clause 42	Merger and Amalgamation of Companies to substitute sub-section (8) of section 232	To modify penalty in place of fine and deletion of provision for imprisonment on failure to comply with sub-section (5) of the said section.
Clause 43	Powers of Tribunal sub-section (8) of section 242	To omit the punishment of imprisonment in relation to an officer in default for the offence mentioned therein.
Clause 44	Consequence of Termination or Modification of Certain Agreements sub-section (2) of section 243	To omit the punishment of imprisonment in relation to an officer in default for the offence mentioned therein.
Clause 45	Valuation by Registered Valuers sub-section (3) of section 247	To reduce penalty in place of fine and deletion of provision for imprisonment of the valuer in case of contravention of the section.
Clause 46	Promoters, Directors, etc., to Cooperate with Company Liquidator to substitute sub-section (2) of section 284 to insert a new sub-section (3)	Deletion of provision for imprisonment for failing to discharge obligations under sub- section (1). To provide that when a person required to assist a Company Liquidator under sub- section (1) of the section does not do so, then the Company Liquidator may make an application to the Tribunal for necessary directions To provide that the Tribunal may direct such person to comply with the directions of the Company Liquidator.
Clause 47	Dissolution of Company by Tribunal to substitute sub-section (3) of section 302 to omit	To provide that the Tribunal shall forward a copy of the order of dissolution to the Registrar, and direct the Company Liquidator to also forward such copy to the

	sub-section (4)	Registrar, who shall record in the register relating to the company a minute of the dissolution of the company. Penal provision on Company Liquidator making a default in forwarding a copy of the order to Registrar is omitted.
Clause 48	Prosecution of Delinquent Officers and Members of Company to omit sub-section (6) of section 342	Omission of penal provision if a person fails or neglects to give assistance required by sub- section (5).
Clause 49	Disposal of Books and Papers of Company sub-section (4) of section 347	Omitting the punishment for imprisonment in relation to a person for the offence mentioned therein.
Clause 50	Information as to Pending Liquidations to substitute sub-section (6) of section 348 to omit sub-section (7).	Deletion of provision for fine and imprisonment. To provide that if a Company Liquidator, who is an Insolvency Professional, is in default in complying with the provisions of the section, the default will be a contravention of the Insolvency and Bankruptcy Code, 2016, and the rules and regulations made thereunder.
Clause 51	Powers of Tribunal to Declare Dissolution of Company Void to substitute sub-section (2) of section 356	Penal provision relating to making a default in forwarding a copy of the order to Registrar is omitted. To provide that the Tribunal shall forward a copy of the order to the Registrar, and direct the Company Liquidator or the person on whose application such order was made to also file a certified copy of the order with the Registrar within thirty days of the order.
Clause 52	To insert a new Chapter XXIA Producer Companies	To insert chapter relating to Producer Companies on similar lines as provided in the Companies Act, 1956.
Clause 53	Application of Act to Foreign Companies to omit the proviso to sub- section (1) of section 379	Omitted.
Clause 54	Punishment for Contravention section 392	To omit the punishment of imprisonment in relation to an officer who is in default for the offence mentioned therein.
Clause 55	Exemptions under this Chapter to insert a new section 393A	To empower the Central Government to exempt any class of foreign companies or companies incorporated or to be incorporated outside India , from any of the provisions of Chapter XXII of the Act by notification to be laid before both Houses of Parliament.
Clause 56	Fee for Filing, etc. to substitute the third proviso to sub-section (1) of section 403	To provide that where there is a default on two or more occasions in submitting, filing, registering or recording of prescribed documents the same shall be done on payment of such higher additional fee as may be provided by rules.

Clause 57	Power of Central Government to Direct Companies to Furnish Information or Statistics to substitute sub-section (4) of section 405	To provide for payment of penalty in place of fine in case a company fails to comply with an order made under sub-section (1) or sub-section (3) of the said section, or furnishes any incorrect information and omission of provision of imprisonment of the officer in default.
Clause 58	Constitution of Appellate Tribunal section 410	Removing the restriction on the number of Judicial and Technical members that the Central Government may appoint in the Appellate Tribunal.
Clause 59	Benches of Appellate Tribunal to insert a new section 418A	To provide for constitution of Benches of the Appellate Tribunal to exercise powers of the Appellate Tribunal and related provisions.
Clause 60	Establishment of Special Courts sub-section (1) of section 435	To provide that the offence under section 452 of the Act shall be excluded from the applicability of section 435 of the Act.
Clause 61	Compounding of Certain Offences to substitute sub-section (5) of section 441	To provide that if any officer or employee of the company fails to comply with the order of Tribunal or Regional Director or any other officer authorized by the Central Government the maximum amount of fine shall be twice the amount provided in the corresponding section in which the punishment for such offence is provided and deletion of provision for imprisonment.
Clause 62	Lesser penalties for certain companies to substitute section 446B	To provide for payment of lesser penalty by a start-up company, Producer Company, One Person Company or small company on failure to comply with provisions of the Act which attract penalties.
Clause 63	Punishment Where No Specific Penalty or Punishment is Provided section 450	To provide for penalty in place of fine in case where a company or any officer of a company or any other person makes contraventions of any provision of the Act for which no penalty or punishment is provided elsewhere in the Act.
Clause 64	Punishment for Wrongful Withholding of Property to insert a proviso in sub-section (2) of section 452	To provide that the imprisonment of officer or employee of the company specified under the said sub-section shall not be ordered in case of wrongful possession or withholding of a dwelling unit is concerned and such officer or employee has not received certain statutory dues from the company.
Clause 65	Adjudication of Penalties sub-section (3) of section 454	To insert a new proviso to provide that no penalty shall be imposed when such default relates to non-compliance of sub-section (4) of section 92 or sub-section (1) or sub-section (2) of section 137 and has been rectified either prior to, or within thirty days of, the issue of the notice by the adjudicating officer.
Clause 66	Repeal of Certain Enactments and Savings to omit the first proviso to sub-section (1) of section 465	Proviso relating to Producer Companies is omitted.



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