

HIGHLIGHTS OF COMPANIES (AMENDMENT) BILL, 2019

The Companies (Amendment) Bill, 2019 was passed by the Rajya Sabha on the 30th day of July, 2019. Earlier the Amendment Bill, 2019 was passed by Lok Sabha on the 27th day of July, 2019. While introducing the Bill in the Lok Sabha, the Hon'ble Finance and Corporate Affairs Minister, Nirmala Sitharaman said, *"the Bill seeks to ensure more accountability and better enforcement to strengthen the corporate governance norms and compliance management in corporate sector as enshrined in the Companies Act, 2013"*.

Background:

- The Companies Act, 2013 (the Act) was enacted with a view to consolidate and amend the law relating to companies.
- In order to review the existing provisions of the Act dealing with the offences and to make recommendations to promote better corporate compliance, the Government of India constituted a Committee in July, 2018.
- The said Committee, after taking the views of several stakeholders, submitted its Report in August, 2018.
- The Committee recommended that the existing rigour of the law should continue for serious offences, whereas the lapses that are essentially technical or procedural in nature may be shifted to in-house adjudication process
- Accordingly, it was proposed to amend certain provisions of the Companies Act, 2013.
- However, in view of the urgency, the Companies (Amendment) Ordinance, 2018 was promulgated on 2nd day of November, 2018.
- To replace the aforesaid Ordinance, a bill, namely, the Companies (Amendment) Bill, 2018 was introduced in the Lok Sabha and passed in the said House on the 4th day of January, 2019.
- However, the said Bill could not be taken up for consideration in the Rajya Sabha.
- In order to give continued effect to the Companies (Amendment) Ordinance, 2018, the President promulgated the Companies (Amendment) Ordinance, 2019 and the Companies (Amendment) Second Ordinance, 2019 on the 12th day of January, 2019 and the 21st day of February, 2019 respectively.

Amendments through the Companies (Amendment) Second Ordinance, 2019

The main reforms undertaken through the Ordinance include the following:

- Re-categorising of offences which are in the category of compoundable offences to an in-house adjudication framework. However, no change has been made in respect of any of the non-compoundable offences.
- Ensuring compliance of the default and prescribing stiffer penalties in case of repeated defaults.
- De-clogging the NCLT by:

- enlarging the jurisdiction of Regional Director (“RD”) by enhancing the pecuniary limits up to which they can compound offences under section 441 of the Act.
 - vesting in the Central Government the power to approve the alteration in the financial year of a company under section 2(41); and
 - vesting the Central Government the power to approve cases of conversion of public companies into private companies.
- Other reforms include re-introduction of declaration of commencement of business provision; greater accountability with respect to filing documents related to creation, modification and satisfaction of charges; non-maintenance of registered office to trigger de-registration process; holding of directorships beyond permissible limits to trigger disqualification of such directors.

Apart from replacing the Second Ordinance 2019, the newly introduced Amendment Bill seeks to provide for certain additional amendments.

AMENDMENTS THROUGH COMPANIES (AMENDMENT) SECOND ORDINANCE, 2019
(As also provided in the Companies (Amendment) Bill, 2019)

(A) Re-categorising of offences:

The list of offences which are re-categorised as defaults carrying civil liabilities which would be subject to an in-house adjudication mechanism, along with the pre-ordinance punishment in each case is as under:

S. No.	Section	Nature of default	Punishment	
			Pre-Ordinance	Post ordinance
1.	Section 53(3) Prohibition of issue of shares at a discount	Prohibition of issue of shares at a discount	Fine or imprisonment or both	Non-compliance with sub-section (3) of Section 53 shall result in the company and any officer in default being liable to a penalty, instead of being punishable with fine or imprisonment or with both.
2.	Section 64(2) Notice to be given to Registrar for alteration of share capital	Failure/delay in filing notice for alteration of share capital	Fine only	Non-compliance with sub-section (1) of Section 64 shall result in the company and any officer in default being liable to a penalty, instead of being punishable with fine.
3.	Section 92(5) Annual return	Failure/delay in filing annual return	Fine or imprisonment or both	Non-compliance with sub-section (4) of Section 92 shall result in: (i) the company being liable to a penalty, instead of being punishable with fine; and (ii) every officer in default being liable to a penalty, instead of being punishable with fine or

				imprisonment or with both.
4.	Section 102(5) Statement to be annexed to notice	Attachment of a statement of special business in a notice calling for general meeting	Fine only	Non-compliance with Section 102 shall result in every promoter, director, manager or other key managerial personnel who is in default being liable to a penalty, instead of being punishable with fine.
5.	Section 105(3) Proxies	Default in providing a declaration regarding appointment of proxy in a notice calling for general meeting	Fine only	Non-compliance with sub-section (2) of Section 105 shall result in every officer in default being liable to a penalty, instead of being punishable with fine.
6.	Section 117(2) Resolutions and Agreements to be filed	Failure/Delay in filing Certain resolutions	Fine only	Non-compliance with sub-section (1) of Section 117 shall result in the company and every officer in default including liquidator of a company, if any, being liable to a penalty, instead of being punishable with fine.
7.	Section 121(3) Report on annual general meeting	Failure/Delay in filing Report on AGM by public listed company	Fine only	Non-compliance with sub-section (2) of Section 121 shall result in the company and every officer in default being liable to a penalty, instead of being punishable with fine.
8.	Section 137(3) Copy of financial statement to be filed with Registrar	Failure/Delay in filing financial statement	Fine or imprisonment or both	Non-compliance with sub-section (1) or (2) of Section 137 shall result in: (i) the company being liable to a penalty, instead of being punishable with fine; and (ii) the managing director and the Chief Financial Officer of the company, if any, and, in the absence of

				the managing director and the Chief Financial Officer, any other director who is charged by the board of directors with the responsibility of complying with the provisions of Section 137, and, in the absence of any such director, all the directors of the company, being liable to a penalty, instead of being punishable with fine or imprisonment or with both.
9.	Section 140(3) Removal, resignation of auditor and giving of special notice	Failure/Delay in filing statement by auditor after resignation	Fine only	Non-compliance with sub-section (2) of Section 140 shall result in the auditor being liable to a penalty, instead of being punishable with fine.
10.	Section 157(2) Company to inform Director Identification Number to Registrar	Failure/Delay by company in informing DIN of director	Fine only	Non-compliance with sub-section (1) of Section 157 shall result in the company and every officer in default being liable to a penalty, instead of being punishable with fine.
11.	Section 159 Punishment for Contravention - in respect of DIN	Contraventions related to DIN	Fine or imprisonment or both	Penalty for default in certain provisions Non-compliance with Section 152 (Appointment of directors), Section 155 (Prohibition to obtain more than one Director Identification Number) and Section 156 (Director to intimate Director Identification Number) shall result in any individual or director of a company in default being liable to a penalty, instead of being punishable with fine or imprisonment.
12.	Section 165(6) Number of Directorships	Accepting directorships beyond specified	Fine only	If a person accepts appointment as a director in contravention of sub-section (1) of Section 165 such person shall be liable to a penalty, instead of being

		limits		punishable with fine.
13.	Section 191(5) Payment to Director for Loss of Office, etc., in connection with transfer of undertaking, property or shares	Payment to director not to be made on loss of office	Fine only	Non-compliance with Section 191 shall result in the director of the company being liable to a penalty, instead of being punishable with fine.
14.	197(15) Overall maximum managerial remuneration and managerial remuneration in case of absence or inadequacy of profits	Managerial remuneration	Fine only	Under sub-section (15) Non-compliance with Section 197 shall result in any person in default being liable to a penalty, instead of being punishable with fine.
15.	203(5) Appointment of Key Managerial Personnel	Appointment of KMPs in certain class of companies	Fine only	Non-compliance with Section 203 shall result in the company, every director and key managerial personnel of the company who is in default being liable to a penalty, instead of being punishable with fine.
16.	238(3) Registration of the offer of scheme involving transfer of shares	Registration of the offer of scheme involving transfer of shares	Fine only	Non-compliance with clause (c) of sub-section (1) of Section 238 shall result in the director being liable to a penalty, instead of being punishable with fine.

(B) Ensuring compliance of the default and prescribing stiffer penalties in case of repeated defaults.

To achieve the said reform, the Ordinance has modified sub-section (3) and (8) of section 454 and also introduced a new section 454A as follows:

S. No.	Section	Title	Post ordinance Impact
1.	454(3)	Adjudication of Penalties	The adjudicating officer shall also give the direction of making good of the default at the time of levying penalty.
2.	454(8)	Adjudication of Penalties	Default would occur when the company or the officer in default would fail to comply with the order of the adjudicating officer or RD as the case may be.
3.	454A	Penalty for repeated default	A new section has been inserted to provide where a penalty in relation to a default has been imposed on a person under the provisions of CA 2013, and the person commits the same default within a period of three years from the date of order imposing such penalty, passed by the adjudicating officer or RD as the case may be, it or he shall be liable for the second and every subsequent defaults for an amount equal to twice the amount provided for such default under the relevant provision of CA 2013.

(C) De-clogging the NCLT

- **enlarging the jurisdiction of Regional Director (“RD”) by enhancing the pecuniary limits up to which they can compound offences under section 441 of the Act.**

S. No.	Section	Title	Post ordinance Impact
1.	441(1)(b)	Compounding of Certain Offences	Power of Regional Director to compound offence punishable increased upto Rs. 2,500,000/- Pre-Amendment, where the maximum amount of fine which may be imposed for such offence did not exceed five lakh rupees , such offence was compounded by the Regional Director or any officer authorised by the Central Government. Through the Amendment, where the maximum amount of fine which may be imposed for such offence does not exceed Twenty five lakh rupees , such offence shall be compounded by the Regional Director or any officer authorised by the Central Government.
2.	441(6)(a)	Compounding of Certain Offences	Section 441(6)(a), which requires the permission of the Special Court for compounding of offences, being redundant provision, is omitted.

- **vesting in the Central Government the power to approve the alteration in the financial year of a company under section 2(41)**

As per Companies Act, in case of Indian company having Holding/ subsidiary/ Associate Company situated outside India, it is allowed the change the financial year as per such company with the approval of Tribunal. Through this Ordinance, Power of Tribunal has been transferred from Tribunal to Central Government, therefore, financial year of Company can be changed with approval of Central Government.

- **vesting the Central Government the power to approve cases of conversion of public companies into private companies**

In terms of Section 14(1), for Conversion of Public Company into Private Limited Company, the power to approve is shifted from Tribunal to Central Government.

(D) Other corporate governance related reforms:

S. No.	Section	Title	Post ordinance Impact
1.	10A	Insertion of new section 10A Commencement of business, etc.	Re-introduction of section 11 omitted under the Companies (Amendment) Act, 2015 (after doing away with the requirements of minimum paid up capital) to provide for a declaration by a company having share capital before it commences its business or exercises borrowing power. Non-compliance of section 11 by an officer in default shall result in liability to a penalty instead of fine.
2.	12	Registered Office of Company	Insertion of sub-section (9) to section 12, stating that <i>"If Registrar has reasonable cause to believe that the company is not carrying on any business or operations, he may, without prejudice to the provision of sub-section (8), cause a physical verification of the registered office of the company and if any default is found in complying with the requirements of sub-section (1), initiate action for the removal of the name of the company from the register of companies under Chapter XVIII".</i>
3.	90	Register of significant beneficial owners in a company.	Considering the importance of the disclosures under section 90, the punishment for violation of section 90(1) prescribed under section 90(10) is enhanced to the effect that the contravention is punishable with fine or imprisonment or both, instead of being punishable with only fine.
4.	164	Disqualifications from appointment of directors	A new clause (i) after clause (h) in section 164(1) inserted, whereby a person shall be subject to disqualification if he accepts directorships exceeding the maximum number of directorships provided in section 165.

ADDITIONAL AMENDMENTS THROUGH COMPANIES (AMENDMENT) BILL, 2019

1. Section 26 - Matters to be stated in prospectus

The requirement of registration of prospectus with the Registrar of Companies has been done away with. Instead the prospectus would be filed with the Registrar.

2. Section 29 - Public offer of securities to be in dematerialised form

The term 'public' has been omitted under section 29(1)(b). Government would now prescribe the class of companies (not restricted to public companies), which would be mandatorily required to issue the securities only in dematerialised form.

3. Section 35 - Civil liability for mis-statements in prospectus

The reference of 'Registration of Prospectus with the Registrar' is replaced by 'Filing of copy of Prospectus with the Registrar'.

4. Section 90 - Register of significant beneficial owners in a company

- The company shall take necessary steps to identify an individual who is a SBO. Failure to take necessary steps has been made punishable.
- Sub-Section (9A) inserted to provide the power to the Central Government to make rules for the purposes of this section.
- The company or the person aggrieved by the order of the Tribunal may make an application to the Tribunal for relaxation or lifting of the restrictions placed, within a period of one year from the date of such order: (Amendment through Companies (Amendment) Ordinance, 2019).

5. Section 132 - Constitution of National Financial Reporting Authority (NFRA)

- NFRA to perform its functions through such divisions as may be prescribed by the Central Government.
- Executive body of NFRA shall consist of the Chairperson and full-time Members for efficient discharge of its certain functions.
- Debarring of the member or firm from being appointed as an auditor or internal auditor etc. or performing any valuation under section 247 by NFRA in case professional or other misconduct is proved.

6. Section 135 - Corporate Social Responsibility

- (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 a period of six months of the expiry of the financial year.
- (ii) In case the unspent amount relates to any ongoing project subject to fulfilling of prescribed conditions, unspent amounts to be transferred by the company within a period of thirty 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 three financial years from the date of such transfer, failing which, the company shall transfer the same to a Fund specified in Schedule VII, within a period of thirty days from the date of completion of the third financial year.
- (iv) Penal provisions inserted as under:
The company - punishable with fine which shall not be less than Rs. 50,000 but which may extend to Rs. 25 lakh
Every officer of such company who is in default - shall be punishable with imprisonment for a term which may extend to 3 years or with fine which shall not be less than Rs. 50,000 but which may extend to Rs. 5 lakh, or with both.
- (v) MCA empowered to give general or special directions to a company or class of companies as it considers necessary to ensure compliance of provisions of this section.

7. Section 212 - Investigation into affairs of Company by Serious Fraud Investigation Office

- Any officer not below the rank of Assistant Director of Serious Fraud Investigation Office (SFIO), if so authorised, may arrest any person in accordance with the provisions of this section.
- The person so arrested may be taken to a Special Court or Judicial Magistrate or Metropolitan Magistrate within 24 hours of his arrest.
- Where an investigation report submitted by SFIO states that a fraud has taken place and any director, KMP or officer has taken undue advantage or benefit, then the Central Government may file an application before the Tribunal with regard to disgorgement and such director, KMP or officer may be held personally liable without any limitation of liability.

8. Section 241 - Application to Tribunal for relief in cases of oppression, etc.

Central Government to prescribe such company or class of companies in respect of which, applications under such sub-section, shall be made before the Principal Bench of NCLT and shall be dealt with by such Bench.

In certain circumstances, the Central Government may refer the matter and request to the Tribunal to inquire into the case and record a decision about whether the person is a fit and proper person to hold the office of director or any other office connected with the conduct and management of any company.

9. Section 242 - Powers of Tribunal

In matters under section 241, the Tribunal shall record its decision stating specifically as to whether or not the respondent is a fit and proper person to hold the office of director or any other office connected with the conduct and management of any company.

10. Section 243 - Consequence of termination or modification of certain agreements

- The person who is not a fit and proper person pursuant to section 242 shall not hold the office of a director or any other office connected with the conduct and management of the affairs of any company for a period of five years from the date of the decision of the Tribunal.
- Central Government may, with the leave of the Tribunal, permit such person to hold any such office before the expiry of the said period of five years.
- The person so removed from the office of a director or any other office connected with the conduct and management of the affairs of the company shall not be entitled to, or be paid, any compensation for the loss or termination of office.

11. Section 272 - Power of Court to stay or restrain proceedings

In section 272 (3), as provided under, the reference to clause (e) is omitted:

The Registrar shall be entitled to present a petition for winding up under section 271, except on the grounds specified in clause (a) or clause (e) of that sub-section:

271(e) provides that a company may, on a petition under section 272, be wound up by the Tribunal, if the Tribunal is of the opinion that it is just and equitable that the company should be wound up.

Registrar allowed to present a petition of winding up on the ground that it is just and equitable to do so under clause (e) of section 271.

12. Section 398 - Provisions relating to filing of applications, documents, inspection, etc., in electronic form

Prospectus not required to be registered by the Registrar.

A copy of the said Companies (Amendment) Bill, 2019 is available at the following link:

<http://164.100.47.4/BillsTexts/LSBillTexts/PassedLoksabha/189-C 2019 LS Eng.pdf>
