Bill Summary

The Companies (Amendment) Bill, 2020

- The Companies (Amendment) Bill, 2020 was introduced in Lok Sabha by the Minister for Corporate Affairs, Ms. Nirmala Sitharaman, on March 17, 2020. The Bill seeks to amend the Companies Act, 2013.
- **Producer companies**: Under the 2013 Act, certain provisions from the Companies Act, 1956 continue to apply to producer companies. These include provisions on their membership, conduct of meetings, and maintenance of accounts. Producer companies include companies which are engaged in the production, marketing and sale of agricultural produce, and sale of produce from cottage industries. The Bill removes these provisions and adds a new chapter in the Act with similar provisions on producer companies.
- **Changes to offences**: The Bill makes three changes. First, it removes the penalty for certain offences. For example, it removes the penalties which apply for any change in the rights of a class of shareholders made in violation of the Act. Note that where a specific penalty is not mentioned, the Act prescribes a penalty of up to Rs 10,000 which may extend to Rs 1,000 per day for a continuing default. Second, it removes imprisonment in certain offences. For example, it removes the imprisonment of three years applicable to a company for buying back its shares without complying with the Act. Third, it reduces the amount of fine payable in certain offences. For example, it reduces the maximum fine for failure to file annual return with the Registrar of Companies from five lakh rupees to two lakh rupees.
- Under the Act, one person companies (i.e., companies with only one member) or small companies (i.e., with lower paid-up share capital and turnover thresholds) are only liable to pay up to 50% of the penalty for certain offences (such as failing to file annual return). The Bill: (i) extends this provision to all producer companies and start-up companies, (ii) extends this provision to apply to violation of any provision of the Act, and (iii) limits the maximum penalty to two lakh rupees for the company and one lakh rupees for a defaulting officer.
- **Direct listing in foreign jurisdictions**: The Bill empowers the central government to allow certain classes of public companies to list classes of securities (as may be prescribed) in foreign jurisdictions.
- **Exclusion from listed companies**: The Bill empowers the central government, in consultation with the Securities and Exchange Board of India, to exclude companies issuing specified classes of securities from the definition of a "listed company".
- **Remuneration to non-executive directors**: The Act makes special provisions for payment of remuneration to executive directors of a company (including managing director and other whole-time directors) if the company has inadequate or no profits in a year. For example, if a company has an effective capital of up to five crore rupees, the annual remuneration to its executive directors cannot exceed 60 lakh rupees. The Bill extends this provision to non-executive directors, including independent directors.
- **Beneficial shareholding**: Under the Act, if a person holds beneficial interest of at least 10% shares in a company or exercises significant influence or control over the company, he is required to make a declaration of his interest to the company. The company is required to note the declaration in a separate register. The Bill empowers the central government to exempt any class of persons from complying with these requirements if considered necessary in public interest.
- **Exemptions from filing resolutions**: The Act requires companies to file certain resolutions with the Registrar of Companies. These include resolutions of the Board of Directors of the company to borrow money, or grant loans. However, banking companies are exempt from filing resolutions passed to grant loans, or to provide guarantees or security for a loan. This exemption has been extended to registered non-banking financial companies and housing finance companies.
- **Corporate Social Responsibility (CSR)**: Under the Act, companies with net worth, turnover or profits above a specified amount are required to constitute CSR Committees and spend 2% of their average net profits in the last three financial years, towards its CSR policy. The Bill exempts companies with a CSR liability of up to Rs 50 lakh a year from setting up CSR Committees. Further, companies which spend any amount in excess of their CSR obligation in a financial year can set off the excess amount towards their CSR obligations in subsequent financial years.
- **Periodic financial results for unlisted companies**: The Bill empowers the central government to require classes of unlisted companies (as may be prescribed) to prepare and file periodical financial results, and to complete the audit or review of such results.
- **Benches of NCLAT**: The Bill seeks to establish benches of the National Company Law Appellate Tribunal. These shall ordinarily sit in New Delhi or such other place as may be notified.

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