



# THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

(Set up by an Act of Parliament)

## Corporate Laws & Corporate Governance Committee The Institute of Chartered Accountants of India

29<sup>th</sup> September, 2020

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### ANNOUNCEMENT

**Sub: Highlights of the amendments made by the Companies (Amendment) Act, 2020 by CL&CGC ICAI.**

The Companies (Amendment) Act, 2020 (herein after referred to as 'the Amendment Act') got the assent of Hon'ble President as on 28<sup>th</sup> September, 2020 and is thus operative since that date. It was passed by the Lok Sabha on 19<sup>th</sup> September, 2020 and by the Rajya Sabha on 22<sup>nd</sup> September, 2020.

There are amendments in 61 sections in the Act and 4 sections have been newly inserted which includes the provisions for Producer Companies.

Major thrust of the Amendment Act is decriminalisation of the Companies Act, 2013 and lightening rigour of penalties. Besides relaxation of CSR law, remuneration to non-executive directors in case of inadequate profits, producer companies, periodic financial results by non-listed companies, etc. has been provided.

Highlights of the amendments are:

**Decriminalisation of the Companies Act: Reduction in Penalties:** Decriminalisation of the Companies Act, 2013 is main feature of the Amendment Act. It removes the imprisonment for various offenses, substitutes fine by penalty in and reduces amount of payable as penalty across the board. In certain minor omissions, etc. penal consequence has been omitted.

One-person companies, small companies, start-up company or Producer Company, or by any of its officer in default, or any other person in respect of such company, then such company or person shall be liable to one-half of the penalty specified and it is subject to a

maximum of Rs. 2.00 lakh in case of a company and Rs. 1.00 lakh in case of an officer who is in default or any other person.

**Exclusion from listed companies:** The Amendment Act empowers the Centre in consultation with the SEBI, to exclude companies issuing specified classes of securities from the definition of a "listed company". The objective of according such flexibility is to exclude such private companies that list their debt securities on a recognized stock exchange upon their allotment on private placement basis, thereby falling under the definition of a 'listed company' under the Act. This can incentivise private companies seeking listing of their debt securities.

**Exemptions from filing resolutions:** The Act requires companies to file certain resolutions with the Registrar of Companies, which 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 nonbanking financial companies and housing finance companies.

**CSR:** The Act exempts companies with a CSR liability of up to Rs 50 lakh a year from setting up CSR Committees.

**Benches of NCLAT:** The Act provides to establish benches of the National Company Law Appellate Tribunal in New Delhi.

**Direct listing in foreign jurisdictions:** The Act empowers the central government to allow certain classes of public companies to list classes of securities in foreign jurisdictions.

The Companies (Amendment) Act, 2020, *inter alia*, provides for the following as per its Statement of Objects, namely:—

- to decriminalise certain offences under the Act in case of defaults which can be determined objectively and which otherwise lack any element of fraud or do not involve larger public interest;
- to empower the Central Government to exclude, in consultation with the Securities and Exchange Board, certain class of companies from the definition of "listed company", mainly for listing of debt securities;

- to clarify the jurisdiction of trial court on the basis of place of commission of offence under section 452 of the Act for wrongful withholding of property of a company by its officers or employees, as the case may be;
- to incorporate a new Chapter XXIA in the Act relating to Producer Companies, which was earlier part of the Companies Act, 1956;
- to set up Benches of the National Company Law Appellate Tribunal;
- to make provisions for allowing payment of adequate remuneration to nonexecutive directors in case of inadequacy of profits, by aligning the same with the provisions for remuneration to executive directors in such cases;
- to relax provisions relating to charging of higher additional fees for default on two or more occasions in submitting, filing, registering or recording any document, fact or information as provided in section 403;
- to extend applicability of section 446B, relating to lesser penalties for small companies and one person companies, to all provisions of the Act which attract monetary penalties and also extend the same benefit to Producer Companies and start-ups;
- to exempt any class of persons from complying with the requirements of section 89 relating to declaration of beneficial interest in shares and exempt any class of foreign companies or companies incorporated outside India from the provisions of Chapter XXII relating to companies incorporated outside India;
- 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;
- to provide that the companies which have Corporate Social Responsibility spending obligation up to fifty lakh rupees shall not be required to constitute the Corporate Social Responsibility Committee and to allow eligible companies under section 135 to set off any amount spent in excess of their Corporate Social Responsibility spending obligation in a particular financial year towards such obligation in subsequent financial years;
- to provide for a window within which penalties shall not be levied for delay in filing annual returns and financial statements in certain cases;
- to provide for specified classes of unlisted companies to prepare and file their periodical financial results;
- to allow direct listing of securities by Indian companies in permissible foreign jurisdictions as per rules to be prescribed.

## **Amendments related to Chapter IX and X**

### **Section 129 A- Specified unlisted entities to prepare and file periodical financial statements**

- New section 129A has been introduced, which prescribes specified classes of unlisted companies to prepare and file their periodical financial results at a frequency that will be notified later. This provision is aimed at improving corporate governance.

### **Section 135- Corporate Social Responsibility**

- **Set Off of excess amount-** Provision for setting off excess amount against the requirement to be spent under CSR activity for such number of succeeding financial years and in such manner, as may be prescribed.
- **Exemption from forming CSR Committee-** Where the amount to be spent by a company for CSR activity does not exceed fifty lakh rupees, the requirement for constitution of the Corporate Social Responsibility Committee shall not be applicable and the functions of such Committee provided under this section shall, in such cases, be discharged by the Board of Directors of such company.
- **Penalty for Non Compliance-** Penalty provision has been inserted for non-compliance of provisions of Corporate Social Responsibility.

### **Section 140- Removal, Resignation of Auditor and Giving of Special Notice**

**As per Section 140 (3),** If the auditor does not comply with the provisions of sub-section (2), he or it shall be liable to a penalty of fifty thousand rupees or an amount equal to the remuneration of the auditor, whichever is less, and in case of continuing failure, with further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees.

### **Amendment Introduced**

In section 140 of the principal Act, in sub-section (3), for the words "five lakh rupees", the words "two lakh rupees" shall be substituted.

**Maximum liability for an auditor has been reduced from Rs 5 lakh to Rs 2 lakh.**

## **Section 143- Powers and Duties of Auditors and Auditing Standards**

### **Section 143 (12)**

Notwithstanding anything contained in this section, if an auditor of a company in the course of the performance of his duties as auditor, has reason to believe that an offence of fraud involving such amount or amounts as may be prescribed, is being or has been committed in the company by its officers or employees, the auditor shall report the matter to the Central Government within such time and in such manner as may be prescribed:

Provided that in case of a fraud involving lesser than the specified amount, the auditor shall report the matter to the audit committee constituted under section 177 or to the Board in other cases within such time and in such manner as may be prescribed:

Provided further that the companies, whose auditors have reported frauds under this sub-section to the audit committee or the Board but not reported to the Central Government, shall disclose the details about such frauds in the Board's report in such manner as may be prescribed.]

### **Section 143 (15)**

If any auditor, cost accountant or company secretary in practice do not comply with the provisions of sub-section (12), he shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees.

#### **Amendment Introduced**

In section 143 of the principal Act, for sub-section (15), the following sub-section shall be substituted, namely:—

"(15) If any auditor, cost accountant, or company secretary in practice does not comply with the provisions of sub-section (12), he shall,—

(a) in case of a listed company, be liable to a penalty of five lakh rupees; and

(b) in case of any other company, be liable to a penalty of one lakh rupees."

**Maximum liability for an auditor has been reduced from**

- a) **For listed company- from Rs 25 lakh to Rs 5 lakh.**
- b) **For any other company- from Rs 25 lakh to Rs 1 lakh.**

### **Section 147- Punishment for Contravention**

2) If an auditor of a company contravenes any of the provisions of section 139, section 143, section 144 or section 145, the auditor shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees 1[or four times the remuneration of the auditor, whichever is less]

### **Amendment Introduced**

In section 147 of the principal Act,—

- (a) in sub-section (2), the words ", section 143" shall be omitted.

**Punishment of Section 143 has been provided in Section 143 itself, therefore, it has been omitted in Section 147.**

**Therefore, the contravention of Section 143 does not fall under Section 147.**

### **Other Amendments in Brief:**

#### **1. Related to Penalty/ Fine/ Imprisonment:**

Out of 66 amendments, 45 amendments are relating to amendment in penalty clause of Sections like:

- In some sub-sections, penalty has been omitted
- Many places imprisonment has been substituted with penalty
- In some places penalty/ fine has been decreased etc.

#### **2. Section 129A – New Section Introduced – Periodical Financial Result by unlisted companies:**

The Central Government may, require such class or classes of unlisted companies, as may be prescribed,—

- (a) To prepare the financial results of the company on such **periodical basis** and in such form as may be prescribed;
- (b) To obtain approval of the Board of Directors and complete audit or limited review of such periodical financial results in such manner as may be prescribed; and
- (c) File a copy with the Registrar within a period of thirty days of completion of the relevant period** with such fees as may be prescribed.”

**Objective:** Purpose of insertion of this section is to empower 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.

### **3. Corporate Social Responsibility Section 135:**

In sub-section (5), after the second proviso, the following proviso shall be inserted, namely:—

“Provided also that if the company spends an amount in excess of the requirements provided under this sub-section, such company may set off such excess amount against the requirement to spend under this sub-section for such number of succeeding financial years and in such manner, as may be prescribed.”

**Objective:** Purpose 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.

### **4. Independent Director Section 149:**

In section 149 of the principal Act, in sub-section (9), the following proviso shall be inserted, namely:—

“Provided that if a company has no profits or its profits are inadequate, an independent director may receive remuneration, exclusive of any fees payable under sub-section (5) of section 197, in accordance with the provisions of Schedule V.”.

**Objective:** a new proviso 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.

#### **5. Remuneration to Directors- Section 197:**

(3) Notwithstanding anything contained in sub-sections (1) and (2), but subject to the provisions of Schedule V, if, in any financial year, a company has no profits or its profits are inadequate, the company shall not pay to its directors, including any managing or wholetime director or manager or any other non-executive director, including an independent director, by way of remuneration any sum exclusive of any fees payable to directors under sub-section (5) hereunder except in accordance with the provisions of Schedule V .

**Objective:** 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.

#### **6. Right Issue of Shares Section 62:**

The offer shall be made by notice specifying the number of shares offered and limiting a time not being less than fifteen days “*or such lesser number of days as may be prescribed*” and not exceeding thirty days from the date of the offer within which the offer, if not accepted, shall be deemed to have been declined;]

#### **7. Section 117(3)(g):**

In sub-section (3), in clause (g), for the second proviso, the following proviso **shall be substituted**, namely:—



“Provided further that nothing contained in this clause shall apply in respect of a resolution passed to grant loans, or give guarantee or provide security in respect of loans under clause (f) of sub-section (3) of section 179 in the ordinary course of its business by,—

- a. a banking company;
- b. any class of non-banking financial company registered under Chapter IIIB of the Reserve Bank of India Act, 1934, as may be prescribed in consultation with the Reserve Bank of India;
- c. any class of housing finance company registered under the National Housing Bank Act, 1987, as may be prescribed in consultation with the National Housing Bank; and.”.

### **8. Producer Company – Chapter XXIA**

Provisions of Producer Company introduced after Section 378 as 378A to 378ZU.

**Objective:** to insert a new Chapter as Chapter XXIA relating to Producer Companies on similar lines as provided in the Companies Act, 1956.

Detailed amendments made by the Companies (Amendment) Act, 2020 are available at the link <https://resource.cdn.icai.org/61305clcg290920a.pdf>

Members may note the above.

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