Report of the committee to review offences under the Companies Act, 2013

September 04, 2018

In brief

The Ministry of Corporate Affairs (MCA) constituted a ten-member committee, with a view to review offences under the Companies Act, 2013 (Act), since the need was felt to decriminalise certain offences and bring the same within the ambit of an in-house mechanism for levy of penalty. The terms of reference of the committee was as follows:

i. Examine acts that can be decriminalised;

ii. Examine any non-compoundable offences that can be re-categorised as compoundable offences;

iii. Examine the existing mechanism of levy of penalty and recommend improvements thereon;

iv. Provide recommendations to put in place an in-house adjudication mechanism;

v. Formulate draft changes required to be made in the law

The committee submitted its report titled “Report of the committee to review offences under the Companies Act, 2013” (Report)[1] with the MCA on 27 August, 2018. It is important to note the extent to which the recommendations of the committee will be adopted and the subsequent amendments that will be made to the Act.

This is a much welcome move by the MCA since this mechanism has been framed with an objective to ensure in-house discipline. Further, this initiative by the MCA of liberalizing certain aspects of law would provide the much needed relief to companies in getting their cases cleared rapidly and will also facilitate ease of doing business in India.

In detail

The key highlights of the recommendations made by the committee are summarised below.

Restructuring of corporate offences

The committee recommends that the existing rigor of the law should continue for serious offences, whereas lapses that are essentially technical/ procedural in nature may be brought within the ambit of an in-house adjudication process.

With regard to restructuring of corporate offences to relieve special courts from adjudicating routine offences, the main recommendations of the committee are as follows:

a) Re-categorisation of 16 out of the 81 compoundable offences by shifting them from the jurisdiction of special courts to an in-house e-adjudication framework wherein defaults would be subject to levy of penalty by the authorised adjudicating officer (Registrar of Companies);

b) Remaining 65 compoundable offences to continue under the jurisdiction of special courts due to their significance and to avoid potential misuse;

c) *Status quo* in respect of all

[1] http://www.mca.gov.in/Ministry/pdf/ReportCommittee_28082018.pdf

non-compoundable offences related to serious corporate offences;

d) Instituting a transparent online platform for e-adjudication and e-publication of orders;

e) Necessitating a concomitant order for making good the default at the time of levying penalty, to achieve better compliance.

The committee also observed that such restructuring of offences would aid in promoting the ease of doing business and better corporate compliance and reduce the number of prosecutions filed in the special courts, which would, in turn, facilitate speedy disposal of serious offences.

De-clogging the NCLT

The Report attempts to de-clog the National Company Law Tribunal (NCLT) by recommending suitable amendments, which include enlarging the jurisdiction of the regional director with enhanced pecuniary limits for compounding of offences under section 441 of the Act.

Further, in order to reduce the burden of the NCLT, it is suggested to vest in the Central Government the power to approve alteration in the financial year of a company under section 2(41) of the Act and conversion of public companies into private companies under section 14 of the Act.

Other recommendations related to corporate compliance and corporate governance

The Report also contains recommendations on certain essential elements related to corporate compliance and corporate governance. The key highlights of the same are provided below:

Re-introduction of the declaration of commencement of business provision in order to curb "shell companies"

The committee recommends a provision requiring a company to declare that it has received the value of the shares by the subscribers and has filed a form for verification of its registered office, within 180 days of incorporation.

Such a provision originally existed in the Act, which was later omitted to further the objective of ease of doing business for companies in India.

Non-maintenance of a registered office to trigger de-registration process

The committee recommends including the non-maintenance of a registered office as one of the grounds for striking off the name of a company from the Registrar of Companies under section 248 of the Act to ensure that companies maintain a registered office to prevent the existence of "paper companies."

Protection of depositors' interests by greater disclosures with regard to public deposits

The definition of "deposit" under rule 2 (c) of the Companies (Acceptance of Deposits) Rules, 2014 (Rules) excludes certain transactions from the ambit of "deposit," and as a result these transactions go unreported.

In view of the above, the committee recommends the introduction of an eForm for the reporting of transactions that are excluded from the purview of "deposit."

Huge reduction in time-limit for filing documents relating to creation, modification, and satisfaction of charges and stringent penal provisions for non-reporting

The committee felt the need to ensure the timely reporting of creation and modification of charges as there have been a number of cases involving companies not registering the charges on their assets after indulging in borrowings from banks and financial institutions.

Therefore, the committee recommends reducing the time limit for the reporting of creation and modification of charges and the denial of any time extension for such reporting to make companies vigilant in this regard.

Imposition of a cap on independent director's remuneration, in terms of percentage of income, in order to prevent any material pecuniary relationship

The committee recommends progressive measures such as an imposition of a cap on remuneration in terms of percentage (20%) of income to prevent any material pecuniary relationship, which would impair the independent director's independence on the board of the company.

Holding of directorships beyond permissible limits to trigger disqualification of such directors

The committee recommends disqualification of a director holding directorships beyond the threshold limit.

Once a company attracts restrictions under section 90(7) of the Act relating to significant beneficial ownership, in respect of shares whose ownership remains undetermined, such shares should be transferred to the Investor Education and Protection Fund (IEPF) if the rightful owner does not claim ownership within a year of such restrictions

A company is empowered to call upon a person who it reasonably

believes to be a significant beneficial owner to disclose the nature of interest. In case no information is received, the company can apply to the NCLT for imposing restrictions on such shares and the person aggrieved may approach the NCLT for lifting such restrictions.

The committee recommends that if a person does not approach the NCLT for lifting restrictions on the shares held by him within a period of one year, such shares should be transferred to the IEPF.

It further recommends enhancing the penalty for non-reporting of significant beneficial ownership to promote the relevance of disclosures.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact your local PwC advisor

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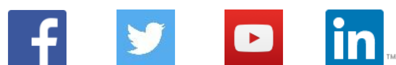

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