
The Companies (Amendment) Bill, 2019 receives President's assent

August 2, 2019

In brief

The President of India has given its assent to the Companies (Amendment) Bill, 2019, which further amends the Companies Act, 2013 (the Act). The Companies (Amendment) Bill, 2019 has been now published in the Official Gazette on 31 July 2019 as the Companies (Amendment) Act, 2019 (the Amendment Act).

The Amendment Act has taken into consideration the amendments that were originally notified in the Companies (Amendment) Ordinance, 2018 which was promulgated by the President on 2 November 2018, and then retained in effect through the Companies (Amendment) Ordinance Act, 2019 and the Companies (Amendment) Second Ordinance, 2019 promulgated by the President on 12 January 2019 and 21 February 2019, respectively.

Further, the Amendment Act has brought about other key changes which are as follows –

- Doing away with the prerequisite of registering the prospectus with the registrar (in case of a public offer) to only a filing requirement.
- Extending the possibility of mandating dematerialisation of securities even to private limited companies by providing requisite powers to the Central Government.
- Specific responsibility cast on companies to identify significant beneficial owners (SBO).
- Stricter enforcement of compliance with corporate social responsibility (CSR) provisions and introduction of penal clause.

While the amendments implemented through the ordinances¹ have already been in effect since 2 November 2018, the new amendments introduced by the Amendment Act will come into force from the date on which it's prescribed by the Central Government by way of a notification in the Official Gazette.

The key amendments other than those that were brought in through the ordinances¹, are analysed below.

In detail

Prospectus for public offer

The previous provision required a company to deliver a copy of the prospectus to the registrar for registration.

However, with the amendment, the requirement has been changed from “registration” to “filing”.

Dematerialisation of securities

The Central Government can now prescribe and mandate even private limited companies to issue and hold securities in DEMAT form.

¹ Includes the Companies (Amendment) Ordinance, 2018, the Companies (Amendment) Ordinance Act, 2019 and the Companies (Amendment) Second Ordinance, 2019

Significant Beneficial Owners

The responsibility of the company to identify an individual who is a SBO and cause such individual to make a declaration was previously included in the Companies (Significant Beneficial Owners) Amendment Rules, 2019 notified on 8 February 2019. The Act has now been amended to also echo the same intention, as it casts responsibility on a company to take necessary steps to identify the SBO and cause the SBO to comply with the SBO provisions under the Act.

Corporate Social Responsibility

- For the companies who have not completed three years, the amount of CSR contribution shall be calculated on the average of net profits for the years since incorporation.
- The unspent CSR amount, except for the amount that relates to any ongoing projects, is required to be transferred to any of the funds mentioned in Schedule VII of the Act, within a period of six months from the end of the financial year (FY).
- The unspent amounts in relation to ongoing projects should now be transferred to a separate bank account within 30 days from the end of FY, and such amount should be spent within a period of three FYs from the date of such transfer. In case

such amount remains unspent after completion of three FYs, the said amount is then required to be transferred to any of the funds mentioned in Schedule VII, within a period of 30 days from the date of completion of the third FY.

- Penalty provisions for non-compliance of the CSR provisions has been introduced. As per the new provision, the failure to comply with the CSR provisions makes the company liable to a fine ranging from INR 0.05m to INR 2.5m, and every officer in default can be punished with imprisonment that may extend to three years or with a fine ranging from INR 0.05m to INR 0.5m or both.

Powers of the Central Government and NCLT in case of oppression and mismanagement

- The Central Government is now empowered to initiate a case against unfit and improper persons (i.e. persons concerned in the conduct and management of a company, who have been found guilty of fraud, misfeasance, not conducting the business in accordance with sound business principles or practices, etc.) and refer the same to the National Company Law Tribunal (NCLT) to make inquiry and record a decision

to declare if such a person is fit and proper to hold office of director or any other office connected with the company.

- NCLT is now empowered to determine, in case of oppression and mismanagement, if a person connected with any conduct or management of the company, is fit and proper. In case the NCLT reaches a conclusion that such a person is not fit and proper, then such a person can be debarred from holding an office of a director or any other office connected with a company for a period of five years from date of NCLT's order. Further, such person shall not be entitled to be paid any compensation for the loss of office.

The takeaways

The Central Government, with the Amendment Act, is further trying to strengthen the governance framework for companies. It has also provided a key thrust to the CSR agenda, indirectly mandating all companies to spend towards CSR activities, against the initial stance of “comply or explain” to now “comply or explain and comply”.

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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