

Companies (Amendment) Act,
2020



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COMPANY SECRETARIES

- Comparative Analysis of Companies (Amendment) Act, 2020
- Criminal offenses made Civil
- Monetary fine is enhanced
- No Imprisonment No Penalty
- Fine is reduced

KNOWLEDGE CAPSULE

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INTRODUCTION

In a bid to promote ease of doing business in India, the upper house of Parliament on 22th September 2020 passed Companies Amendment Bill 2020, which will decriminalize various offences under 48 sections of the Companies Act 2013.

This Knowledge Capsule is comparative analysis of new provisions and old provisions.

Objects of the Companies (Amendment) Act, 2020

- To decriminalize some provisions of the Act, based on their gravity;
- To amend various provisions of the Act to decriminalise minor procedural or technical lapses under the provisions of the said Act, into civil wrong
- To constant Endeavour of the Government to facilitate Greater Ease of Living of Law abiding corporates;
- To provide greater ease of living to corporates through certain other amendments to the Act



Comparative analysis of Companies (Amendment) Act, 2020

SECTION	TITLE	OLD	NEW	COMMENT
16(1)	rectification in name of company	section 16(1)(b) change in name of company, within 6 months, upon receiving direction from the CG.	company shall comply with direction within 3 months.	3 months is substituted with 6 months
16(2)		section 16(3) punishment for violating CG order	new section 16(3) substituted 1. CG can assign new name to the company 2. subsequently company can change name by procedures given in section 13.	
23	Public Offer and Private Placement		new sub section(3) and (4) inserted 1. classes of public companies to be permitted to issue shares for the purpose listing on foreign exchange. 2.. Exemption to companies from compliance with chap III (prospectus and allotment of securities) and (Private placement), chap IV (share capital and debenture), Section 89(declaration of beneficial interest), Section 90 (register of SBO), section 127(Punishment for Failure to Distribute Dividends).	
26	Matters to be Stated in Prospectus	section 26(9) Punishment to officer in default 3years imprisonment or fine of max Rs 3lakh Rs or both	amendment in section 26(9) punishment to officer in default of max Rs 3 lakh	no imprisonment
40	Securities to be Dealt with in Stock Exchanges	section 40(5) punishment officer in default 1 year imprisonment or fine of min	amendment in section 40(5) fine of min 50,000 and max 3lakhs	no imprisonment

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		50,000 and max 3lakhs		
62	Further issue of share capital	section 62(1)(a)(i) time limit for sending letter of offer is min 15 or max 30 days	amendment in section 62(1)(a)(i) 'min 15 days or such lesser no of days as may be prescribed' is inserted	
89(11)	Declaration in Respect of Beneficial Interest in any Share		new section inserted by The CG may exempt class of persons to comply with section 89 except 89(10).	section 89(10) For the purposes of this section and section 90, beneficial interest in a share includes, directly or indirectly, through any contract, arrangement or otherwise, the right or entitlement of a person alone or together with any other person to— (i) exercise or cause to be exercised any or all of the rights attached to such share; or (ii) receive or participate in any dividend or other distribution in respect of such share.
117(3)(g)	filing of resolution with the Registrar	old proviso is substituted	resolution passed under section 179(3)(f) in ordinary course by banking company, NBFC and housing finance company need not to be filed with the Registrar.	
129A	Periodical financial results	no provision	the CG may require classes of unlisted companies to prepare financial results for a period as may be prescribed by it.	

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135(5)	CSR	no provision	Third proviso to Section 135(5) if company spends excess amount. Then such excess can be set off against future CSR obligation for no of years as may be prescribed.	
135(9)	CSR	no provision	new insertion if CSR obligation amounts to less than 50lakhs then constitution of CSR Committee. Functions of CSR to be exercised by the BOD.	
143(15)	Powers and Duties of Auditors and Auditing Standards	if any auditor does not report information of fraud, he shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees.	new provision 1.if concern company is a listed company then penalty is 5lakhs rupees. 2. For other companies, Rs 1lakh.	
149(9)	Independent director	Independent director not to receive ESOP and Remuneration	new provision inserted to section 149(9) if company has no profits or inadequate profits, remuneration may be paid to Independent Director in compliance with Schedule V. (Exclusive of sating fees)	
197(3)	Overall Maximum Managerial Remuneration and Managerial Remuneration in Case of Absence or Inadequacy of Profits	provision given for remuneration to Managing Director, Whole Time Director or Manager.	provision given for remuneration to Non-Executive Director including Independent Director along with Managing Director, Whole Time Director and Manager	



Imprisonment for Following matters has been removed but reserves penalty

Section	Title
26(9)	Matters to be Stated in Prospectus
40(5)	Securities to be Dealt with in Stock Exchanges
48(5)	Variation of Shareholders' Rights
59(5)	Rectification of register of members
68(11)	Power of company to purchase its own securities
86(1)	Punishment for contravention (Charge)
90(10)	Punishment for contravention in filing Form BEN
128(6)	Non-compliance in maintenance of Books of Accounts
135(7)	Non-compliance of CSR
147(1)	punishment for contravention of provisions of section 139 to 146.
167(2)	vacation of office of director
178(8)	NRC and SRC
184(4)	punishment for non-disclosure of interest by Director.
187(4)	Investments of Company to be Held in its Own Name
188(5)(i)&(ii)	punishment for contravention of compliance of RPT.

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Monetary fine for following matter has been enhanced

Section	Title	New Provision
56(6)	Transfer and transmission of securities	Where any default is made in complying with the provisions of sub-sections (1) to (5), the company and every officer of the company who is in default shall be liable to a penalty of fifty thousand rupees."
64(2)	Notice to be given to Registrar for alteration of share capital	if company fails to file notice then fine is min 500/day and max 5lakhs and 1lakhs in case of company and officer in default, respectively.

For following matters monetary fine is omitted

Section	Old Provision
64(11)	If a company fails to comply with the provisions of sub-section (4), it shall be punishable with fine which shall not be less than five lakh rupees, but which may extend to twenty-five lakh rupees.



No Imprisonment No Penalty

Section	Title	Omitted Provision
66(11)	Reduction of share capital	If a company fails to comply with the provisions of sub-section (4), it shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees.
71(11)	Debentures	If any default is made in complying with the order of the Tribunal under this section, every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than two lakh rupees but which may extend to five lakh rupees, or with both



For following matters fine is reduced

section	Title
88(5)	Register of members
89(5) and (7)	Declaration in respect of beneficial interest in any share
90(11)	punishment for non maintenance of SBO Registers and intimation of changes therein, to the registrar.
92(5)	punishment for failure in filling annual return
92(6)	punishment for non compliance by PCS.
105(5)	punishment for sending invitation to appoint a company as a Proxies at company's expense.
117(2)	punishment for non filing resolution with Registrar
124(7)	Punishment for non compliance of Unpaid Dividend Account
134(8)	Financial Statement, Board's Report, etc
137(3)	Punishment for Non filing of FS
165(6)	punishment for contravention in appointment of director.
172	contravention of chapter XI Appoint mention and qualification of Director.



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