

Bill Summary

The Companies (Amendment) Bill, 2019

- The Companies (Amendment) Bill, 2019 was introduced in Lok Sabha on July 25, 2019 by the Minister of Finance, Ms. Nirmala Sitharaman. It amends the Companies Act, 2013.
- **Issuance of dematerialised shares:** Under the Act, certain classes of public companies are required to issue shares in dematerialised form only. The Bill states this may be prescribed for other classes of unlisted companies as well.
- **Re-categorisation of certain Offences:** The 2013 Act contains 81 compoundable offences punishable with fine or fine or imprisonment, or both. These offences are heard by courts. The Bill re-categorizes 16 of these offences as civil defaults, where adjudicating officers (appointed by the central government) may now levy penalties instead. These offences include: (i) issuance of shares at a discount, and (ii) failure to file annual return. Further, the Bill amends the penalties for some other offences.
- **Corporate Social Responsibility (CSR):** Under the Act, if companies which have to provide for CSR, do not fully spent the funds, they must disclose the reasons for non-spending in their annual report. Under the Bill, any unspent annual CSR funds must be transferred to one of the funds under Schedule 7 of the Act (e.g., PM Relief Fund) within six months of the financial year.
- However, if the CSR funds are committed to certain ongoing projects, then the unspent funds will have to be transferred to an Unspent CSR Account within 30 days of the end of the financial year, and spent within three years. Any funds remaining unspent after three years will have to be transferred to one of the funds under Schedule 7 of the Act. Any violation may attract a fine between Rs 50,000 and Rs 25,00,000 and every defaulting officer may be punished with imprisonment of up to three years or fine between Rs 50,000 and Rs 25,00,000, or both.
- **Debarring auditors:** Under the Act, the National Financial Reporting Authority debar a member or firm from practising as a Chartered Accountant for a period between six months to 10 years, for proven misconduct. The Bill amends the punishment to provide for debarment from appointment as an auditor or internal auditor of a company, or performing a company's valuation, for a period between six months to 10 years.
- **Commencement of business:** The Bill states that a company may not commence business, unless it (i) files a declaration within 180 days of incorporation, confirming that every subscriber to the Memorandum of the company has paid for the shares agreed to be taken by him, and (ii) files a verification of its registered address with the RoC within 30 days of incorporation. If it fails to comply with these provisions and is found not to be carrying out business, its name of the company may be removed from the Register of Companies.
- **Registration of charges:** The Act requires companies to register charges (e.g., mortgages) on their property within 30 days of creation of charge, extendable upto 300 days with the permission of the RoC. The Bill changes the deadline to 60 days (extendable by 60 days).
- **Change in approving authority:** Under the Act, change in period of financial year for a company associated with a foreign company, has to be approved by the National Company Law Tribunal. Similarly, any alteration in the incorporation document of a public company which has the effect of converting it to a private company, has to be approved by the Tribunal. Under the Bill, these powers have been transferred to central government.
- **Compounding:** Under the Act, a regional director can compound (settle) offences with a penalty of up to five lakh rupees. The Bill increases this ceiling to Rs 25 lakh.
- **Bar on holding office:** Under the Act, the central government or certain shareholders can apply to the NCLT for relief against mismanagement of the affairs of the company. The Bill states that in such a complaint, the government may also make a case against an officer of the company on the ground that he is not fit to hold office in the company, for reasons such as fraud or negligence. If the NCLT passes an order against the officer, he will not be eligible to hold office in any company for five years.
- **Beneficial ownership:** If a person holds beneficial interest of at least 25% shares in a company or exercises significant influence or control over the company, he is required to make a declaration of his interest. The Bill requires every company to take steps to identify an individual who is a significant beneficial owner and require their compliance under the Act.

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