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Companies (Amendment) Bill, 2020

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Abstract

The Companies (Amendment) Bill, 2020, introduced by the Indian government, represents a significant step in simplifying corporate laws and fostering a business-friendly environment. This amendment aims to ease the compliance burden on companies, especially startups and small businesses, while decriminalizing minor offenses, streamlining corporate governance, and enabling easier access to capital markets. The reform is part of a larger initiative to boost India's position in the World Bank's Ease of Doing Business rankings, attract foreign investment, and stimulate economic growth. This article provides a comprehensive analysis of the Companies (Amendment) Bill, 2020, examining its key provisions, impact on the business landscape, and the challenges it presents. By comparing the amendment with previous reforms and analyzing its implications for various sectors, this article explores whether the 2020 amendment is a genuine step towards a more conducive business environment or a compromise on corporate governance standards. The discussion also includes an international perspective to assess how India's reforms align with global best practices and what lessons can be drawn for future amendments.

Keywords: Companies (Amendment) Bill, 2020, Corporate Law Reform, Ease of Doing Business, Decriminalization of Offenses, Corporate Governance, CSR Flexibility

Introduction

The economic landscape in India has undergone significant changes in the last few decades, driven, efforts to create a more business-friendly environment. A pivotal part of these efforts has been the constant revision and modernization of corporate laws. The Companies (Amendment) Bill, 2020, is the latest in a series of reforms aimed, easier to do business in India. This amendment seeks to reduce bureaucratic hurdles, simplify compliance processes, and align India's corporate law framework with international standards. The broader objective is to boost the country's in the World Bank's Ease of Doing Business index, which has become a benchmark for gauging the business climate of nations.

India's journey of corporate law reform began with the enactment of the Companies Act, 1956, which was a foundational step in regulating corporate behavior. However, with the evolution of the business environment, it became necessary to overhaul the legal framework to meet contemporary challenges. This led to the introduction of the Companies Act, 2013, which brought a more robust and comprehensive set of laws. Over the years, several amendments have been made to the 2013 Act, with the 2020 amendment being one of the most significant, reflecting the government's intent to enhance the ease of doing business and make India a more attractive destination for both domestic and international investors.

The need for the Companies (Amendment) Bill, 2020, arose from the realization that compliance costs, complex regulations, and stringent penalties were hampering the business environment, particularly for smaller companies and startups. The COVID-19 pandemic further underscored the necessity of creating a flexible, supportive framework for businesses to survive and grow. The bill was introduced with the primary objective of decriminalizing minor offenses, easing corporate governance norms, facilitating capital raising, and promoting responsible business practices. This article will analyze these changes in detail, assess their impact on the corporate landscape, and explore whether they genuinely make it easier to do business in India.

Overview: Companies (Amendment) Bill, 2020

To facilitate the ease of doing business in India and support corporates, the Government of India constituted the Company Law Committee (CLC), September 18, 2019. Chaired by Mr. Injeti Srinivas, then Secretary of the Ministry of Corporate Affairs (MCA), the committee comprised representatives from the MCA, industry chambers, professional institutes, and the legal fraternity. The primary mandate of the committee was to recommend measures for decriminalizing additional provisions of the Companies Act, 2013, and to propose changes aimed at enhancing the ease of living for businesses. The CLC submitted its report on November 14, 2019, outlining several significant recommendations, which formed the basis for the Finance Ministry's proposed amendments to the Companies Act, 2013.

These recommendations were incorporated into the Amendment Bill, 2020, introduced in the Lok Sabha (March 17, 2020). The bill was passed by the Lok Sabha (September 19, 2020), and subsequently approved by the Rajya Sabha on September 22, 2020 and received the President assent on September 28, 2020, becoming the Companies (Amendment) Act, 2020. The amendment seeks to create a more business-friendly environment by introducing key changes such as the decriminalization of certain offenses, simplification of compliance requirements, and provisions for the direct listing of securities in foreign markets.

One of the major highlights of the amendment is the shift from a punitive approach to a facilitative one for minor compliance issues. This approach aligns with international practices, where minor procedural lapses are addressed through administrative measures instead of criminal prosecution. Such a shift aims to reduce the fear of severe penalties, especially for small and medium enterprises (SMEs), which often face

challenges due to the cost and complexity of compliance. Additionally, the amendment introduces flexibility in Corporate Social Responsibility (CSR) obligations, enabling companies to fulfil their social responsibilities without excessive regulatory pressure.

The Companies (Amendment) Act, 2020 also seeks to enhance transparency, accountability, and ease of corporate governance. By enabling direct listing of Indian companies on foreign stock exchanges, it opens up new opportunities for raising capital and accessing global markets. This step is expected to integrate India's corporate sector with the global economy, providing Indian companies with a broader investor base and enhancing their competitiveness in the international arena.

Features of the Companies (Amendment) Bill, 2020

1. Decriminalization of Minor Offenses:

One of the cornerstone changes brought about by the Companies (Amendment) Bill, 2020, is the decriminalization of various minor offenses. Traditionally, Indian corporate law has taken a strict stance on compliance violations, treating even technical and procedural lapses as criminal offenses. This punitive approach often led to legal complexities and a deterrent effect on business activities. The 2020 amendment shifts this focus from criminal prosecution to administrative penalties for minor, non-fraudulent violations. Offenses like shortcomings in corporate filings, non-compliance with procedural norms, and delays in reporting are now handled through financial penalties instead of criminal proceedings.

This change is expected to reduce the burden on the judicial system, allowing courts to focus on more serious violations involving fraud or harm to public interest. It also helps businesses avoid the stigma associated with criminal cases over minor infractions, fostering a more business-friendly environment. The reduction in compliance-related penalties also encourages voluntary compliance, as companies are less likely to face severe consequences for minor oversights.

2. Simplification of Corporate Governance Norms

The Companies (Amendment) Bill, 2020, also aims to simplify corporate governance norms to make it easier for businesses to operate. This includes streamlining the compliance process, enabling digital documentation, and easing the regulatory framework for small businesses. Certain procedural requirements, such as mandatory board meetings and audit obligations, have been relaxed for small and one-person companies. These changes are aimed at making compliance more accessible and less costly, especially for startups and smaller companies with limited resources.

Additionally, the amendment provides clearer definitions and guidelines for several aspects of corporate governance, making it easier for companies to understand and comply with regulations. These steps are expected to enhance transparency and reduce the ambiguity that often surrounds regulatory compliance in India. By making corporate governance simpler, the amendment encourages a broader adoption of best practices and a more professional approach to business management.

3. CSR Relaxations and Flexibility

Corporate Social Responsibility (CSR) has been a mandatory requirement for certain categories of companies under the Companies Act, 2013. However, the compliance burden related to CSR has often been criticized for being too rigid, particularly during times of economic difficulty. The Companies (Amendment) Bill, 2020, introduces flexibility into CSR requirements by allowing companies to carry forward unspent CSR amounts for future projects. Additionally, penalties for non-compliance with CSR norms have been reduced, easing the pressure on businesses to adhere strictly to timelines and financial thresholds.

These changes are expected to make it easier for companies to plan and execute long-term CSR projects, promoting more meaningful and impactful contributions to social development. The amendment acknowledges the challenges companies face in fulfilling CSR obligations, especially during periods of financial strain, and provides a more balanced approach to corporate responsibility.

4. Direct Listing of Securities in Foreign Markets

A significant provision introduced in the Companies (Amendment) Bill, 2020, is the allowance for Indian companies to directly list securities in foreign jurisdictions. This move is seen as a bold step towards liberalizing the Indian capital markets, offering companies greater flexibility in raising capital. By allowing direct listings abroad, Indian companies, particularly startups and tech companies, can access a larger pool of investors and potentially achieve higher valuations than they might in the domestic market alone.

This change is expected to benefit sectors that are capital-intensive or reliant on foreign investments, such as technology, pharmaceuticals, and infrastructure. It also aligns India with global best practices, where direct foreign listings are common for companies seeking to expand their investor base. The provision is a testament to India's growing confidence in the global economy and its willingness to embrace a more open and liberalized business environment.

Impact on Ease of Doing Business

The Companies (Amendment) Bill, 2020, is part of a broader effort to improve India's ranking in the World Bank's Ease of Doing Business Index. In recent years, India has made significant strides in enhancing its business environment, moving up the rankings through a series of reforms targeting key areas such as starting a business, dealing with construction permits, getting electricity, and protecting minority investors. The 2020 amendment is expected to further this progress by making it easier to comply with corporate regulations and reducing the regulatory burden on businesses.

The decriminalization of offenses is particularly noteworthy, as it reduces the risk of litigation and enhances legal predictability. This is likely to increase investor confidence, as a more transparent and predictable regulatory environment is a key factor in investment decisions. Furthermore, the amendment's focus on facilitating access to capital through foreign listings is expected to attract greater foreign direct investment (FDI), contributing to economic growth. The changes to CSR regulations and support for startups also align

with the global trend towards sustainable development and innovation-driven economies, making India a more attractive destination for investors looking for long-term growth opportunities.

Criticisms and Challenges

While the Companies (Amendment) Bill, 2020, has been widely welcomed by the business community, it is not without its criticisms. Some stakeholders have raised concerns that the decriminalization of offenses could lead to a dilution of corporate governance standards. By making penalties less severe, there is a risk that companies may become complacent about compliance, especially in areas that involve consumer protection, environmental sustainability, and financial transparency. Critics argue that while the amendment reduces the burden on businesses, it may inadvertently compromise the ability of regulators to enforce high standards of corporate behavior.

Additionally, there are concerns about the potential misuse of provisions such as the direct listing of securities in foreign jurisdictions. While the reform aims to enhance access to global capital markets, there is a risk that it could lead to capital flight, with companies choosing to list abroad rather than contribute to the growth of India's domestic capital markets. This could potentially limit the development of India's financial sector, as it may discourage local investment in Indian companies.

Despite these criticisms, the Companies (Amendment) Bill, 2020, represents a significant step toward a more business-friendly regulatory environment. Its focus on reducing the compliance burden, simplifying procedures, and fostering innovation reflects a commitment to creating a more dynamic and globally competitive business ecosystem.

Conclusion

In conclusion, the Companies (Amendment) Bill, 2020, is a landmark reform in India's corporate legal landscape, aimed at improving ease of doing business and fostering a more favorable environment for entrepreneurship and investment. By decriminalizing minor offenses, simplifying compliance procedures, facilitating direct foreign listings, and supporting startups, the amendment addresses several key challenges faced by businesses in India. While there are valid concerns regarding the potential implications of some of the reforms, the overall impact is expected to be positive, contributing to India's long-term economic growth and competitiveness on the global stage. As the business ecosystem continues to evolve, the Companies (Amendment) Bill, 2020, lays the foundation for a more inclusive, innovative, and dynamic corporate environment, aligning with India's ambitions to be a global economic powerhouse.

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Overview of the Companies Amendment Act 2020

World Bank's Ease of Doing Business Index

