

THE COMPANIES (AMENDMENT) BILL, 2019

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further to amend the Companies Act, 2013.

BE it enacted by Parliament in the Seventieth Year of the Republic of India as follows:—

1. (1) This Act may be called the Companies (Amendment) Act, 2019.

(2) The provisions of this Act, except sections 6, 7 and 8, clauses (i), (iii) and clause (iv) of section 14, sections 20 and 21, section 31, sections 33, 34 and 35, sections 37 and 38 shall be deemed to have come into force on the 2nd day of November, 2018.

(3) The provisions of sections 6, 7 and 8, clauses (i), (iii) and clause (iv) of section 14, sections 20 and 21, section 31, sections 33, 34 and 35, sections 37 and 38 shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint Short title and commencement. Bill No. 189-C of 2019 5 AS PASSED BY LOK SABHA ON 26.07.2019 2 and different dates may be appointed for these provisions and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision. 2. In section 2 of the Companies Act, 2013 (hereinafter referred to as the principal Act), in clause (41),— (a) for the first proviso, the following provisos shall be substituted, namely:— “Provided that where a company or body corporate, which is a holding company or a subsidiary or associate company of a company incorporated outside India and is required to follow a different financial year for consolidation of its accounts outside India, the Central Government may, on an application made by that company or body corporate in such form and manner as may be prescribed, allow any period as its financial year, whether or not that period is a year: Provided further that any application pending before the Tribunal as on the date of commencement of the Companies (Amendment) Act, 2019, shall be disposed of by the Tribunal in accordance with the provisions applicable to it before such commencement.”; (b) in the second proviso, for the words “Provided further that”, the words “Provided also that” shall be substituted. 3. After section 10 of the principal Act, the following section shall be inserted, namely:— “10A. (1) A company incorporated after the commencement of the Companies (Amendment) Act, 2019 and having a share capital shall not commence any business or exercise any borrowing powers unless— (a) a declaration is filed by a director within a period of one hundred and eighty days of the date of incorporation of the company in such form and verified in such manner as may be prescribed, with the Registrar that every subscriber to the memorandum has paid the value of the shares agreed to be taken by him on the date of making of such declaration; and (b) the company has filed with the Registrar a verification of its registered office as provided in sub-section (2) of section 12. (2) If any default is made in complying with the requirements of this section, the company shall be liable to a penalty of fifty thousand rupees and every officer who is in default shall be liable to a penalty of one thousand rupees for each day during which such default continues but not exceeding an amount of one lakh rupees. (3) Where no declaration has been filed with the Registrar under clause (a) of sub-section (1) within a period of one hundred and eighty days of the date of

incorporation of the company and the Registrar has reasonable cause to believe that the company is not carrying on any business or operations, he may, without prejudice to the provisions of sub-section (2), initiate action for the removal of the name of the company from the register of companies under Chapter XVIII.”.

4. In section 12 of the principal Act, after sub-section (8), the following sub-section shall be inserted, namely:— “(9) If the Registrar has reasonable cause to believe that the company is not carrying on any business or operations, he may cause a physical verification of the registered office of the company in such manner as may be prescribed and if any default is found to be made in complying with the requirements of sub-section (1), he may without prejudice to the provisions of sub-section (8), initiate action for the removal of the name of the company from the register of companies under Chapter XVIII.”. Amendment of section 2. Insertion of new section 10A. Commencement of business, etc. Amendment of section 12. 18 of 2013. 5 10 15 20 25 30 35 40 45 50 3 5. In section 14 of the principal Act,— (i) in sub-section (1), for the second proviso, the following provisos shall be substituted, namely:— “Provided further that any alteration having the effect of conversion of a public company into a private company shall not be valid unless it is approved by an order of the Central Government on an application made in such form and manner as may be prescribed: Provided also that any application pending before the Tribunal, as on the date of commencement of the Companies (Amendment) Act, 2019, shall be disposed of by the Tribunal in accordance with the provisions applicable to it before such commencement.”; (ii) in sub-section (2), for the word “Tribunal”, the words “Central Government” shall be substituted. 6. In section 26 of the principal Act,— (i) in sub-sections (4), (5) and (6), for the word “registration”, the word “filing” shall be substituted; (ii) sub-section (7) shall be omitted. 7. In section 29 of the principal Act,— (i) in sub-section (1), in clause (b), the word “public” shall be omitted; (ii) after sub-section (1), the following sub-section shall be inserted, namely:— “(1A) In case of such class or classes of unlisted companies as may be prescribed, the securities shall be held or transferred only in dematerialised form in the manner laid down in the Depositories Act, 1996 and the regulations made thereunder.”. 8. In section 35 of the principal Act, in sub-section (2), in clause (c), for the words “delivery of a copy of the prospectus for registration”, the words “filing of a copy of the prospectus with the Registrar” shall be substituted. 9. In section 53 of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely:— “(3) Where any company fails to comply with the provisions of this section, such company and every

officer who is in default shall be liable to a penalty which may extend to an amount equal to the amount raised through the issue of shares at a discount or five lakh rupees, whichever is less, and the company shall also be liable to refund all monies received with interest at the rate of twelve per cent. per annum from the date of issue of such shares to the persons to whom such shares have been issued.”. 10. In section 64 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:— “(2) Where any company fails to comply with the provisions of sub-section (1), such company and every officer who is in default shall be liable to a penalty of one thousand rupees for each day during which such default continues, or five lakh rupees whichever is less.”. 11. In section 77 of the principal Act, in sub-section (1), for the first and second provisos, the following provisos shall be substituted, namely:— “Provided that the Registrar may, on an application by the company, allow such registration to be made— Amendment of section 14. Amendment of section 26. Amendment of section 29. 22 of 1996. Amendment of section 35. Amendment of section 53. Amendment of section 64. Amendment of section 77. 5 10 15 20 25 30 35 40 45 4 (a) in case of charges created before the commencement of the Companies (Amendment) Act, 2019, within a period of three hundred days of such creation; or (b) in case of charges created on or after the commencement of the Companies (Amendment) Act, 2019, within a period of sixty days of such creation, on payment of such additional fees as may be prescribed: Provided further that if the registration is not made within the period specified— (a) in clause (a) to the first proviso, the registration of the charge shall be made within six months from the date of commencement of the Companies (Amendment) Act, 2019, on payment of such additional fees as may be prescribed and different fees may be prescribed for different classes of companies; (b) in clause (b) to the first proviso, the Registrar may, on an application, allow such registration to be made within a further period of sixty days after payment of such ad valorem fees as may be prescribed.”. 12. Section 86 of the principal Act shall be numbered as sub-section (1) thereof and after sub-section (1) as so numbered, the following sub-section shall be inserted, namely:— “(2) If any person wilfully furnishes any false or incorrect information or knowingly suppresses any material information, required to be registered in accordance with the provisions of section 77, he shall be liable for action under section 447.”. 13. For section 87 of the principal Act, the following section shall be substituted, namely:— “87. The Central Government on being satisfied that— (a) the omission to give intimation to the Registrar of the payment or satisfaction

of a charge, within the time required under this Chapter; or (b) the omission or misstatement of any particulars, in any filing previously made to the Registrar with respect to any charge or modification thereof or with respect to any memorandum of satisfaction or other entry made in pursuance of section 82 or section 83, was accidental or due to inadvertence or some other sufficient cause or it is not of a nature to prejudice the position of creditors or shareholders of the company, it may, on the application of the company or any person interested and on such terms and conditions as it deems just and expedient, direct that the time for the giving of intimation of payment or satisfaction shall be extended or, as the case may require, that the omission or misstatement shall be rectified.”. 14. In section 90 of the principal Act,— (i) after sub-section (4), the following sub-section shall be inserted, namely:— “(4A) Every company shall take necessary steps to identify an individual who is a significant beneficial owner in relation to the company and require him to comply with the provisions of this section.”; (ii) for sub-section (9), the following sub-section shall be substituted, namely:— “(9) The company or the person aggrieved by the order of the Tribunal may make an application to the Tribunal for relaxation or lifting of the restrictions placed under sub-section (8), within a period of one year from the date of such order: Provided that if no such application has been filed within a period of one year from the date of the order under sub-section (8), such shares shall be Amendment of section 86. Substitution of new section for section 87. Rectification by Central Government in Register of charges. Amendment of section 90. 5 10 15 20 25 30 35 40 45 5 transferred, without any restrictions, to the authority constituted under sub-section (5) of section 125, in such manner as may be prescribed.”; (iii) after sub-section (9), as so substituted, the following sub-section shall be inserted, namely:— “(9A) The Central Government may make rules for the purposes of this section.”; (iv) in sub-section (11), after the word, brackets and figure “sub-section (4)”, the words, brackets, figure and letter “or required to take necessary steps under sub-section (4A)” shall be inserted. 15. In section 92 of the principal Act, for sub-section (5), the following sub-section shall be substituted, namely:— “(5) If any company fails to file its annual return under sub-section (4), before the expiry of the period specified therein, such company and its every officer who is in default shall be liable to a penalty of fifty thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees.”. 16. In section 102 of the principal Act, for sub-section (5), the following sub-section shall be

substituted, namely:— “(5) Without prejudice to the provisions of sub-section (4), if any default is made in complying with the provisions of this section, every promoter, director, manager or other key managerial personnel of the company who is in default shall be liable to a penalty of fifty thousand rupees or five times the amount of benefit accruing to the promoter, director, manager or other key managerial personnel or any of his relatives, whichever is higher.”. 17. In section 105 of the principal Act, in sub-section (3), for the words “punishable with fine which may extend to five thousand rupees”, the words “liable to a penalty of five thousand rupees” shall be substituted. 18. In section 117 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:— “(2) If any company fails to file the resolution or the agreement under sub-section (1) before the expiry of the period specified therein, such company shall be liable to a penalty of one lakh rupees and in case of continuing failure, with a further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of twenty-five lakh rupees and every officer of the company who is in default including liquidator of the company, if any, shall be liable to a penalty of fifty thousand rupees and in case of continuing failure, with a further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees.”. 19. In section 121 of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely:— “(3) If the company fails to file the report under sub-section (2) before the expiry of the period specified therein, such company shall be liable to a penalty of one lakh rupees and in case of continuing failure, with a further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees and every officer of the company who is in default shall be liable to a penalty which shall not be less than twenty-five thousand rupees and in case of continuing failure, with a further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of one lakh rupees.”. Amendment of section 92. Amendment of section 102. Amendment of section 105. Amendment of section 117. Amendment of section 121. 5 10 15 20 25 30 35 40 45 6 20. In section 132 of the principal Act,— (a) after sub-section (1), the following sub-section shall be inserted, namely:— “(1A) The National Financial Reporting Authority shall perform its functions through such divisions as may be prescribed.”; (b) after sub-section (3), the following sub-sections shall be inserted, namely:— “(3A) Each division of the National Financial Reporting Authority shall be presided over by the Chairperson

or a full-time Member authorised by the Chairperson. (3B) There shall be an executive body of the National Financial Reporting Authority consisting of the Chairperson and full-time Members of such Authority for efficient discharge of its functions under sub-section (2) [other than clause (a)] and sub-section (4).”; (c) in sub-section (4), in clause (c), for sub-clause (B), the following sub-clause shall be substituted, namely:— “(B) debarring the member or the firm from— I. being appointed as an auditor or internal auditor or undertaking any audit in respect of financial statements or internal audit of the functions and activities of any company or body corporate; or II. performing any valuation as provided under section 247, for a minimum period of six months or such higher period not exceeding ten years as may be determined by the National Financial Reporting Authority.”. 21. In section 135 of the principal Act,— (a) in sub-section (5), — (i) after the words “three immediately preceding financial years,” the words “or where the company has not completed the period of three financial years since its incorporation, during such immediately preceding financial years,” shall be inserted; (ii) in the second proviso, after the words “reasons for not spending the amount” occurring at the end, the words, brackets, figure and letters “and, unless the unspent amount relates to any ongoing project referred to in sub-section (6), transfer such unspent amount to a Fund specified in Schedule VII, within a period of six months of the expiry of the financial year” shall be inserted; (b) after sub-section (5), the following sub-sections shall be inserted, namely:— “(6) Any amount remaining unspent under sub-section (5), pursuant to any ongoing project, fulfilling such conditions as may be prescribed, undertaken by a company in pursuance of its Corporate Social Responsibility Policy, shall be transferred by the company within a period of thirty days from the end of the financial year to a special account to be opened by the company in that behalf for that financial year in any scheduled bank to be called the Unspent Corporate Social Responsibility Account, and such amount shall be spent by the company in pursuance of its obligation towards the Corporate Social Responsibility Policy within a period of three financial years from the date of such transfer, failing which, the company shall transfer the same to a Fund specified in Schedule VII, within a period of thirty days from the date of completion of the third financial year. (7) If a company contravenes the provisions of sub-section (5) or sub-section (6), the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to twenty-five lakh rupees Amendment of section 132. Amendment of section 135. 5 10 15 20 25 30 35 40 45