

Govt decriminalises Companies Act to promote greater ease of doing business

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The Companies Bill has decriminalised 48 sections by removing or reducing penal provisions and omitting imprisonment for various offences that were considered procedural and technical in nature, a move that will help corporates in ease of doing business.

The Bill, passed on Saturday in the Lok Sabha, comes at a time when companies are reeling under stress due to the Covid-19 pandemic. Finance and Corporate Affairs Minister Nirmala Sitharaman said decriminalisation of various provisions under the company's law will also help small firms by reducing the litigation burden on them. The Bill has proposed doing away with imprisonment for nine offences, which relate to non-compliance with orders of the national company law tribunal (NCLT). These include matters relating to winding-up of companies, default in publication of NCLT order relating to reduction of share capital, rectification of registers of security holders, variation of rights of shareholders, and payment of interest and redemption of debentures.

In case of corporate social responsibility (CSR), if a company fails to transfer the amount to a specified fund, it shall be liable to a penalty twice the amount required to be transferred or Rs.1 crore, whichever is less. Also, every officer of the company, which is in default, will have to pay a penalty of one-tenth of the amount required to be transferred by the firm, instead of the earlier provision of three years imprisonment and maximum fine of Rs.5 lakh. "These amendments are in furtherance of the objective of CAB 2020 to eliminate subjectivity in the adjudication process, which exists in such cases because the Act provides the adjudicating officer with the power to order either a punishment of imprisonment or impose a criminal fine, or both," Pavan Kumar Vijay, founder of Corporate Professionals, said. The Bill has also omitted the punishment of imprisonment prescribed under Sections 26(9) and 40(5) of the Act relating to the provision of public offering of securities by a company such as matters to be stated in the prospectus. However, the quantum of the monetary penalty under each of these provisions remains unchanged.

Imprisonment for non-compliance with procedure for buyback prescribed under Section 68 of the Act and also for various lapses in financial statements of the company are also to be done away with, according to the Bill. The government has also rationalised several penalties under the Act such as for delay in filing the financial statement with the registrar of companies. The corporate affairs ministry has decriminalised sections where the complainant can enter into a compromise, and agree to have the charges dropped against the accused. Such offences include, for instance, default with respect to the section 8 (11), which deals with formation of companies with charitable objects, section 26 (9) regarding matters to be stated in the prospectus. The punishment in these cases includes a fine as well as provision for imprisonment for the company's directors or other individuals involved. According to the new penal provision, if any person fails to make a declaration of significant beneficial ownership, the minimum penalty has been reduced by half to Rs.50,000 and in case of continuing failure Rs.1,000 each day up to a maximum level of Rs.200,000. In the last amendment to the Companies Act, the government had decriminalised 16 sections. Most of them covered lapses such as prohibition on issue of shares at discount or failure to file a copy of financial statement with the registrar.

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