

## **Ministry of Corporate Affairs**

### **Companies Act decriminalized to help in ease of doing business**

**September 19, 2020**

Relevant to the Corporate Finance Team of All Mahindra Businesses

#### **Background**

- Since the advent of the Companies Act, 2013 (the "Act"), the governmental authorities in India have often adopted a proactive approach, and proposed and implemented various measures to facilitate ease of doing business for companies operating in India
- On March 30, 2020, the Ministry of Corporate Affairs (the "MCA") introduced the Companies Fresh Start Scheme, 2020 (the "Fresh Start Scheme"), a limited duration scheme available between April 1, 2020 and September 30, 2020, which provides relief by way of condonation of delays in filing of various statutory forms with the Registrar of Companies in India (the "RoC") for certain categories of companies
- Announced measures under the fifth and final tranche of the Rs 20-lakh crore stimulus package for the economy hit hard by the coronavirus pandemic, the minister also said an Ordinance would be promulgated to amend the Act

#### **Salient Features of the Bill**

- Majority of the compoundable offences sections would be shifted to internal adjudication mechanism
- Powers of a regional director for compounding various offences would be enhanced
- 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

#### **Decimalization**

- The Bill has also omitted the punishment of imprisonment prescribed under Sections 26(g) 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
- 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
- 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

### For Further Study

1. [https://www.business-standard.com/article/economy-policy/govt-decriminalises-companies-act-to-promote-greater-ease-of-doing-business-120092000398\\_1.html#:~:text=The%20Companies%20Bill%20has%20decriminalised,in%20ease%20of%20doing%20business.](https://www.business-standard.com/article/economy-policy/govt-decriminalises-companies-act-to-promote-greater-ease-of-doing-business-120092000398_1.html#:~:text=The%20Companies%20Bill%20has%20decriminalised,in%20ease%20of%20doing%20business.)
2. <https://www.mondaq.com/india/corporate-governance/944056/the-companies-amendment-bill-2020-decriminalizing-offences-under-the-companies-act-2013>
3. <https://economictimes.indiatimes.com/news/economy/policy/govt-to-bring-ordinance-to-amend-companies-law-to-decriminalise-various-provisions/articleshow/75787215.cms>