



COMPANY LAW ALERT - Volume XXIII

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The Companies (Amendment) Act, 2017 ("the Act") has been passed by both the houses of parliament and received president's assent on 3rd January 2018.

This Act has made 93 further amendments in the Companies Act, 2013 to provide relief to stakeholders and to provide more clarity on some of the provisions of the Companies Act, 2013. Amendments made broadly aims at:

- Ease of doing business;
- Harmonization with other Acts and accounting standard requirements;
- Rectifying omissions and inconsistencies in the Act;
- New requirements / other provisions.

These amendments will come into force as and when notified by Central Government in the Official Gazette.

Summary of key amendments are as tabulated below:

A) Ease of doing business

Section	Existing provision	Amended provision	Our Comments / Views
12(1) & (4)	Newly incorporated company was required to have registered office within 15 days from the date of incorporation. Notice of change of office was required to be given within 15 days.	Period of having registered office and intimation for change of registered office increased to 30 days from the date of incorporation/ change.	This change would be beneficial to newly incorporated companies especially small and medium size companies.
136(1)	Copies of audited financial statements and other documents shall be sent to every member, not less than 21 days before the date of the meeting.	Copies of audited financial statements and other documents may be sent at shorter notice i.e. less than 21 days if 95% of members entitled to vote at the meeting agree for the same.	Shorter notice for circulation of audited financial statements was earlier permitted vide circular dated 21 st July 2015. This has now been brought into the Act.
First Proviso to 139(1)	Matter relating to appointment of auditor to be placed for ratification by the members in each AGM.	This requirement has been omitted.	This would reduce the compliance requirement.
7(1)(c)	At the time of incorporation of the company, affidavit by each subscriber was required to be attached.	Now instead of affidavit, declaration is prescribed.	This would facilitate faster incorporation of companies.
Second Proviso to 173(2)	Earlier, participation of directors through video conferencing was restricted on certain items if there was quorum for Board Meeting through physical presence of directors.	Now directors can participate on all matters through video conferencing. However, this participation shall not be counted for quorum.	This would facilitate larger participation by the directors.
92(1)	Disclosure of 'indebtedness' was required in annual return.	This requirement is omitted.	This would reduce the compliance requirement.

Section	Existing provision	Amended provision	Our Comments / Views
Proviso to 160	Requirement of deposit of Rs. 1 lakh for nomination of all directors except director retiring by rotation getting reappointed.	This requirement shall not be applicable in case of appointment of independent directors or directors nominated by nomination and remuneration committee.	The process of appointment of the nominee directors and independent directors has been liberalized.
185	<p>There were restrictions on providing loan, guarantee or security in connection with loan given to,</p> <p>a) Any private company of which any such director is a director or member.</p> <p>b) Any body-corporate at a general meeting of which 25% or more voting power may be exercised or controlled by any such director, or by two or more such directors, together.</p> <p>c) Any body-corporate, the Board, managing director or manager, accustomed to act in accordance with the directions or instructions of the Board, or of any director or directors, of the lending company.</p>	<p>The restrictions have been relaxed provided that following two conditions are satisfied:</p> <ul style="list-style-type: none"> • Passing of special resolution by the company in general meeting and explanatory statement disclosing full particulars of the transaction and • Loans are utilized by the borrowing company for its principal business activities: 	<p>As against complete prohibition on inter-group loans and advances to entities with common directors, the powers have now been given to the shareholders for approval of such transactions.</p> <p>This is a significant change and would be a big relief to various large corporate groups.</p>
First, Second and Third proviso to 197(1)	<ul style="list-style-type: none"> • Central Government approval was required for payment of remuneration exceeding 11% of net profits by public companies 	<ul style="list-style-type: none"> • No Central Government approval is required for payment of remuneration exceeding 11% of net profits subject to compliance with Schedule V of the Companies Act, 2013. 	<ul style="list-style-type: none"> • The requirement of approval of Central Government has been removed and the said responsibility has been delegated to the shareholders. This would also reduce the compliance burden on the companies.

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	<ul style="list-style-type: none"> Remuneration in excess of individual limits [i.e. 5% in case of MD / whole time directors or 10% in case of more than one MD / whole time director] shall be paid with the approval of the company in general meeting. 	<ul style="list-style-type: none"> Remuneration in excess of individual limits can be paid or waived after approval of shareholders by way of special resolution. <p>In case of default in payment of dues to bank or public financial institution or non-convertible debenture holders or any other secured creditors, prior approval of these parties required before approval in general meeting. No such requirement was there earlier.</p>	<ul style="list-style-type: none"> Now special resolution would be required in place of ordinary resolution for payment of remuneration in excess of individual limits. Now non-convertible debenture holders, banks/FI and other secured creditors would have power to restrict payment of remuneration in excess of prescribed limits in cases where there has been a default in the payment of dues.
First Proviso to 94(1)	There was requirement to file a copy of special resolution in advance with RoC for keeping of the registers and returns at a place other than the registered office of the company.	This requirement has been omitted.	This reduces the compliance burden and facilitates ease of doing business.
2(88)	Sweat Equity shares were allowed to be issued after one year from commencement of business.	Now sweat equity shares can be issued at any time after registration of the company.	It is beneficial for start-ups.
96	Annual General Meeting was held either at the registered office of the Company or at some other place within the city, town or village in which the registered office of the Company was situated.	Annual General Meeting of unlisted company can be held anywhere in India.	This change will be beneficial for many companies. However this provision is also capable of being misused.
Proviso to 100(1)	Earlier as per Rule 18, for the companies incorporated in India, Extraordinary General Meeting (EGM) was required to be held at registered office of the Company or city/ town where registered office situated.	Now EGM of wholly owned subsidiary whose holding company is incorporated outside India, can be held anywhere [including outside India].	This is a significant change from the perspective of foreign Holding companies which has established wholly owned subsidiaries in India..

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73(2)(d)	Deposit insurance was required for deposits accepted.	Requirement of providing deposit insurance is omitted.	-
188	There was restriction on voting by members of the Company in the general meeting on any contract or arrangement which may be entered into by the Company, if such member is a related party.	Now restriction shall not apply to a company in which ninety percent or more members in numbers are relatives of promoters or related parties.	Bottleneck removed for passing resolutions where relatives were interested in a particular transaction.

B) Harmonization with other Acts and accounting standard requirements

Section	Existing provision	Amended provision	Our comments / Views
129(3)	The companies having one or more subsidiaries was required to prepare consolidated financial statement of the company and of all the subsidiaries in the same form and manner as that of its own.	The term "associate companies" is also inserted in addition to the subsidiaries.	These changes are made to eliminate inconsistencies with other Acts, accounting standards etc. and would facilitate better implementation / compliance by the companies.
2(6)	Definition of Associate Company was based on control of atleast 20% of the 'total share capital' of associate [e.g. including preference shares] or control of business decision under agreement Also whilst Associate included joint Venture but there was no separate definition of Joint venture.	Now the words "total share capital" has been replaced by "total voting power" to align it with accounting standard requirement. Joint venture has been defined as joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement.	As regards Joint venture, it would have been more appropriate if Joint arrangement was defined rather than joint venture. It would be noted that as per Ind AS 111, Joint arrangements can be Joint control or Joint venture.
2(87)	Definition of subsidiary company was based on 'total share capital' of subsidiary [e.g. including preference share capital].	Now subsidiary company would be based on 'total voting power'.	
26, 93, 194 and 195	In case of listed companies, • Return was required to be filed with Registrar within 15 days in case change in number of shares held by Promoters' and top 10 shareholders.	Since these are already required to be complied as per SEBI Regulations and stock exchanges requirement, to remove duplication same are omitted.	

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	<ul style="list-style-type: none">• Disclosures in the prospectus was required under the Companies Act, 2013 and the Securities and Exchange Board of India Act, 1992.• There was prohibition on forward dealings in securities of Company by director or KMP and insider trading in securities by any person.		

C) Clarifications, rectifying omissions and removing inconsistencies in the Act.

Section	Existing provision	Amended provision	Our views / comments
130(3)	No period for reopening of books of accounts was defined.	As per the amendment, books of account can now be re-opened only up to 8 financial years immediately preceding the current financial years. However, Central Government is empowered to issue special directions in this regard.	This amendment restricts the power to reopen up to 8 years instead of no time limit.
134(1)	The financial statements are required to be signed by the Chief Executive Officer ('CEO'), if he is a director in the company.	Now CEO need to sign the financial statements irrespective of whether he is director or not.	Additional responsibility on CEO who is not a director
135(1)	<p>a) Earlier for CSR compliance, committee was required to be formed based on meeting thresholds in "any financial year".</p> <p>As per general circular no. 21/ 2014, the phrase 'any financial year' as defined as 'any of the three preceding financial years'.</p> <p>b) CSR committee need to consist of 3 or more directors with 1 independent director.</p>	<p>a) Now the words "any financial year" is replaced with "immediately preceding financial year" for compliance with CSR requirement.</p> <p>b) In case, independent director is not required to be appointed, CSR committee shall consist with 2 or more directors.</p>	<ul style="list-style-type: none"> This change brings clarity to the financial year which is required to be referred for CSR applicability. This change would override the earlier general circular number 21/2014. The change in composition of CSR committee would be beneficial to companies to whom requirement of appointing independent directors is not mandatory.

Section	Existing provision	Amended provision	Our views / comments
Explanation to 135(5)	For the purpose of CSR calculation, "average net profit" was calculated as per section 198.	The words "average net profit" has been replaced by the words "net profit".	No implications. Doubt created due to the word 'average' along with net profit. Now deleted.
136(1)	Every company having a subsidiaries shall, <ul style="list-style-type: none"> Place separate audited accounts in respect of each of its subsidiary on its website, if any. Provide a copy of separate audited financial statements in respect of each of its subsidiary, to any shareholder of company who asks for it. 	<p>a) Now only listed company required to comply with this requirement.</p> <p>b) In case listed company having foreign subsidiary, if Consolidated Financial Statement is placed on the website, if any, no need to place separate audited accounts of such foreign subsidiary.</p> <p>c) Now unaudited financial statement of foreign subsidiaries can also be placed on its website (in English language).</p>	This change reduces the compliance requirements for unlisted companies.
89(10)	There was no clarification on word 'Beneficial interest in a share' in the section.	As per amendment, word 'Beneficial interest in a share' is clearly defined as the right or entitlement to exercise any or all of the rights attached to such share or receive dividend or other distribution in respect of such share.	Scope of word 'Beneficial interest' is clearly defined. While structuring company's holding in the entity, the definition of beneficial interest would need to be analyzed.
First Proviso to 2(41)	Only holding company or a subsidiary company of a company incorporated outside India can apply to the Tribunal for a different financial year.	Now associate company of a company incorporated outside India can also apply to the Tribunal for a different financial year.	The exemption for different accounting year subject to tribunal approval available to the subsidiary has also been extended to the associate company as well.
2(46)	Holding company in relation to one or more other companies, means a company of	The expression "company" for the purpose of this section will include any body corporate.	Consequent to the change a company incorporated outside India would be treated as holding company.

Section	Existing provision	Amended provision	Our views / comments
	which such companies are subsidiary companies.		Whether an LLP would also be considered as holding company on account of this change needs to be further clarified by the Government.
2(57)	Earlier, the term net worth shall not include the words 'debit or credit balance of profit and loss account'.	Definition of net worth change to include debit or credit balance of profit and loss account. Earlier credit balance of profit and loss account was not specifically covered in the definition. This anomaly has been plugged by above change.	The earlier anomaly has now been rectified.
2(71)	Definition of Public company was (a) other than private limited company; (b) has a minimum paid up share capital as may be prescribed.	Word "and" has been inserted between both the conditions. Now both the conditions need to be fulfilled to become public company.	This change has been made to bring more clarity to the definition.
2(91)	Earlier, the term turnover included the words 'the aggregate value of the realization of amount made from the sale, supply or distribution of goods or on account of services rendered or both by the Company.	Now the same has been substituted with the words 'the gross amount of revenue recognized in the profit and loss account from the sale, supply or distribution of goods or on account of services rendered or both by the Company'.	This change ensures consistency of interpretation with financial statements.
Proviso to 130(1)	For re-opening of books of accounts, the Court or the Tribunal was required to give notice to the Central Government, the Income tax authorities, the Securities and Exchange Board or any other regulatory body and shall take into consideration the representation made by the Government or	In addition to bodies described earlier, representation of 'any other concerned person' also need to be taken.	The term 'other concerned person has not been defined'. This may include company, auditors of the company or other persons who are concerned with the re-opening of the books of accounts.

Section	Existing provision	Amended provision	Our views / comments
	the authorities, Securities and Exchange Board before passing any order.		
198	At the time of calculation of profits, credit was not given of any change in carrying amount of an asset or of a liability recognized in equity reserves including surplus in profit and loss account on measurement of the asset or the liability at fair value.	In addition to earlier provision, credit shall also not be given for any amount representing be unrealized gains, notional gains or revaluation of assets.	In line with the definition of free reserves, these items are excluded from the profits available for remuneration and declaration of dividend.

D) New requirements/ Other provisions

Section	Existing provision	Amended provision	Our Comments / Views
Proviso to section 123	There were no exclusions from the profit for the year to be considered for declaration of dividend.	New proviso is inserted to exclude any amount representing unrealised gain, notional gains or revaluation of assets and any changes in the carrying value of an asset or of a liability on the measurement of the asset or the liability at fair value from the profit to be computed for declaration of dividend.	Insertion is In line with the definition of free reserves. This would significantly impact companies complying with Ind AS and also to companies covered under existing accounting standards to the extent these items are credited to Statement of P&L. Practical difficulties would arise in identifying unrealised gains.
Section 123(3)	Declaration of interim dividend was allowed only upto the end of the financial year for which interim dividend was sought to be declared. Interim dividend can be declared out of surplus in the P&L and profits for the financial year for which interim dividend is sought to be declared.	Declaration of interim dividend can be made during the financial year or any time during the period from closure of financial year till holding of the AGM. Apart from utilising surplus in the P&L and profits for the financial year for which interim dividend is sought to be declared, interim dividend can now also be declared out of profits generated in the financial year till the quarter preceding the date of declaration of interim dividend.	Extended period upto date of AGM and utilisation of profits generated in subsequent financial year upto the quarter preceding the date of declaration of interim dividend is now allowed
42(4)	In case of private placement, earlier monies received on application were not possible to be utilized till the allotment is made.	New proviso is inserted wherein the company cannot utilize monies raised through private placement till allotment is made and the return of allotment is filed with the Registrar.	Additional requirement introduced for utilization of funds raised through private placement.
42(8)	A company was required to file with the Registrar a return of allotment of private	Period of filing a return of allotment is reduced to 15 days. Requirement of filing the record of	-

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	placement within 30 days from the date of allotment.	private placement with ROC within 30 days of circulation of private placement offer letter has been omitted.	
42(9)	There was no penalty provision when a Company defaults in filing the return of allotment within the prescribed time.	Penal provision has been introduced	
73(2)(e)	Earlier, in case the Company has made any default in the repayment of deposits accepted either before or after the commencement of this act, then such defaulting company was prohibited from accepting deposits.	In case of defaulting company, permanent prohibition from raising deposits is reduced to 5 years from the date of making default good.	Impact of stringent provision reduced for defaulting companies.
2(49)	Interested director means a director who in any way interested in a contract or arrangement entered into by or on behalf of a company.	This definition has been omitted	The definition was repeated at two places i.e. in section 2(49) as well as under section 184(2) and hence to avoid duplication one of them is removed.
Proviso to 153	It was mandatory for every individual intending to be appointed as director of the Company to apply for allotment of Director Identification Number (DIN) to Central Government.	As per the amendment, now Central Government is empowered to recognise any other universally accepted identification number as an identification document similar to DIN.	
447	Earlier any person who was found to be guilty of fraud was punishable with imprisonment and fine. There was no differentiation based on quantum of amount involved in the fraud.	Now punishment is based on amount of fraud involved as given below:	-

Section	Existing provision	Amended provision	Our Comments / Views						
		<table border="1"> <thead> <tr> <th>Amount of fraud</th> <th>Punishment</th> </tr> </thead> <tbody> <tr> <td>At least Rs. 10 lakhs or 1% of turnover [whichever is lower]</td> <td>Imprisonment of 6 – 10 years and fine upto 3 times the amount involved.</td> </tr> <tr> <td>Less than 10 lakhs or 1% of turnover whichever is lower and does not involve public interest</td> <td>Imprisonment upto 5 years or fine upto Rs. 20 lakhs or both.</td> </tr> </tbody> </table>	Amount of fraud	Punishment	At least Rs. 10 lakhs or 1% of turnover [whichever is lower]	Imprisonment of 6 – 10 years and fine upto 3 times the amount involved.	Less than 10 lakhs or 1% of turnover whichever is lower and does not involve public interest	Imprisonment upto 5 years or fine upto Rs. 20 lakhs or both.	
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92(3)	An extract of the annual return shall form part of the Board's report.	<p>a) Copy of the annual return to be placed on the website, if any, of the company and the web-link of such annual return shall be disclosed in the Board's report.</p> <p>b) The Central Government may prescribe abridged form of annual return for One Person Company ('OPC'), Small Company and such other class or classes of companies as may be prescribed.</p>	This would avoid duplication of information and reduce the time required for compliance with the requirements of the section.						
135(3)(a)	CSR policy has to indicate activities to be undertaken by the Company as specified in Schedule VII.	For the purpose of expanding the coverage and scope of activities mentioned in schedule VII, words 'in areas or subject' have been added.	This would facilitate liberal interpretation of the activities covered under CSR.						

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Revised proviso to 403(1)	The time limit of submitting any document, fact or information with Registrar of Companies ("ROC") was maximum 270 days.	Maximum period of 270 days has been removed. Now filing with ROC can be made any time on payment of additional fees, as prescribed.	More flexibility provided for ensuring compliances.
73(2)(c)	Maintenance of Deposit Repayment Reserve for Public Deposits was 15% of the amounts maturing during the financial year and next year.	Now Deposit Repayment Reserve for Public Deposits is 20% of the amounts maturing during the next financial year.	-
Proviso to 2(30)	Earlier, definition of debentures was "debenture includes debenture stock, bonds or any other instrument of a company evidencing a debt, whether constituting a charge on the assets of the company or not"	Now, instruments referred to in Chapter III-D of the Reserve Bank of India Act, 1934 and such other instruments as prescribed by the Central Government in consultation with the RBI shall not be considered as debentures.	-
2(51)	Officers not more than 1 level below the directors who are in whole time employment were not included in definition of Key Managerial Personnel (KMP).	Definition of KMP is amended to include such other officer not more than one level below the directors who is in whole time employment and designated as KMP by the Board.	This has substantially expanded the definition of KMP. The responsibilities and obligations of the officer's one level below the directors (who are designated as KMP) would increase significantly.
2(76)(viii)	As per existing definition, related party included the following: Any <u>company</u> which is, a) holding, subsidiary or an associate company of such company or b) a subsidiary of a holding company to which it is also a subsidiary	The word ' <u>company</u> ' has been replaced by the word ' <u>body corporate</u> '. Further an investing company or the venturer of the company is also included in the definition of related party. The investing company or the venturer of a company means a body corporate whose investment in the company would result in	In the earlier definition, a foreign holding or a subsidiary or an associate company was not included in the definition of the related party. On account of inclusion of the word body corporate, foreign holding, subsidiary or associate would also be covered under the definition of related party. The change as regards inclusion of investment company or venturer would need to be analyzed

Section	Existing provision	Amended provision	Our Comments / Views
	Further, investing company or venturer company was not included in the definition of related parties.	becoming an associate company of the body corporate.	while structuring investments / transactions by venture capital/ private equity firms etc.
2(85)	<p>a. Maximum paid-up share capital and turnover amount which can be prescribed for small company was not more than Rs. 5 crores and Rs. 20 crores rupees respectively.</p> <p>b. Turnover was taken as per its last financial year.</p>	<p>a. The upper limit which can be prescribed for defining small company has been increased to Rs. 10 crores and 100 crores in case of paid-up share capital and turnover respectively.</p> <p>b. Now specifically provided that turnover should be as per profit and loss account for the immediately preceding financial year.</p>	This change empowers the central government to prescribe a higher limit for definition of small companies. Current prescribed limits for defining a small company have not been changed.
366	Partnership or LLP required 7 members to convert into company	Now the limit has been reduced to 2.	Requirement of conversion into company eased out
177	In case of related party transactions, approval of audit committee is required.	Now in case of related party transactions other than those prescribed under section 188, if not approved by audit committee will require the approval of Board of Directors.	-
180	Restrictions on powers of board: For the purpose of calculating maximum limit on borrowing powers of the board, paid up capital and free reserves were taken into account.	Now along with paid up capital and free reserves, securities premium is also included to calculate maximum limit on borrowing powers of the board.	-
197(16)	Earlier there was no such sub-section.	The auditor of the Company shall, in his report under section 143, make a statement as to whether the remuneration paid by the Company to its directors is in accordance	

Section	Existing provision	Amended provision	Our Comments / Views
		with the provisions of this section, whether remuneration paid to any director is in excess of the limit laid down under this section and give such other details as may be prescribed.	

The Companies (Amendment) Act, 2017 is available on: http://mca.gov.in/Ministry/pdf/CAAct2017_05012018.pdf

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This document has been prepared as a service to the clients. We recommend you to seek professional advice before taking any action on the specific issues.

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