

Nagpur Branch of WIRC of ICAI – Seminar on Companies Act, 2013

Key Highlights of Companies (Amendment) Act, 2017

By Gaurav Pingle, Practising Company Secretary

(E): gp@csgauravpingle.com . (M): +91 9975565713

Title of provision	Details of amendment	Effective from:
Associate Company	‘Significant Control’ means at least 20% of total voting power (earlier ‘total share capital’)	May 7, 2018
Debenture	Instruments referred to in Chapter III-D of the RBI Act, 1934 and such other instrument, as may be prescribed by Central Govt. in consultation with RBI, shall not be treated as debenture.	Feb. 9, 2018
Holding Company	Holding Co. now includes ‘Body Corporates’ i.e. company incorporated in India & LLP	Feb. 9, 2018
KMP	Now includes – Officer, not more than one level below the director who is in whole-time employment may be designated as KMP by the board of directors.	Feb. 9, 2018
Net-worth	While calculating net-worth, the debit & credit balance in P&L A/c shall be considered	Feb. 9, 2018
Related Party	As per amendment – Holding company, Subsidiary company, Associate Company incorporated outside India are also ‘related parties’ under Cos. Act, 2013. Investing company or Venturer Company are also included as ‘related parties’. They mean a body corporate whose investment in the Co. would result in the Co. becoming an Associate Co. of the body corporate.	Feb. 9, 2018
Small Company	Paid-Up share capital (maximum limit) enhanced to Rs. 10 Crore (from Rs. 5 Crore). Turnover (maximum limit) enhanced to Rs. 20 Crore (from Rs. 100 Crore). Clarification that for the purpose of computing turnover, P&L A/c of immediately preceding FY shall be considered.	Feb. 9, 2018
Subsidiary Company	One of the criteria changed for determining a company as ‘subsidiary company’: Co. in which Holding Co. exercises controls more than ½ of the total voting rights (earlier ‘total-share capital’) either at its own or together with one or more of its subsidiary cos.	May 7, 2018
Turnover	Turnover means gross amount of revenue recognised in P&L A/c (earlier, ‘aggregate value of realisation of amount made’) from the sale, supply, or distribution of goods or on account of services rendered, or both, by a company during a FY.	Feb. 9, 2018
Reduction in No. of	All the members shall be severally liable if the Co. carries on business for more than 6 months while	Feb. 9, 2018

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members	the number of members is reduced below minimum statutory limit (7 or 2 members).	
Name reservation	ROC shall reserve the name of the Co. for 20 days only from the date of approval. In case of change of change of name, name is reserved for 60 days from the date of approval.	Jan. 26, 2018
Incorporation Doc.	The requirement of furnishing an Affidavit has been substituted with Declaration.	Not Notified
Registered Office – post incorporation	Co. shall within 30 days (<i>earlier 15 days</i>) of its incorporation and at all times thereafter shall have a registered office.	Not Notified
Authentication of Documents	In addition to KMP, the documents & contracts can be authenticated by an officer or employees of the company duly authorized by board of directors.	Feb. 9, 2018
Prospectus contents	Disclosures under the Act deleted, now such disclosures are aligned with SEBI ICDR Regulations.	May 7, 2018
Mis-statements in prospectus	Provisions introduced w.r.t. misleading statement by an expert.	Feb. 9, 2018
Issue of share on private placement basis	Sec. 42 of the Act has been entirely substituted. Key amendments are: (i) Group of persons whom offer is to be made is to be identified by board of directors, (ii) Private Placement offer and application shall not carry right of renunciation, (iii) Requirement to file Form GNL-2 has been discontinued, (iv) Cos. cannot use funds till return of allotment has been filed with ROC within 15 days from the date of allotment, (v) Separate penalty provided for default in filing of return of allotment.	Not Notified
Issue of shares at discount	Co. may issue shares at a discount to its creditors when its debt is converted into shares in pursuance of any statutory Resolution Plan or Debt Restructuring Scheme in accordance RBI Guidelines.	Feb. 9, 2018
Sweat Equity Share	Sweat equity shares can be issued within 1 year from the commencement of business of the Co.	Feb. 9, 2018
Offer letter for Rights Issue	In addition to registered post, speed post and electronic means, the Letter of Offer can be sent through courier or any other mode having proof of delivery.	Feb. 9, 2018

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Title of provision	Details of amendment	Effective from:
Share valuation u/s 62(1)(c) of Act	Valuation Report of Registered Valuer u/s 62(1)(c) of the Act shall now be subject to compliance of Chapter III of the Act & other prescribed conditions.	Feb. 9, 2018
Acceptance of deposits under the Companies Act, 2013	(i) Company accepting deposits, on or before the 30 th day of April each year, such sum which shall not be less than 20% (Earlier 15%) of the amount of its deposits maturing during the following FY and kept in a Scheduled Bank in a separate Bank A/c to be called 'Deposit Repayment Reserve A/c', (ii) Elimination of provisions relating to deposit insurance provisions, (iii) Co., if defaulted in repayment of deposit or payment of interest thereon, will also be allowed to raise deposits, on a condition that it has repaid all the money & 5 years have elapsed since the date of making good the default.	Feb. 9, 2018
Deposit repayment	The deposits shall be repaid within 3 years from April 1, 2014 (earlier 1 year from April 1, 2014) or before the date provided for maturity of deposits, whichever is earlier.	Feb. 9, 2018
Charge registration	Govt. (in consultation with RBI) may exempt charges to which Sec. 77 of the Act shall not apply.	May 7, 2018
Company to report satisfaction of charge	ROC may, on an application by Co. or Charge holder, allow such intimation of payment or satisfaction to be made within a period of 300 days of such payment or satisfaction on payment of additional fees.	Not Notified
Register of Significant Beneficial Owners in Co.	Every individual, who acting alone or together, or through one or more persons or trust, including a trust and persons resident outside India, holds beneficial interests, of not less than 25% or such other percentage as may be prescribed, in shares of a company or the right to exercise, or the actual exercising of significant influence or control over the company ('Significant Beneficial Owner'), shall make a declaration to the Co., specifying the nature of his interest and other particulars, in such manner and within such period of acquisition of the beneficial interest or rights and any change thereof, as may be prescribed.	Not Notified

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Title of provision	Details of amendment	Effective from:
Annual Return	(i) Indebtedness of Co. is not required to be reported, (ii) Details / Particulars of Foreign Institutional Investors is not to be reported, (iii) Govt. to prescribe abridged form of Annual Return for OPC, Small Co. and such other class or classes of companies as may be prescribed, (iv) No more a requirement of providing extract of Annual Return is to the Board's Report, (v) Annual Return to be uploaded on website of Co. & web-link to be provided in Board's Report.	Certain provisions notified w.e.f. May 7, 2018
Promoters' stake change	The provisions for filing return with ROC, in case of promoters' stake changes have been omitted.	Not Notified
Place of keeping registers, returns.	Requirement of filing proposed special resolution in advance with ROC has been deleted.	Not Notified
Venue – AGM of unlisted Co.	AGM of an unlisted company may be held at any place in India subject to prior consent of all the members of the company in writing or by electronic mode.	Not Notified
Venue – EGM of WOS	EGM of a Co. shall be held at any place in India, however EGM of Wholly Owned Subsidiary incorporated outside India may be held outside India.	Feb. 9, 2018
General meeting on shorter notice	The requirement for conducting a general meeting on shorter notice (i.e. less than 21 days) is amended. Shorter notice consent can be provided in writing or electronic mode.	Feb. 9, 2018
Resolution by Postal ballot	In case of matters required to be mandatorily conducted through Postal Ballot, the same may be transacted at a General Meeting – subject to the condition that the facility of e-voting is provided.	Feb. 9, 2018
Report on AGM	Amendment Act does not amend the provisions relating to preparation and reporting of Report on each AGM by listed public Co. The provisions are specifically amended w.r.t. penal provisions.	May 7, 2018
Payment of dividend	The provisions relating to declaration of interim dividend by the board of directors during any FY or	Feb. 9, 2018

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Title of provision	Details of amendment	Effective from:
	at any time during the period from closure of FY till holding of the AGM have been amended.	
Consolidation	Financial Statements of Associate Co. shall also be consolidated with Financial Statements of the Co.	May 7, 2018
NFRA constitution	Appeals against order of National Financial Reporting Authority shall be examined by NCLAT.	March 21, 2018
Board's Report	(i) CEO shall sign the Boards' Report, whether or not appointed as a director of the company, (ii) Provisions relating to extract of Annual Return (in Form MGT-9) omitted, web-link of the annual return to be provided, (iii) Salient points of CSR Policy, Remuneration Policy may be included in the Report and web-link of these Policies to be provided in the Report, (iv) Govt. may prescribe an abridged Board's Report, for OPC or Small Company.	Not Notified
CSR	(i) For determining applicability or requirement to constitute CSR Committee – the net worth, turnover or net profit of immediately <i>preceding</i> FY shall be considered, (ii) If Co. is not required to appoint Independent Director then, CSR Committee shall be constituted of 2 or more directors.	Not Notified
Copies of audited Fin. Statements	The criterias for sending financial statements less than 21 days before the date of General Meeting has been amended.	Feb. 9, 2018
Filing of Fin. Statements to be filed with RoC	(i) Where Co. has a foreign subsidiary, it can attach unaudited financial statements of such subsidiary, if getting results audited is not mandated under the law of foreign subsidiary, along with a declaration to this effect, together to be filed with ROC; (ii) Where such financial statements of subsidiary are in language other than English, translated copy shall also be attached	May 7, 2018
Auditor's appointment	The provisions relating to ratification of auditor's appointment (at every AGM) has been eliminated.	May 7, 2018
Right of Auditor	Statutory Auditor of Holding Co. has a right to access the records of Associate Companies also.	Feb. 9, 2018
Companies to have	(i) The provisions relating to 'resident director' have been changed. According to the amended	May 7, 2018

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Title of provision	Details of amendment	Effective from:
Board of Directors	provisions, a person who has stayed in India for a minimum period of 182 days in previous FY shall be considered as 'resident'. In case of newly incorporated companies, the requirement of 182 days shall apply proportionately, (ii) Change in eligibility criteria for independent directors.	
Application for allotment of DIN	Govt. may prescribe any identification number which shall be treated as DIN for the purposes of the Act and if any individual holds or acquires such identification number, the requirement of this Sec. shall not apply or shall apply in the prescribed manner.	Feb. 9, 2018
Right of a person to stand for directorship	In case of company appointing: (i) Independent director, (ii) Director recommended by NRC or (iii) Director recommended by the board (where NRC constitution is not applicable), requirement to deposit amount of Rs. 1 lac shall not apply.	Feb. 9, 2018
Appointment of Alternate Director	(i) A person holding directorship in the Co. in any capacity cannot be an alternate director in the same Co., (ii) The provisions of appointment of casual vacancy of director are now applicable to private companies. However, the director appointed by casual vacancy by the board of directors shall be subsequently be approved by the members in the general meeting.	Feb. 9, 2018
Disqualifications of director	In case of disqualification of director u/s 164(2) of the Act, where a person is appointed as a director of a company which is in default, shall not incur the disqualification for a period of 6 months from the date of his appointment.	May 7, 2018
No. of directorship	Dormant Co. (whether private or public) to be excluded from reckoning limit of directorships.	Feb. 9, 2018
Vacation of office of director	Several provisions relating to vacation of office of director have been amended. If an office of a director becomes vacant, wherein he incurs any disqualification u/s 164 of the Act, then the office of the director shall become vacant in all the companies, other than the company which is in default under that sub-Sec. (2) of Sec. 164 of the Act. 1)(a) vacation of office of a director, if he incurs any of	May 7, 2018

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Title of provision	Details of amendment	Effective from:
	the disqualifications referred to under Sec. 164.	
Resigning director's intimation	The director who has resigned <i>may</i> forward a copy of his resignation along with detailed reasons for resignation.	May 7, 2018
Participation in Board meeting through electronic mode	Directors may attend the meeting by video conferencing or audio visual means for all business agenda items, subject to presence of quorum in-person (specifically in relation to the Rule 4 of Companies (Meetings of Board and its Powers) Rules, 2014) i.e. Approval of annual financial statements, Approval of Board's report, Approval of prospectus, Audit Committee Meetings for consideration of Financial Statement including Consolidated Financial Statement and approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover.	May 7, 2018
Audit Committee	(i) RPTs, other than those covered u/s 188, if the audit committee does not approve of a transaction it shall make the recommendation to board of directors, (ii) Provisions relating to ratification of RPTs is inserted, subject to riders, (iii) In case the transaction is not approved, it shall be voidable at the option of the Audit Committee and certain conditions prescribed, (iv) Requirement of obtaining Audit Committee's approval for RPTs is waived off for certain transaction (i.e. other than a transaction referred to u/s 188) between a Holding Company and its Wholly-Owned Subsidiary.	May 7, 2018
Nomination and Remuneration Committee	NRC shall specify the manner for effective evaluation of performance of the board of directors, its committee and individual directors and review its implementation and compliance. Evaluation shall be carried out either by the board of directors, NRC or by independent external agency. The salient features of the NRC Policy and changes therein, if any, shall be disclosed in the Boards' Report along with the web-link of the website (where the policy is uploaded).	May 7, 2018
Borrowing powers	The borrowing powers of the board of directors of public company (without obtaining the approval of	Feb. 9, 2018

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Title of provision	Details of amendment	Effective from:
of public company / BoD	shareholders u/s 180(1)(c) of the Act) have been enhanced from <i>paid-up share capital and free reserves</i> to <i>paid-up share capital, free reserves and securities premium account</i> .	
Sec. 184 non-applicability	The provisions relating to non-applicability of Sec. 184 of the Act have been amended.	Feb. 9, 2018
Loan to directors	Sec. 185 of the Act has been completely substituted by the Companies (Amendment) Act, 2017. The revised Sec. is divided in 4 sub-Sec., the highlights are: (i) Complete restriction on loans, guarantees & securities to certain parties, (ii) Permits granting of loans, guarantees & securities to certain parties, subject to riders, (iii) Loans, guarantees & securities to certain parties completely exempted from compliance of the Sec., (iv) Penal provisions under the Sec..	May 7, 2018
Loan & investment by company	Certain provisions relating to loan & investment by Co. (u/s 186 of the Act) have been amended. Term 'persons' for the purpose of Sec. sub-Sec. (2) of Sec. 186 of the Act excludes 'employees'. Therefore, loans given as a part of the condition of service or pursuant to a scheme approved by all employees of the company are not covered in Sect. 186. The Amendment Act provides for certain exemptions and non-applicability of the provisions to certain transactions.	May 7, 2018
RPTs	The approval of the shareholders for Related Party Transactions under Sec. 188 of the Act by ordinary resolution is not applicable to a company in which 90% or more members, in number, are relatives of promoters or are related parties.	Feb. 9, 2018
Appointment of MD / WTD / Manager above 70 years of age	A company may appoint or continue the employment of person as MD, WTD, Manager who has attained the age of 70 years, where no special resolution has been passed, but the members have accorded their approval by ordinary resolution and the Central Govt. being satisfied on an application that such appointment is beneficial to the company.	Not Notified

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Title of provision	Details of amendment	Effective from:
Managerial remuneration and limits thereon	Approval of Central Government u/s 197 has been completely eliminated and the approval of ‘stakeholders’ (i.e. shareholders, banks/public financial institutions/non-convertible debenture holders/secured creditors) has been introduced.	Not Notified
Calculation of profits	For calculating net profit u/s 198 of the Act, the following shall not be deducted: (i) Profits, by way of premium on shares or debentures of the company, which are issued or sold by the company unless the company is an investment company as referred to in clause (a) of the Explanation to Sec. 186, (ii) Any amount representing unrealised gains, notional gains or revaluation of assets. However, any brought forward losses of the years prior to the commencement of the Act, 2013 shall be deducted while calculating net profit u/s. 198.	Not Notified
Inspector’s report	Copy of Report submitted by inspector may be availed by members and creditors of the company or by any other person whose interest is likely to be affected.	Feb. 9, 2018
Valuation by Registered Valuer	Any person who has a direct or indirect interest or becomes so interested at any time during a period of 3 years prior to his appointment as valuer or 3 years after the valuation of assets was conducted by him shall not be appointed as valuer.	Feb. 9, 2018
Companies capable of being registered	U/s 366 of the Act, any partnership firm, LLP, co-operative society or any other business entity (with 7 or more members, now 2 members or more members) may be converted into company limited by shares, guarantee or unlimited company under the Act.	Not Notified
Application of Act to foreign companies	Pursuant to the Amendment Act, it is clarified that Sec. 380 to 386 (both inclusive) and Sec. 392 & 393 shall apply to all Foreign Cos. Further, Central Govt. may exempt any class of foreign companies, specified in the Order, from any of the provisions the aforementioned Sec.s.	Feb. 9, 2018
CSR provisions for	The provisions of Sec. 135 of the Act (relating to CSR) shall also apply to foreign companies, subject	Feb. 9, 2018

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Title of provision	Details of amendment	Effective from:
Foreign Cos.	to such exceptions, modifications and adaptations as may be made.	
Fee for filing, Etc.	Annual Filing (Financial Statements / Annual Return) – Where any document / e-Form is required to be submitted, filed, registered within prescribed time period, without prejudice to any other legal action or liability under the Act, it may be submitted, filed, registered, as the case may be, after expiry of the period (as prescribed), on payment of such additional fee, which shall not be less than Rs. 100/- per day. Different amounts may be prescribed for different classes of cos. Where the document / e-Form (other than annual filing) is not submitted, filed, registered within prescribed period, it may, without prejudice to any other legal action or liability under this Act, be submitted, filed, registered as the case may be, on payment of such additional fee as may be prescribed. Different fees may be prescribed for different classes of companies.	Partly Notified
Nidhi Companies	Govt. may declare a company as ‘Nidhi’ or ‘Mutual Benefit Society’.	Not Notified
Compounding of certain offences	NCLT should have the power to compound offences punishable with fine as well as offences punishable with imprisonment or fine or both.	Feb. 9, 2018

Reference:

- (i) MCA Notification dated January 23, 2018. File No. 1/1/2018 – CL.I
- (ii) MCA Notification dated February 9, 2018. File 1/1/2018 – CL.I
- (iii) MCA Notification dated March 21, 2018, File 1/4/2016 – CL.I
- (iv) MCA Notification date May 7, 2018. File No. 1/1/2018 – CL.I