

# COMPANIES (AMENDMENT) BILL 2017

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PRESENTATION  
BY  
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AT  
WIRC REGIONAL CONFERENCE AT GOA  
ON  
NOVEMBER 03, 2017

# DEFINITIONS

## **Associate Company {Section 2(6)}:**

-  Associate Company in relation to another company means a company in which that other company has a **significant influence but which is not a subsidiary company** of the company **and includes a joint venture company having joint control.**
-  The expression '**significant influence**' means control of at least **20% of total voting power or control of or participation in business decision under an agreement.**
-  **Joint Venture** means parties having joint control of the arrangement have right to the net assets of the arrangement.

# DEFINITIONS

## **Debenture {Section 2(30)}:**

 The **following instruments shall not be** treated as 'debenture':

- The instruments referred to in Chapter III D of the of the Reserve Bank of India Act, 1934 namely; **Derivatives, Money Market Instruments, REPO, Reverse Repo, Securities of Central and State Government;** and
- Such other instrument, as may be prescribed by the Central Government in consultation with the RBI.

# DEFINITIONS

## ✍ **Financial year {Section 2(41)}:**

- The financial year means the period ending on 31<sup>st</sup> March every year.
- 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**, can have any period as its financial year, **subject to approval of Tribunal.**

# DEFINITIONS

## **Holding Company {Section 2(46)}:**

-  Holding company, means a company of which such companies are subsidiary companies.
-  **The Bill has inserted an explanation to this clause whereby the expression 'company' includes any body corporate so that a company incorporated outside India could be considered to be the holding company of another company.**

# DEFINITIONS

 **Key Managerial Personnel (KMP) {Section 2(51)}:**

 KMP will also mean such other officer, not more than one level below the directors who is in whole-time employment, designated as KMP by the Board.

Comment: The Board of directors of a company may designate Members of Management Committee / Executive Committee as KMPs to be accountable for compliance with provisions of the Act.

# DEFINITIONS

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## **Net worth {Section 2(57)}:**

Net worth means and **includes debit or credit balance of Profit and Loss Account** which was omitted to be included in the Companies Act, 2013.

# DEFINITIONS

## **Related Party {Section 2(76)}:**

 **Coverage of related party has been enlarged to include any body corporate which is:**

(a) a holding, subsidiary or an associate company of such company,

(b) a subsidiary of a holding company to which it is also a subsidiary (means a co-subsidary) **so that companies incorporated outside India are included.**

 **The related party also covers a body corporate which is an investing company or the venturer of the company.**

The investing company or venturer of a company means a body corporate whose investment in the company would result in the company becoming an associate company of the body corporate.

# DEFINITIONS

## **Subsidiary Company {Section 2(87)}:**

Subsidiary Company means a company in which **the holding company** exercises or **controls more than one-half of the total voting power (presently total share capital)** either at its own or together with one or more of its subsidiary companies.

## **Turnover {Section 2(91)}:**

Turnover means the **gross amount of revenue recognised in the profit and loss account** from the sale, supply, or distribution of goods or on account of services rendered, or both, by a company during a financial year.

# INCORPORATION OF COMPANY

 **Members severally liable in certain cases (Section 3A – New Section) (previously section 45 of 1956 Act):**

 If the number of members of a company is reduced below members seven or two **and the company carries on business for more than six months while the number of members is so reduced, members of the company during that time shall be severally liable.**

# INCORPORATION OF COMPANY

## **Registered Office (Section 12):**

-  A company shall within 30 days of its incorporation (**earlier 15 days of its incorporation**) have a registered office.
-  Notice of every change of the situation of the registered office shall be given to RoC within 30 days (**earlier 15 days**) of the change.

# INCORPORATION OF COMPANY

## **Authentication of documents, proceedings and contracts (Section 21):**

-  In addition to KMP and officers (including a director), **employee of the company duly authorized by the Board** may sign a document or proceedings requiring authentication by a company or contracts made by or on behalf of a company.

# PROSPECTUS AND ALLOTMENT OF SECURITIES

## **Matters to be stated in Prospectus (Section 26):**

-  Every prospectus issued by a public company shall state such information and set out such reports on financial information as may be specified by SEBI.
-  Until SEBI specifies the information and reports on financial information, SEBI (ICDR) Regulations shall apply.

**Comment: Only the format prescribed by SEBI to be followed.**

# PROSPECTUS AND ALLOTMENT OF SECURITIES

## **Issue of shares on private placement basis (Section 42):**

-  The present heading of Section 42 namely 'Offer or invitation for subscription of securities on private placement' is sought to be modified by the heading mentioned above.

**Comment: Despite the new caption of the section, it covers issue of all securities on private placement.**

# PROSPECTUS AND ALLOTMENT OF SECURITIES

✍ Some of the existing provisions contained in Section 42 of the Act shall be substituted by the new provisions as set out below:

- 1) A private placement shall be made **only to a select identified persons (identified persons)** in a financial year subject to such conditions as may be prescribed.
- 2) Private placement offer and application **shall not carry any rights of renunciation.**
- 3) The company shall not utilise monies raised through private placement **unless the return of allotment is filed with the Registrar within 15 days from the date of allotment.**

# PROSPECTUS AND ALLOTMENT OF SECURITIES

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- 4) **A company may, at any time (meaning at the same time), make more than one issue of securities to such class of identified persons as may be prescribed.**
- 5) **If the return of allotment is not filed within the period prescribed, promoters and directors shall be liable to a penalty for each default.**
- 6) **Any private placement issue not made in compliance of the provisions of this Section shall be deemed to be a public offer.**

# SHARE CAPITAL AND DEBENTURES

## **Prohibition on issue of shares at discount (Section 53):**

-  A company cannot issue shares at a discount (except sweat equity shares).
-  A company **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 with any guidelines or directions or regulations specified by RBI under RBI Act, 1934 or the Banking (Regulation) Act, 1949.

**Comment: This amendment is proposed to enable restructuring of a distressed company.**

# SHARE CAPITAL AND DEBENTURES

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## **Issue of sweat equity shares (Section 54):**

-  One of the conditions to be fulfilled by a company for issuing sweat equity shares is that not **less than one year should elapse since the date on which the company had commenced business.**
-  **This restriction is sought to be omitted in the Bill.**

# ACCEPTANCE OF DEPOSITS BY COMPANIES

## **Prohibition on acceptance of deposits from public (Section 73):**

 **Three amendments are proposed** in this Section. In brief, a company **may accept deposits from its members** subject to fulfilment of certain conditions.

➤ **The first amendment is that** the company concerned shall deposit on or before 30<sup>th</sup> April each year, such sum which **shall not be less than 20%** of the amount of its deposits maturing during the following financial year and kept in a separate bank account called '**deposit repayment reserve account**'.

# ACCEPTANCE OF DEPOSITS BY COMPANIES

## **Prohibition on acceptance of deposits from public (Section 73):**

- **The present limit is 15% of the amount of its deposits maturing during a financial year and the financial year next following, covering two years.**
- **The second amendment is that the company accepting deposits need not provide deposit insurance.**
- **The third amendment is that, where a company has committed a default in the repayment of deposits accepted, such company can accept further deposits if it had made good the default and a period of five years had lapsed since the date of making good the default.**

# ACCEPTANCE OF DEPOSITS BY COMPANIES

## **Punishment for contravention of Section 73 or Section 76 (Section 76A):**

-  If a company fails to repay the deposit or interest **even within the further time allowed by the Tribunal**, it shall be punishable in addition to the payment of the deposit amount and the interest due with a minimum fine not less than one crore rupees or twice the amount of deposit accepted by the company whichever is lower (presently fine extends up to rupees ten crore).
-  Further **every officer of the company who is in default** is punishable with imprisonment which may extend to seven years and with fine which shall not be less than **25 lakh rupees** but which may extend to 2 crore rupees. The offence is not compoundable.

# REGISTRATION OF CHARGES

## **Duty to register charges etc. (Section 77):**

-  It is the duty of every company to register the particulars of the charge signed by the company together with the instruments, if any, creating the charge with RoC within 30 days of its creation.
-  **The above requirement shall not apply to such charges as may be prescribed by MCA in consultation with RBI.**

# REGISTRATION OF CHARGES

## **Company to report satisfaction of charge (Section 82):**

-  A company shall inform the Registrar for satisfaction of any charge within a period of 30 days from the date of such satisfaction.
-  The Registrar may on an application by the company or the charge holder allow such intimation of satisfaction to be made within a period of 300 days of such satisfaction **on payment of such additional fees** as may be prescribed.

**Comment: The Bill provides the time lines for filing satisfaction of charge on the time lines provided for registration of charge under Section 77.**

# MANAGEMENT AND ADMINISTRATION

## **Declaration in respect of beneficial interest in any share (Section 89):**

 **Beneficial interest in a share has been defined in the Bill which includes**, (directly or indirectly, through any contract, arrangement or otherwise), **the right or entitlement of a person** (alone or together with any other person) **to:**

- a) exercise or cause to be exercised any or all of the rights attached to such share; or
- b) receive or participate in any dividend or other distribution in respect of such share.

# MANAGEMENT AND ADMINISTRATION

## **Register of significant beneficial owners in a company (Section 90):**

- 1) Every individual who acting alone or together or through one or more persons or trust including a Trust and persons resident outside India, holding beneficial interest, of not less than 25% or such other percentage as may be prescribed, in shares of a company or the right to exercise significant influence or control as defined in clause (27) of Section 2 of the Act, over the company (significant beneficial owner), shall make a declaration to the company, specifying the nature of his interest and other particulars, in such manner and within such period of acquisition of the beneficial interest; **The Central Government may prescribe a class or classes of persons who shall not be required to make declaration.**

# MANAGEMENT AND ADMINISTRATION

## **Register of significant beneficial owners in a company (Section 90) (cont.)**

- 2) Every Company to maintain a register of the interest declared by significant beneficial owner and changes therein.**
- 3) The register is open for inspection by any member of the Company on payment of fees.
- 4) The Company to file a return of significant beneficial owners of the Company and changes therein with Registrar of Companies.**

# MANAGEMENT AND ADMINISTRATION

## **Register of significant beneficial owners in a company (Section 90) (cont.)**

- 5) The Company shall give notice to any person whom the company knows to be a significant beneficial owner and who is not registered as a significant beneficial owner with the Company.
  
- 6) The information required by the company shall be given by the concerned person within 30 days of the date of the notice.

# MANAGEMENT AND ADMINISTRATION

## **Register of significant beneficial owners in a company (Section 90) (cont.)**

- 7) The company can apply to the Tribunal within 15 days of the expiry of the period specified in the notice where the person fails to give the information required or the information given is not satisfactory **for an order directing that the shares in question be subject to restrictions with regard to transfer of interest, suspension of all rights attached to the shares and such other matters as may be prescribed.**
- 8) Penal provisions have been provided for non-compliance with the provisions of this new requirement with respect to significant beneficial owners.

# MANAGEMENT AND ADMINISTRATION

## **Annual Return (Section 92):**

 **Following particulars are not required to be furnished:**

➤ Company's indebtedness

➤ names, addresses, countries of incorporation, registration and percentage of shareholding **held by Foreign Institutional Investors**

 **The central Government may prescribe abridged form of annual return for One Person Company, small company and such other class of companies as may be prescribed.**

# MANAGEMENT AND ADMINISTRATION

## **Annual Return (Section 92):**

-  Extract of the annual return (in form MGT-9) which presently forms part of the Board's report, need not be annexed to it and instead every company shall place a copy of the annual return on its website, if any, and **the web-link of such annual return shall be disclosed in the Board's report.**

# MANAGEMENT AND ADMINISTRATION

 **Place of keeping and inspection of registers, returns, etc. (Section 94):**

 **The Central Government to prescribe the particulars of the register which shall not be made available for inspection or for taking extracts or copies thereof.**

**Comment: Personal information of members, as may be prescribed, by the Rules, may not be made available publicly.**

# MANAGEMENT AND ADMINISTRATION

## **Annual General Meeting (Section 96):**

-  Annual General Meeting of **an unlisted company** may be held **at any place in India** if consent is given in writing or by electric mode **by all the members in advance.**

## **Extra-ordinary general meeting (Section 100):**

-  An extra-ordinary general meeting of the company, other than of the wholly owned subsidiary of a company incorporated outside India, **shall be held at a place within India.**

# MANAGEMENT AND ADMINISTRATION

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## **Notice of meeting (Section 101):**

- An annual general meeting **may be called after giving shorter notice** if consent is accorded thereto, **by not less than 95% of the members (in number)** entitled to vote thereat; and

# MANAGEMENT AND ADMINISTRATION

## Notice of meeting (Section 101):

- Any other general meeting, consent by members of the company:
  - **holding majority in number of members entitled to vote and **who represent not less than 95% of the paid-up share capital of the company (dual majority)**, giving a right to vote at the meeting; or**
  - consent by members, if the company has no share capital, having not less than 95% of the total voting power **exercisable at that meeting**

# MANAGEMENT AND ADMINISTRATION

## **Postal Ballot (Section 110):**

-  Any item of business required to be transacted by means of postal ballot may be transacted at a general meeting by a company which is required to provide the facility to **members to vote by electronic means.**

**Comment: This is yet another welcome amendment for ease of doing business, as this gives total flexibility to companies for seeking members' approval.**

# MANAGEMENT AND ADMINISTRATION

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 **Resolutions and agreements to be filed (Section 117):**

 **A resolution passed to grant loans, or give guarantee or provide security in respect of loans by a banking company by its board of directors need not be filed with RoC.**

# DECLARATION AND PAYMENT OF DIVIDEND

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## **Declaration of dividend (Section 123):**

 **Interim dividend may be declared** not only during any financial year but also at any time during the period from closure of financial year till holding of the annual general meeting.

# DECLARATION AND PAYMENT OF DIVIDEND

## Declaration of dividend (Section 123) (cont.)

 Dividend may be declared:

- a) out of the surplus in the profit and loss account;  
or
- b) out of profits of the financial year for which such interim dividend is sought to be declared;  
or
- c) out of profits generated in the financial year till the quarter preceding the date of declaration of the interim dividend

# DECLARATION AND PAYMENT OF DIVIDEND

## Declaration of dividend (Section 123) (cont.)

-  In case the company has incurred loss during the current financial year **up to the end of the quarter immediately preceding the date of declaration of interim dividend**, such interim dividend shall not be declared at a rate higher than the average dividends declared by the company **during the immediately preceding three financial years.**

# ACCOUNTS OF COMPANIES

## **Financial Statement (Section 129):**

-  A company which has one or more subsidiaries **or associate companies** shall prepare a consolidated financial statement of the company.
-  The company shall also attach along with its financial statement, a separate statement containing the salient features of the financial statement of its subsidiary or subsidiaries **and associate company**.

# ACCOUNTS OF COMPANIES

## **Financial statement, Board's report, etc. (Section 134):**

-  The financial statement, including consolidated financial statement, is required to be signed on behalf of the Board **by Managing Director, if any.** It is provided in the Bill that **Chief Executive Officer of the company** is also required to sign the financial statements and CFS, **even if he is not a member of the Board.**

# ACCOUNTS OF COMPANIES

## **Financial statement, Board's report, etc. (Section 134) (cont.)**

 **Following are the amendments proposed with respect to report of the Board of directors:**

- a) An extract of the annual return (Form MGT-9) need not be attached to Board's report; **instead web address shall be given in the Report.**
- b) Where disclosures required to be made in the Board's Report have been included in the financial statements, **reference to such disclosures shall be made in the Director's Report instead of repeating such disclosures.**

# ACCOUNTS OF COMPANIES

 **Financial statement, Board's report, etc.  
(Section 134) (cont.)**

**c) Salient features of the following policies and changes therein should be specified in the Board's report by indicating the web-address at which the complete policy is available instead of annexing the policies in the Directors' Report.**

**I. Company's policy on directors appointment and remuneration**

**II. Policy on corporate social responsibility initiatives**

# ACCOUNTS OF COMPANIES

 **Financial statement, Board's report, etc.  
(Section 134) (cont.)**

**d) The Central Government may prescribe an abridged Board's report, for One Person Company or small company**

**Comment: This is yet another welcome amendment as this will reduce number of pages of printed annual report of the companies.**

# ACCOUNTS OF COMPANIES

## **Corporate Social Responsibility (Section 135):**

-  Every company having net worth of Rs. 500 crore or more, or turnover of Rs. 1000 crore or more or a net profit of Rs. 5 crore or more **during the immediately preceding financial year (presently during any financial year)** shall constitute a CSR Committee.
-  A company which is not required to appoint an independent director under Section 149(4), it shall have in its CSR Committee with two or more directors.
-  **The expression 'net profit' shall not include such sums as may be prescribed**, and shall be calculated in accordance with the provisions of Section 198.

# ACCOUNTS OF COMPANIES

## **Right of member to copies of audited financial statement (Section 136):**

 Financial statements, including Consolidated Financial Statement (CFS), auditor's report and other documents **can be sent to a member, less than 21 days before the date of the meeting**

- a) **if the company has a share capital, majority in number** entitled to vote and **who represent not less than 95% of the paid-up share capital** of the company (**dual compliance**); or
- b) **if the company has no share capital, not less than 95% of the total voting power** exercisable at the meeting

# ACCOUNTS OF COMPANIES

- ✍ **Right of member to copies of audited financial statement (Section 136) (cont.)**
- ☞ **A listed company which has a foreign subsidiary, where the foreign subsidiary is statutorily required to prepare consolidated financial statement under any law of the country, **only the consolidated financial statement of such foreign subsidiary** (and not the financial statement of its step down subsidiary) **should be placed on the website of the listed company.****
- ☞ **Where a foreign subsidiary is not required to get its financial statement audited, **the holding Indian listed company may place such unaudited financial statement translated in English on its website.****

# AUDIT AND AUDITORS

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## **Appointment of auditors (Section 139):**

-  Members having appointed Auditors for a period of five years need not ratify their appointment at every annual general meeting

# AUDIT AND AUDITORS

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## **Removal, resignation of auditor and giving of special notice (Section 140):**

-  **An auditor who has resigned from the company if fails to file the prescribed form with RoC within 30 days from the date of resignation, he shall be punishable with reduced fine of Rs. 50,000 or the remuneration of the auditor, whichever is less.**

# AUDIT AND AUDITORS

## Eligibility, qualifications and disqualifications of auditors (Section 141):

-  A person who, directly or indirectly, renders any service referred to in Section 144 (**that is prohibited services by an auditor set out in the said Section**) to the company or its holding company or its subsidiary company **shall not be eligible for appointment as an auditor of a company.**

**Comment: Associate company is excluded.**

# AUDIT AND AUDITORS

## **Punishment for contravention (Section 147) (cont.)**

-  **Auditors are liable for damages only to shareholders or creditors of the company.**
-  In case of criminal liability of an audit firm, in respect of liability other than fine, **the concerned partner or partners, who acted in a fraudulent manner or abetted or, as the case may be, colluded in any fraud shall only be liable.**

# APPOINTMENT AND QUALIFICATION OF DIRECTORS

## **Company to have Board of Directors (Section 149):**

 Every company shall have at least one director who stays in India for a total period of not less than **182 days during the financial year.**

 **In case of a newly incorporated company the requirement shall apply proportionately**

# APPOINTMENT AND QUALIFICATION OF DIRECTORS

## ✍ **Company to have Board of Directors (Section 149) (cont.)**

### ☞ **Independent Director**

➤ Certain criteria laid down in sub-section 149(6), detailed below have been amended

**a) Pecuniary relationship, (other than remuneration as such director) having transaction not exceeding 10% of his total income or such amount as may be prescribed, with the company, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year will not disqualify him;**

# APPOINTMENT AND QUALIFICATION OF DIRECTORS

## ✍️ **Company to have Board of Directors (Section 149) (cont.)**

### **b) none of whose relatives:**

- i. is holding any security(exceeding Rs.50 lakh face value) or 20% of the paid up share capital or interest in the company, its holding, subsidiary or associate company during the two immediately preceding financial years or during the current financial year;

# APPOINTMENT AND QUALIFICATION OF DIRECTORS

## ✍ Company to have Board of Directors (Section 149) (cont.)

- ii. is indebted to the company, its holding, subsidiary or associate company **or their promoters, or directors, in excess of such amount as may be prescribed** during the two immediately preceding financial years or during the current financial year;
- iii. has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, its holding, subsidiary or associate company or their promoters, or directors of such holding company, **for such amount as may be prescribed** during the two immediately preceding financial years or during the current financial year; **or**

# APPOINTMENT AND QUALIFICATION OF DIRECTORS

## **Company to have Board of Directors (Section 149) (cont.)**

- iv. has any other pecuniary transaction or relationship with the company, or its subsidiary, or its holding or associate company amounting to 2% or more of its gross turnover or total income singly or in combination with the transactions referred to in (i), (ii) or (iii) above; or**
  
- c) A relative of a designated independent director, who is an employee of the company, its holding company, subsidiary or associate company during preceding three financial years will not disqualify the director being construed as an independent director.**

# APPOINTMENT AND QUALIFICATION OF DIRECTORS

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 **Right of persons other than retiring directors to stand for directorship (Section 160):**

 **The requirement to deposit one lakh rupees shall not be applicable in case of appointment of an independent director or a director recommended by the nomination and remuneration committee.**

# APPOINTMENT AND QUALIFICATION OF DIRECTORS

## **Appointment of additional director, alternate director and nominee director (Section 161):**

 An alternate director in a company or holding directorship in the same company, cannot be appointed by the Board to act as an alternate director for any other director.

**Comment: A person cannot both be a director as well as an alternate director for any other director, in the same company.**

# APPOINTMENT AND QUALIFICATION OF DIRECTORS

## **Appointment of additional director, alternate director and nominee director (Section 161)(cont.)**

 If the office of any director appointed by the members in general meeting is vacated before his term of office expires, the resulting casual vacancy may be filled by the Board at a meeting of the Board.

 **The said appointment by the Board shall be subsequently approved by members in the immediate next general meeting.**

# APPOINTMENT AND QUALIFICATION OF DIRECTORS

## **Number of directorships (Section 165):**

 For reckoning the limit of directorships of 20 companies, **the directorship in a dormant company shall not be included.**

## **Resignation of director (Section 168):**

 **It is not a must** for a director **to forward a copy of his resignation** along with detailed reasons for the resignation to the Registrar of Companies.

# MEETINGS OF BOARD AND ITS POWERS

## Meetings of Board (Section 173):

 As per Rule 4 of the Companies (Meetings of Board and its Powers) Rules, 2014, **the following matters shall not be dealt with in any meeting held through video conferencing:**

- a) Approval of the annual financial statements;
- b) Approval of the Board's report;
- c) Approval of the prospectus;
- d) Approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover;
- e) In case of the Audit Committee Meetings for consideration of financial statement including consolidated financial statement, to be approved by the board.

# MEETINGS OF BOARD AND ITS POWERS

## Meetings of Board (Section 173) (cont.)

 The above requirement is relaxed where there is quorum in a meeting through physical presence of directors, any other director may participate through video conferencing in such meeting.

Comment: This is yet another welcome amendment for ease of doing business.

# MEETINGS OF BOARD AND ITS POWERS

## ✍ **Audit Committee (Section 177):**

- ☞ **A private company whose debentures are listed need not constitute an Audit Committee.**
- ☞ As per provisions of Section 177(4), Audit Committee has to approve transactions of the company with related parties.
- ☞ In case of transaction, **other than transactions referred to in Section 188**, where the **Audit Committee** does not approve the transaction, it **shall make its recommendations to the Board.**

# MEETINGS OF BOARD AND ITS POWERS

## **Audit Committee (Section 177) (cont.)**

-  Audit Committee can ratify RPT transactions not exceeding one crore rupees entered into by a director or officer of the company within 3 months from the date of the transaction. **If not ratified, such transaction shall be voidable at the option of the Audit Committee.**
-  **If the transaction is with the related party to any director or is authorised by any other director, the director concerned shall indemnify the company against any loss incurred by it.**
-  **A transaction, other than a transaction referred to in Section 188, between a holding company and its wholly owned subsidiary company need not be approved by the Audit Committee.**

# MEETINGS OF BOARD AND ITS POWERS

## **Nomination and Remuneration Committee and Stakeholders Relationship Committee (Section 178):**

-  **A private company whose debentures are listed need not constitute the Nomination and Remuneration Committee (NRC).**
-  **The NRC shall specify the manner for effective evaluation of performance of Board, its committees and individual directors to be carried out either by the Board, by NRC or by an independent external agency and review its implementation and compliance (earlier, NRC shall carry out evaluation of every director's performance).**
-  The company shall place the remuneration policy on its website and will disclose the salient features of such policy with the web address in the Board's report.

# MEETINGS OF BOARD AND ITS POWERS

## **Restriction on powers of Board (Section 180):**

-  For calculation of upper limit on borrowing powers of the Board, **the amount of securities premium account disclosed** in the financial statement will be included along with paid up share capital and free reserves.

# MEETINGS OF BOARD AND ITS POWERS

## **Loan to directors, etc. (Section 185):**

 Entire provisions of Section 185 of the Act has been substituted by the following provisions, namely:

- 1) No company shall advance any loan or give any guarantee or provide any security in connection with any loan taken by any director of the company, or any director of its holding company or any partner or relative of any such director or any firm in which any such director or relative is a partner.**

# MEETINGS OF BOARD AND ITS POWERS

## **Loan to directors, etc. (Section 185) (cont.)**

**2) A company may advance any loan or give any guarantee or provide security in connection with any loan taken by:**

- a) any private company** of which any such director is a director or member;
- b) any body corporate**, at a general meeting of which not less than 25% of the total voting power may be exercised or controlled by any such director, or by two or more such directors, together; or
- c) any body corporate**, the Board of directors, managing director or manager, whereof is accustomed to act in accordance with the directions or instructions of the Board, or of any director or directors, of the lending company

# MEETINGS OF BOARD AND ITS POWERS

## **Loan to directors, etc. (Section 185) (cont.):**

### **subject to the condition that:**

- i. a special resolution is passed by the lending company** (explanatory statement to disclose the full and complete details); and
- ii. the loans are utilised by the borrowing company for its principal business activities.**

# MEETINGS OF BOARD AND ITS POWERS

## **Loan to directors, etc. (Section 185) (cont.)**

**3) Nothing contained in para (1) and (2) above shall apply to:**

- a) giving any loan to a managing director or whole-time director as a part of conditions of service to all employees or pursuant to any scheme approved by the members by a special resolution;**
- b) a loan given by a company in the ordinary course of its business and interest is charged at a rate not less than the rate of prevailing yield of Government security;**

# MEETINGS OF BOARD AND ITS POWERS

## **Loan to directors, etc. (Section 185) (cont.)**

- c) any loan made by a holding company to its wholly owned subsidiary or guarantee or security provided by a holding company in respect of any loan made to its wholly owned subsidiary company;**
- d) any guarantee or security provided by a holding company in respect of any loan made by any bank or financial institution to its subsidiaries**

**Note: Loans made to subsidiary company should be utilised by the subsidiary company for its principal business activities.**

# MEETINGS OF BOARD AND ITS POWERS

## **Loan to directors, etc. (Section 185) (cont.)**

4) If any loan is advanced or a guarantee or security is given or utilised in contravention of the provisions of this section:

- a) **the company** shall be punishable with fine (contravention compoundable);
- b) **every officer of the company** who is in default shall be punishable with imprisonment or with fine; (contravention compoundable) and
- c) **the director or the other person to whom any loan is advanced or guarantee or security is given** shall be punishable with imprisonment or with fine or with both (contravention compoundable with the permission of the Special Court).

# MEETINGS OF BOARD AND ITS POWERS

## **Loan and investment by company (Section 186):**

- 1) Loan to employee is excluded from the provisions of this Section.**
- 2) Where the aggregate of the loans and investment and guarantee or security so far provided exceed the limits [that is, higher of 60% of company's paid-up share capital, free reserves and securities premium account or 100% of its free reserves and securities premium account], no investment or loan shall be made or guarantee shall be given or security shall be provided **unless previously authorised by a special resolution passed in a general meeting.****

# MEETINGS OF BOARD AND ITS POWERS

## **Loan and investment by company (Section 186) (cont.)**

- 3) The requirement of securing prior approval of members of the company by a special resolution shall not apply where a loan or guarantee or acquisition of securities is **to its wholly owned subsidiary company or a joint venture company.**

# MEETINGS OF BOARD AND ITS POWERS

## **Loan and investment by company (Section 186) (cont.)**

- 4) Nothing contained in Section 186, except sub-section (1) [**that is making investment through not more than two layers of investment companies**], shall apply:
  - a) **to any loan made, any guarantee given or any security provided or any investment made** by (i) a banking company, (ii) an insurance company, (iii) a housing finance company (iv) a company established with the object of and engaged in the business of financing industrial enterprises, (v) a company providing infrastructural facilities;

# MEETINGS OF BOARD AND ITS POWERS

## **Loan and investment by company (Section 186) (cont.)**

### **b) to any investment:**

- i. made by an investment company;**
- ii. made in shares allotted in pursuance of clause (a) of sub-section (1) of Section 62 or in shares allotted in pursuance of rights issues made by a body corporate; (companies incorporated outside India)**
- iii. made in respect of investment or lending activities, by a NBFC registered with RBI and whose principal business is acquisition of securities**

# MEETINGS OF BOARD AND ITS POWERS

## ✍ **Loan and investment by company (Section 186) (cont.)**

- 5) Investment Company means a company whose principal business is the acquisition of shares, debentures or other securities and a company will be deemed **to be principally engaged in the business of acquisition of shares**, debentures or other securities, if its assets in the form of investment in shares, debentures or other securities constitute not less than 50% of its total assets, or if its income derived from investment business constitutes not less than 50% as a proportion of its gross income.

# MEETINGS OF BOARD AND ITS POWERS

## **Related party transactions (Section 188):**

-  The second proviso to sub-section (1) of Section 188 of the Act mandates that, no member of the company shall vote on the shareholders resolution to approve any contract or arrangement which may be entered into by the company, if such member is a related party. **This proviso shall not apply to a company in which 90% or more members, in number, are relatives of promoters or are related parties.**
-  It is also provided in the Bill that, non-ratification of transaction shall be voidable at the option of the Board or shareholders.

# APPOINTMENT AND REMUNERATION OF MANAGERIAL PERSONNEL

 **Appointment of managing director, whole-time director or manager (Section 196):**

 Non-compliance with any of the conditions to be fulfilled for the appointment of a managerial personnel set out under Part I of Schedule V to the Act **will require Central Government approval.**

# APPOINTMENT AND REMUNERATION OF MANAGERIAL PERSONNEL

 **Overall maximum managerial remuneration and managerial remuneration in case of absence or inadequacy of profits (Section 197):**

- 1) A public company in general meeting may authorise (**by passing an ordinary resolution**) the payment of remuneration exceeding 11% of its net profits, **subject to the provisions of Schedule V.**

**Comment: Central Government approval is not necessary.**

# APPOINTMENT AND REMUNERATION OF MANAGERIAL PERSONNEL

2) Except with the approval of the Company in general meeting **by a special resolution:**

☞ the remuneration payable to any one managing director or wholetime director or manager **shall not exceed** 5% of the net profits of the company, and if there is more than one such director, remuneration shall not exceed 10% of the net profits to all such directors and manager taken together;

# APPOINTMENT AND REMUNERATION OF MANAGERIAL PERSONNEL

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- ☞ the remuneration payable to directors who are neither managing directors nor wholetime directors **shall not exceed:**
  - 1% of the net profits of the Company, if there is a managing or wholetime director or manager
  - 3% of the net profits in any other case

# APPOINTMENT AND REMUNERATION OF MANAGERIAL PERSONNEL

- 3) The Bill provides that, where the company has defaulted in payment of dues to any bank or public financial institution or non-convertible debenture holders or any other secured creditor, **prior approval of the above persons shall be obtained by the company before obtaining the approval in the general meeting.**
  
- 4) If a Company has no profit / has inadequate profit it can remunerate the managerial personnel maximum as set out in Schedule V. **No approval of Central Government is possible as the concept of Central Government approval for payment of remuneration in excess of the limits set out in Schedule V is not envisaged in the Act.**

# APPOINTMENT AND REMUNERATION OF MANAGERIAL PERSONNEL

5. **If any director draws or receives by way of remuneration in excess of the limit prescribed by this Section** or without approval required under this Section, he shall refund the excess remuneration to the company within two years or such lesser period as may be allowed by the company, and until such sum is refunded, **he should hold it in trust for the company.**
6. The company shall not waive the recovery of any sum refundable to it **unless approved by the company by special resolution within two years from the date the sum becomes refundable.**

**The company which has defaulted in payment of dues to any bank or public financial institution or non-convertible debenture holders or any other secured creditor, it shall obtain their prior approval of such waiver.**

# APPOINTMENT AND REMUNERATION OF MANAGERIAL PERSONNEL

7. **Two more sub-sections are sought to be inserted** in Section 197 as sub-section (16) and sub-section (17), details of which are as follows:

- a) The auditor of the company in his report under Section 143 to state whether the remuneration paid by the company to its directors is in accordance with the provisions of this Section or 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.

**Comment: Secretarial Auditor also in his report to state whether the remuneration paid by the company to Directors is in accordance with Section 197 as provisions of Section 143 shall mutatis mutandis apply to a company secretary in practice.**

# APPOINTMENT AND REMUNERATION OF MANAGERIAL PERSONNEL

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- b) Any application made to the Central Government under Section 197 shall abate and the company shall, within one year of commencement of the Companies (Amendment) Act, 2017, obtain the approval in accordance with the provisions of this Section, as so amended.**

# APPOINTMENT AND REMUNERATION OF MANAGERIAL PERSONNEL

## **Calculation of profits (Section 198):**

 While making the computation of profit as per Section 198, **credit shall not be given** inter-alia for the following sums, namely:

- a) 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 Section 186**
- b) Any amount representing unrealised gains, notional gains or revaluation of assets

# REGISTRATION OFFICES AND FEES

## **Fee for filing, etc. (Section 403):**

- **Present provisions:** Section 403(1) allows a company to file documents belatedly upto 270 days **by paying additional fee and without attracting liability for prosecution / penal action.**
- **Delayed filings beyond 270 days can still be done with the maximum additional fee but the company is also liable for prosecution / penal action.**
- **Proposed Amendment:** Annual return under Section 92 of the Act or copy of financial statement under Section 137 of the Act if not submitted or filed within the period provided in those sections, **without prejudice to any other legal action or liability under this Act,** it may be submitted or filed after expiry of the period so provided in those Sections, **on payment of such additional fee as may be prescribed, which shall not be less than Rs. 100 per day and different amounts may be prescribed for different classes of companies.**

# REGISTRATION OFFICES AND FEES

- It is further provided that where the document, **other than annual return or financial statements**, is not submitted or filed, within the period provided in the relevant Section, it may, **without prejudice to any other legal action or liability under this Act**, be submitted or filed, on payment of such additional fee as may be prescribed and different fees may be prescribed for different classes of companies.
- It is also provided that where there is default on two or more occasions in submitting or filing the document, it may, **without prejudice to any other legal action or liability under this Act**, be submitted or filed on payment of a higher additional fee, as may be prescribed and **which shall not be lesser than twice the additional fee as stated above.**

# REGISTRATION OFFICES AND FEES

- ☞ Sub-section (2) of Section 403 is fully altered, namely:
  - Where a company fails or commits any default to submit or file any document, before the expiry of the period specified in the relevant section, **the company and the officers of the company who are in default**, shall, **without prejudice to the liability for the payment of fee and additional fee**, be liable for the penalty or punishment provided under this Act for such failure or default.

**Comment: If returns / documents are not filed or submitted within the period, the company and the officers of the company who are in default shall be liable for prosecution / penal action. Compliance officers and practicing company secretaries to report late filing of forms / returns, if any.**

# SPECIAL COURTS

## **Factors for determining level of punishment (Section 446A):**

-  **This is a new provision in the Act**
-  This new Section provides that, the court or the Special Court, while deciding the amount of fine or imprisonment under the Act, shall have due regard to the following factors, namely:
  - a) size of the company
  - b) nature of business carried on by the company
  - c) injury to public interest
  - d) nature of the default
  - e) repetition of the default

# SPECIAL COURTS

## **Lesser penalties for One Person Companies or small companies (Section 446B):**

-  **This is yet another new provision to the Act.**
-  This Section provides for lesser penalty for one person companies or small companies for non-compliance of the following requirements under the Act:
  - a) Failure to file annual return under Section 92
  - b) Failure to file any resolution of the Board of Directors of the company or agreements executed by the company relating to appointment, re-appointment or removal of or variation of the terms of appointment of a Managing director
  - c) Failure to file copy of financial statement with RoC

# MISCELLANEOUS

## **Punishment for fraud (Section 447):**

- 👉 The Bill seeks to amend Section 447 **to bring thresholds with respect to compounding provisions relating to fraud without imprisonment**
- 👉 Any person who is found to be guilty of fraud involving an amount of atleast Rs. 10 lakh or 1% of the turnover of the company, **whichever is lower** shall be punishable as provided in Section 447 of the Act
- 👉 **It is also provided in the Bill that, where the fraud involves an amount less than Rs. 10 lakh or 1% of the turnover of the company, whichever is lower, and does not involve public interest**, any person guilty of such fraud shall be punishable with imprisonment for a term which may extend to 5 years or with fine which may extend to Rs. 20 lakh or with both (offence compoundable)

# Summary

- ✍ Definitions of Associate Company, Subsidiary Company, Net worth
- ✍ Issue of Shares on Private Placement
- ✍ Prohibition on acceptance of deposits by companies
- ✍ Register of significant beneficial owners in a company
- ✍ Annual Return
- ✍ Postal Ballot
- ✍ Declaration of interim dividend
- ✍ Financial Statement and Board's Report
- ✍ Appointment of Auditor

# Summary

- ✗ Independent Directors, Alternate Director and director appointed in a casual vacancy
- ✗ Resignation of director
- ✗ Quorum in a Board meeting for matters which shall not be dealt with through video conferencing
- ✗ Loan to directors (Section 185)
- ✗ Loan and Investment by company (Section 186)
- ✗ Appointment of Managing Director / Whole-time Director / Manager and their overall remuneration
- ✗ Fee for filing etc. (Section 403)

