Companies (Amendment) Act, 2017

By CS Makarand Joshi
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* Report of the **Companies Law Committee** – by panel of experts – 1 February 2016

* Companies (Amendment) Bill, 2016 - **introduced** in the **Lok Sabha on 16 March, 2016**

* Referred to **standing committee** in **April 2016** which presented their report in **December, 2016**

* The Companies (Amendment) Bill 2017 (the Bill) was **passed by the Lok Sabha on 27 July, 2017**
History

* The bill was placed in **Rajya Sabha** on 15 December, 2017 and was **passed** on **19 December, 2017**

* **President’s Assent** on Amendment Act 2017 - 3 January, 2018

* **Section 1 and 4** of the Companies (Amendment) Act, 2017 effective from **26 January, 2018**

* Approx., **40** sections of the Companies (Amendment) Act, 2017 made effective from **9 February, 2018**
Definitions
Section 2(6): Associate Company

* Significant influence means –
  * Control of 20% of **voting power or**
  * Control of participation in business decision under an agreement
Other Section:

* 129- Consolidation of Accounts
* 141- Eligibility, Qualifications and Disqualifications of Auditors
* 149- Appointment of Independent Director who is not related to Associate Company
* 167- Vacation of Office of Director
* 188- Related Parties appointment in Associate Company
* 192- Restriction on Non-cash Transactions Involving Directors of Associate Company
Section 2(41): Financial year (Notified w.e.f 09.02.2018)

* Indian Associate of foreign company/Body corporate can take permission from NCLT for having some other financial year
Section 2(46): Holding Company (Notified w.e.f 09.02.2018)

- **Explanation inserted** – Company includes any body corporate
- **Foreign Company/ Foreign LLP incorporated outside India** and **Indian LLP** will be treated as holding company
Whether the Indian Private Company wholly owned subsidiary of Foreign Public Company will be deemed to be Public Company??
Public company means a company which—

…. Provided that a company which is a subsidiary of a company, not being a private company, shall be deemed to be public company for the purposes of this Act even where such subsidiary company continues to be a private company in its articles.
Impact

- If LLPs / foreign body corporate are holding more than 50% of share capital of Company:-
  - The LLPs / foreign body corporate must be shown as a **Holding Company** in MGT-9, MGT-7 and AOC-4 during Annual filing for 2017-18 onwards
  - Indian companies **cannot be a partner** in the LLPs / foreign body corporate. (Sec 19)
  - Indian companies (if they are public companies) **cannot give loan / guarantee / security** for acquiring capital contribution/shares in LLPs / foreign body corporate. (Sec 67(2))
Impact

* Such companies need to ensure that its **auditor is not related** to or **providing other services** to its LLPs / foreign body corporate (*Sec 141 & Sec 144*).

* In cases where directors of such companies **hold any securities** in such LLPs / foreign body corporate OR other subsidiaries of LLPs / foreign body corporate, such **details** need to be **entered in Register** of Directors & KMP (*Sec 170*)
Impact

* If such companies are entering into transactions of acquisition or sale of asset for consideration other than cash, involving directors of LLPs / foreign body corporate compliance of with Sec 192 must be ensured.

* If public Company’s Managing Director / Whole Time Director is receiving remuneration or commission from LLPs / foreign body corporate, then it must be discloses in the Directors Report of such public company (Sec 197(14))
**Impact**

* In **Employees** of LLPs / foreign body corporate will also be **eligible** for issue of **Sweat equity shares, ESOP** (Chapter IV – Rule 8(1), Rule 12(1) – Explanation of “Employee”)

* Companies can issue **secured debentures** by creating **charge on properties** of such LLPs / foreign body corporate also (Chapter IV – Rule 18(1)(b)).

* While appointing **debenture trustee or trustee for depositors** by such companies, it should be ensured that the proposed trustee **must not be indebted** to LLPs / foreign body corporate also. (Chapter IV – Rule 18 and Chapter V – Rule 7(3)(b))
* Definition is now omitted

* Sec- 184 (2) If a Director is interested in proposed contract with following entities –
  * Body corporate in which Directors together with other Directors hold more than 2%
  * Body corporate in which Director is Promoter, CEO or Manager
  * Firm or other entity in which Director is Partner or Owner or member
Relevance

* Others sections referred:
  * 167 - Vacation of Directors (he acts in contravention of the provisions of section 184 & fails to disclose his interest)
  * 174 – Quorum – Interested directors not to be counted for the purpose of quorum (184(2))
Section 2(51): Key Managerial Personnel (Notified w.e.f 09.02.2018)

* **Officer in whole time employment - not more than one level** below the directors can be appointed as KMP by Board

* **Regulation 30(5) of LODR:**
  * The board of directors of the listed entity shall authorize one or more Key Managerial Personnel for the purpose of determining materiality of an event or information and for the purpose of making disclosures to stock exchange(s) and the contact details of such personnel shall be also disclosed to the stock exchange(s) and as well as on the listed entity's website.
Section 2(51): Key Managerial Personnel:

- LODR - key managerial personnel means key managerial personnel as defined in subsection (51) of section 2 of the Companies Act, 2013;
Section 2(60): "officer who is in default", for the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any penalty or punishment by way of imprisonment, fine or otherwise, means any of the following officers of a company, namely:—

* (i) whole-time director;

* (ii) key managerial personnel ....
21- **Authentication** of Documents, Proceedings and Contracts

67 - **Restrictions on Purchase** by Company or Giving of Loans by it for **Purchase of its Shares**

92 - Annual Return

102 - Statement to be Annexed to Notice

141 - Eligibility, Qualifications and Disqualifications of Auditors

149 - Company to have Board of Directors
Section 2(51): Key Managerial Personnel:

* 170-Register of Directors and key Managerial Personnel and their Shareholding
* 177 -Audit Committee
* 178 -Nomination and Remuneration Committee and Stakeholders Relationship Committee
* 203 -Appointment of Key Managerial Personnel
* Scope is widened to include even **body corporate**
* New concept introduced – **Investing Company** and the **venturer** of the Company – means **investment** in the company becoming an **associate company** of the body corporate
Related Party [Section 2 (76)]

* Director
* Relative of Director
* Director of holding company [Rules]
* Relative of Director of Holding Company [Rules]
* Key Managerial Personnel
* Relative of Key Managerial Personnel
* Key Managerial Personnel of Holding Company [Rules]
* Relative of KMP of holding Company [Rules]
Related Party [Section 2 (76)]

- Firm in which Director or Manager is partner
- Firm in which relative of Director or Manager is partner
- Private company in which Director or manager or his relative is Director
- Private Company in which Director or manager or his relative is Shareholder
- Public company in which Director or Manager is Director and in which Director or Manager holds along with relatives more than 2% paid up capital
Related Party [Section 2 (76)]

- Body Corporate – whose board is accustomed to act as per instruction of a Director or Manager
- A person on whose advice, direction or instruction a director or manager is accustomed to act
- Holding company / Body Corporate
- Subsidiary company / Body Corporate
- Associate Company / Body Corporate
- Subsidiary of its holding company / Body Corporate
- Investing Company / Body Corporate
- Joint Venture / Body Corporate
Section 2(76): Related Party

* What does Investment include here?
  Equity?
  Preference?
  CCDs?

* Associate Company also deals with significant influence ie. Control of Voting power, Control of Business decisions
A company which—
  (a) is not a private company and
  (b) has a minimum paid-up share capital
Section 2(72): Public Financial Institution
(Notified w.e.f 09.02.2018)

* ... *
* no institution shall be so notified unless—
(A) it has been established or constituted by or under any Central or State Act other than this Act or the previous company law

However in some sections .. “Financial institution” is covered
What is Financial Institution?
Section 45 I of RBI Act

(C) "Financial Institution" means any non-banking institution which carries on as its business or part of its business any of the following activities [Investment and Finance]

(e) “non-banking institution” means a company, corporation 4[or cooperative society].
Section 2(72): Public Financial Institution - Others sections:

- Cannot issue shares with **differential voting rights** in case of **default** (FI not covered)
- Approval of PFI required in case company in case of **default**
- In case remuneration exceeds 11% approval of PFI required in case of default in payment of **dues** *(Covers secured creditor)*
- For waiver of remuneration approval of PFI required in case of default in payment of dues *(Covers secured creditor)*
- Internal auditor is required to be appointed in case if loan from PFI exceeds 100 CRS
- Establish **Vigil Mechanism** – if borrowing exceeds 50 CRS
* 70- prohibition for buy back in case of default in payment of dues to FI
* 149- FI can appoint nominee directors
* 185- In case of security provided or guarantee given by holding company to subsidiary in respect loan from FI - exempt
Section 2(85): Small Company (Notified w.e.f 09.02.2018)

* Paid Up capital – 50Lakhs – **10 Crore (5 Crore)**
* Turnover – 2 Crore – **100 crore (20 crore)**
* Base to be taken of P&L - immediately preceding financial year
Section 2(30): Debenture (Notified w.e.f 09.02.2018)

* **Instruments under chapter III D** of Reserve Bank of India - shall not be treated as debenture (Regulation of Transactions In Derivatives, Money Market Instruments, Securities, Etc).

* Authority given to CG in consultation with RBI to prescribe other instruments which will not be treated as debentures.
Section 2(28): Cost Accountant (Notified w.e.f 09.02.2018)

* means a person who holds **valid certificate of practice**

* **Sections which include Cost Accountant:**
  * 7 - Incorporation of company (INC-8)
  * 138: Internal Audit
  * 143: Powers and duties of the Auditor
  * 148: CG to specify items of cost audit
Section 2(91): Turnover (Notified w.e.f 09.02.2018)

* as **recognized in P&L account** and not the realization amount
* All the sections referring to Turnover will have impact
Instead of ‘total share capital’, control over more than one-half of ‘total voting power’ will be the criteria to identify subsidiary.

Aligned the definition under 2013 Act with AS-21 Consolidated Financial Statements.

However, it will continue to be different from definition under Ind AS.
As per IND AS –

- A subsidiary is an entity, including an **unincorporated entity** such as a partnership, that is **controlled by another entity** (known as the parent)
- Control is the **power to govern the financial** and operating policies of an entity so as to obtain benefits from its activities.
Section 2(57): Net worth: (Notified w.e.f 09.02.2018)

- Debit or credit balance of profit and loss account .. Included
- This is a clarificatory change
Members Liability
Section 3A: Members Severally liable in certain cases (Notified w.e.f 09.02.2018)

* Members liable for whole debts of the company in case the minimum no. of members required are reduced and company carries on business for more than 6 months while number is reduced.

* Every person who is a member of the company during the time that it so carries on business after those six months and is cognisant of the fact that it is carrying on business
**Member** in relation to Company means:

- Subscriber to the memorandum
- Every person **who agrees in writing** to become a member and **name is entered in the register of members**
- Every person who holds shares of the company
- Every person who is a beneficial owner

-2(55)
Memorandum
* Name Reservation period
  * In case of incorporation - **20 days (earlier 60 days)**
  * In case of change of name – **60 days (same)**

* **IMPACT:**
  * Incorporation process should be on fast track basis

**Challenges faced due to this amendment:**
* Notary/Apostile of INC-8 and INC-9 takes time
* Documents of foreign directors difficult to acquire in 20 days
Registered Office
The company can have registered office within 30 days of its incorporation. Earlier 15 days

Intimation to ROC in INC-22 – shifting of regd. Office – within 30 days of change (earlier 15 days)

Proofs of registered office:
- Rent Agreement/Lease deed etc.
- Utility bill (not older than 2 months)
- NOC from the owner (if applicable)
- RD order (in case of shifting of office from one state to another)

Stationery items and notice boards etc. should also be updated along with shifting of office
Private Placement
Section 42: Private Placement

- Offer to select group of persons- Identified persons
- Right of Renunciation is prohibited
- PAS 3 to be filed within 15 days
- Monies cannot be utilized unless PAS 3 is filed
- Cannot make fresh offer of securities unless earlier offer and allotment is completed
Section 42: Private Placement

* Default in filing PAS 3 - Company, its Promoters and Directors penalty of Rs. 1,000/- (Rupees one thousand) for each day not exceeding Rs. 25,00,000/- (Rupees twenty-five lakhs) [New]

* An offer is made or monies are accepted in contravention of section- Company, its Promoters and Directors – Penalty amount raised or Rs, 2,00,00,000/- (Rupees two crore), whichever is lower [Earlier higher]
Earlier, any non-compliance of the provisions of the section 42 - treated as public offer – However, post amendment offer/invitation/issue of securities - exceeding 50 - public offer

* Allotment within 60 days from the date of receipt of share application money - failure – Deposit – non Compoundable
Sec- (5) No fresh offer or invitation under this section shall be made unless the *allotments* with respect to any offer or invitation made earlier have been *completed* or that offer or invitation has been *withdrawn or abandoned* by the company:

Provided that, subject to the *maximum number of identified persons* under sub-section (2), a company *may, at any time*, make *more than one issue of securities* to such class of identified persons as may be prescribed.
Can Company issue debenture and Equity shares in one offer?

Draft Rules- Rule 2 (a) – explanation (ii)

* the requirement of provisions of sub-section (2) of section 42 shall apply in respect of offer or invitation of each kind of security and no offer or invitation of another kind of security shall be made unless allotments with respect to offer or invitation made earlier in respect of any other kind of security is completed.
Companies (Prospectus and Allotment of securities) Amendment Rules, 2018: DRAFT

* **Explanatory statement** annexed to notice to contain all the detailed disclosures

* **PAS- 4 and PAS -5 not required to be filed with ROC**

* **Less disclosures in PAS-4**

* In case of **Conversion of Loan into equity** – rules with regards to receipt of money in Bank account – Not applicable
Voting Rights
Section 47: Voting Rights (Notified w.e.f 09.02.2018)

* One Share – One vote
* Subject to –
  * Sec 43 Kinds of Share Capital
  * 50 (2) – Member not entitled to voting right for amount paid but not called up.
* S-188 now also covered – Member who is Related Party – cannot vote
Issue of shares at a discount
Section 53: Prohibition on issue of shares at a discount (Notified w.e.f 09.02.2018)

* Any share issued by a company at a **discount** shall be void. (Earlier it was **discounted price**)
* **Discount** is on **face value** not on **issue price**
* Company may issue shares at discount to its creditors at the time of conversion of debt into shares pursuant to guidelines issued by RBI:
  * Statutory resolution plan; or
  * Debt restructuring scheme
Issue of Sweat Equity Shares
Section 54: Issue of sweat equity shares

- Can be issued in **first year** of Incorporation
- **Beneficiaries:**
  - Start-ups
- **Conditions for issue of sweat equity shares:**
  - Not less than one year has, at the date of such issue, elapsed since the date on which the company had commenced business;
Further issue of Share Capital
Section 62: Further issue of share capital (Notified w.e.f 09.02.2018)

* For dispatch of notice- courier or any other mode which has **proof of deliver is included**
  * Hand delivery??
* With respect to preferential offer:
  * Compliance of **chapter III (earlier section 42)**
Deposit
Section 73: Prohibition on acceptance of deposits from public

- Deposit insurance - omitted
- Amount to be deposited bank - 20% of the amounts maturing during the current financial year only
- Amount to be deposited on or before 30th April of each year
Section 76A: Punishment for contravention of Section 73 or Section 76 (Notified w.e.f 09.02.2018)

* Penalty:
  * **Company** – not less than Rs.1 Crore or twice the amount of deposit accepted by the company, whichever is lower which may extend to Rs. 10 Crore and payment of deposit alongwith interest thereon **AND**
  * **Every officer of the company** who is in default – **Imprisonment** which may extend to **seven years and fine** not less than Rs – 25 Lac but may extend to Rs. 2 Crore
Charges
Section 77: Duty to register charges

* **Powers delegated to RBI** to exclude certain charges from registration

* Definition of Charge:
  * Charge means an interest or **lien** created on the property or assets of a company or any of its undertakings or both as security and includes a mortgage
Section 82: Company to report satisfaction of charge

* **Satisfaction** of charge can be done up to period of **300 days** on payment of additional fee
Once RoC register charge, whether the same is also required to be compounded?
Compounding - As per the Black’s Law Dictionary, “Compound” means “to settle a matter by a money payment, in lieu of other liability”.

The Oxford Dictionary defines the word Compound as “Settle (a debt or other matter) in exchange for money or other consideration”.

Condonation - Under Law of Limitation, Condonation of delay is the extension of the prescribed period in certain cases.
Sec- 89 ....

Central Government just and expedient, direct that the time for the filing of the particulars or for the registration of the charge or for the giving of intimation of payment or satisfaction shall be extended or, as the case may require, that the omission or mis-statement shall be rectified.
Beneficial Interest and Beneficial Owner
Sec. 89 read with rule 3

An inclusive definition of beneficial interest in a share has been provided.

Beneficial interest in a share 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—

(i) exercise or cause to be exercised any or all of the rights attached to such share; or

(ii) receive or participate in any dividend or other distribution in respect of such share."
Section 90: Investigation of beneficial ownership of shares in certain cases

- **Section 90 and Sub -Rule 5 to 9**
- **Concept of Significant beneficial Owner Introduced**
- **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 as defined in clause (27) of section 2, over the company
- **Disclosure to be made in 30 days**
Annual Return
Section 92: Annual Return

* The power to **CG of prescribing abridged form** of annual return for classes of companies along with OPC and small company
* Every Company to disclose on website:
  * annual return and also in the Board’s report

**List of documents to be placed on the website:**

**Website Compliances**
Section 93: Return to be filed with ROC in case promoter’s stake changes

* In case of listed company= **change in promoter shareholder** to be informed to the ROC in Form MGT-10 is now **omitted**
Registers and Returns
Section 94: Place of keeping and inspection of registers, returns etc.

- Register For Inspection

- **Registers, index** etc. as may be prescribed in rules shall **not be available for inspection** or for taking extract of copies
AGM/EGM
Section 96: Annual General Meeting

* Relaxation to **unlisted company** to hold AGM at any place in India if consent is received from **all the members** in advance
Extraordinary general meeting of the company, other than of the WOS of a company incorporated outside India, shall be held at a place within India.

Provision in SS-2:
AGM shall be held either at the RO of the company or at some other place within the city, town or village in which the RO is situated, whereas other General Meetings may be held at any place within India.
In case of EOGM, Whether Secretarial Standards will prevail for Wholly owned subsidiary of Company incorporated outside India?
Notice of Meeting
Section 101: Notice of Meeting (Notified w.e.f. 09.02.2018)

- Shorter notice consent:
  - In case of AGM:
    * Consent required from 95% of members entitled to vote.
  - In case of other GM:
    - For companies having share capital:
      * Consent required from majority in number of members
      * And members representing not less than 95% of paid up capital of company which gives right to vote.
    - For companies not having share capital:
      * not less than 95% of the total voting power exercisable at that meeting
In case of general meeting at shorter notice – separate count is required for every resolution
Postal Ballot
Section 110: Postal Ballot (Notified w.e.f 09.02.2018)

- Items to be transacted by **postal ballot** – may be transacted at **general meeting** – if the company is required to provide **electronic voting** to members.

- Mandatory E- voting Applicable to:
  - Every company which **has listed its equity** shares on a recognised stock exchange.
  - Every company having not less than **1000 members**.
Dividend
In the case of inadequate or absence of profits,

- dividend can be declared out of accumulated profits earned by the company in previous years and transferred by the company to "free reserves" (Earlier Reserves).
Section 123: Declaration of Dividend

* Interim Dividend:
  * During F.Y. OR
  * From closure till holding of AGM
  * Interim dividend can be declared:
    * **Surplus in the profit and loss account**
    * **Out of profits in the FY**
    * **Out of profits** generated in the financial year till the quarter preceding the date of declaration of the interim dividend.
  * In case of **loss** – during current F.Y or till previous quarter - **interim dividend shall not be declared at a rate higher than the average dividends declared**
Financial Statement
* Consolidation of financial statements of associate companies required as well [clarificatory Change]
National Financial Reporting Authority
Sub-Section (6), (7), (8) and (9) of Section 132 related to establishment of appellate authority for NFRA omitted Viz, Constitution of Appellate Authority appointment and qualification of members and other allied matters

Section 132(3) and 132(11) - Constitution of National Reporting Financial Authority – Notified 21.03.2018

NCLAT has power to hear appeal against NFRA.
Financial Statement/ Board’s Report
Section 134: Financial Statement, Board’s report etc.

- **CEO**, whether director or not, required to **sign the financial statement**
- In place of extract of annual return, **web address**, if any can be provided
- Salient features of policies and change therein can be specified in the Board's report and the web-address of the same can be given (new proviso inserted)
- **CG may prescribe abridged board report** for small company and OPC
Corporate Social Responsibility
For the purpose of undertaking CSR activities, applicability is to be tested on the basis of *immediately only preceding financial year*. Few companies may get excluded from the CSR applicability and would *not be required* to spend amount on CSR activities.
Section 135: Corporate Social Responsibility

* Company is not required to appoint **Independent Director** - CSR committee can be formed by 2 or more directors (Rule 5(ii))

* CG to **prescribe sums** which shall **not be included** for calculating net profit of the company as per section 198
Net profit u/s 198 - relevance

- 135. Corporate Social Responsibility (Rule 3)
- 197. Overall Maximum Managerial Remuneration and Managerial Remuneration in Case of Absence or Inadequacy of Profit
Right of member to copies of audited financial statement
Section 136: right of member to copies of audited financial statement (Notified w.e.f 09.02.2018)

* Copies of financial statement and other documents can be sent at shorter notice if agreed by members
* Company having share capital –
  * holding majority in number entitled to vote and who represent not less than 95% of such part of the paid-up share capital of the company as gives a right to vote at the meeting
* No share capital
  * Having not less than 95% of the total voting power exercisable at the meeting
Section 136: right of member to copies of audited financial statement

- Every listed company require to place accounts of its subsidiary on website (Earlier every company)
Auditor
Section 139: Appointment of Auditors

- **Omitted** the requirement of **ratification of auditor** appointment at every AGM
Section 141: Eligibility, qualification and disqualification of auditors (Notified w.e.f 09.02.2018)

* Person not eligible to appoint as auditor who directly or indirectly renders any services referred in section 144 to
  * Company
  * Holding Company
  * Subsidiary company
Auditors Report shall state (143(3))

- (i) whether the company has adequate **internal financial controls with reference to financial statements** (**internal financial controls system**) in place and the operating effectiveness of such controls
Internal Financial Control defined in Sec-134 explanations (Directors Report):

* The policies and procedures adopted by the company for ensuring the orderly and efficient conduct of its business, including adherence to the company’s policies, the safeguarding of its assets, the prevention and detection of frauds and errors, the accuracy and completeness of the accounting records, and the timely preparation of reliable financial information.
Section 147: Punishment for contravention (Notified w.e.f 09.02.2018)

* Maximum fine imposed on an auditor has been revised: (contravention of section 139, 143, 144 or 145)
  * Minimum 25,000 /-
  * Maximum 5 lacs or four times the remuneration of the auditor, whichever is less
* If auditor has contravened provision of act wilfully –
  * Minimum Rs. 50,000/- (earlier 1,00,000/-)
  * Maximum 25 lacs or eight times the remuneration of the auditor, whichever is less
The liability of auditor to pay damages for loss arising out of incorrect statements in audit report:

- Company or
- Statutory Bodies or
- Authorities
- Member and creditors. (Earlier ‘any other person’)

Criminal liability of audit firm – In case of liability other than fine – Concern partner involved is only liable and not the whole firm or other partners
Directors
Section 149: Company to have Board of Directors

* Resident Director – Should be resident in India in that financial year for 182 days
* In case of newly incorporated companies – requirement shall apply proportionately at the end of F.Y. in which company incorporated
* In case of Independent Director:
  * In case of Directors Pecuniary interest is replaced with pecuniary relationship, other than remuneration as such director or having transaction not exceeding 10% of his total income or such amount as may be prescribed
  * In case of relative- Pecuniary relationship made more specific
Section 160: Right of persons other than retiring directors to stand for directorship (Notified w.e.f 09.02.2018)

* Deposit of Rs. **1,00,000/-** is not applicable in the following cases:
  * Independent Directors
  * Directors nominated by Board of Directors
  * Directors nominated by NRC
* Allowed **participation** of directors on restricted items through **video conferencing**, **if there quorum** through physical presence of directors

* Directorship in **dormant company** to be **excluded** in the limit of directorship (notified w.e.f. 09.02.2018)

* Filing of resignation by the director in Form **DIR-11** is **optional** now
When a **new director** is appointed in company which is in default of filing financial statements/annual return/repayment or interest payment on deposits or debentures/dividend payment – such director **shall not incur disqualification upto 6 months** from the date of appointment (Section 164)

**CG may prescribe another number** which can be used as DIN
Section 161: Appointment of Additional Director, alternate director, nominee director (Notified w.e.f 09.02.2018)

- Any person who is a **Director in a Company** cannot be appointed as an **Alternate director** of some other Director of the same Company. (Sec 161(2))

- A director can be appointed in **casual vacancy in case of private** companies also. Earlier it was permissible only in public companies. (Sec 161(4))

- In cases where a Director is appointed in **casual vacancy**, such appointment must **be approved by shareholders** at the immediate **next general meeting** (EGM or AGM as the case may be). (Sec 161(4))
In the calculation of paid up capital and free reserves for Sec 180, now **securities premium** will also be included. (**Sec 180**)
Minimum penalty (Rs. 50,000) omitted in case of failure to give disclosure

Section exempted to:

* **body corporate** where any director or two or more of them holds or hold not more than 2% of the paid-up share capital
Loan to Directors
### Section 185: Loan to Directors

Whether the Company can advance loan, or provide guarantee or security to:

<table>
<thead>
<tr>
<th>Sr. No</th>
<th>Particulars</th>
<th>Old Provision</th>
<th>New Provision</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a)</td>
<td>Director of the Company</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>(b)</td>
<td>Director of holding Company</td>
<td>No</td>
<td>No</td>
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<tr>
<td>(c)</td>
<td>Partner of the Director of the Company</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>(d)</td>
<td>Relative of the Director of the Company</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>(e)</td>
<td>Firm in which Director is a partner</td>
<td>No</td>
<td>No</td>
</tr>
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Loan to Directors

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<tbody>
<tr>
<td>(f)</td>
<td>Firm in which Relative of Director is a partner</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>(g)</td>
<td>Private company in which Director is a director</td>
<td>No</td>
<td>Yes*</td>
</tr>
<tr>
<td>(h)</td>
<td>Private company in which Director is a member</td>
<td>No</td>
<td>Yes*</td>
</tr>
</tbody>
</table>
Loan to Directors

Whether the Company can advance loan, or provide guarantee or security to:

<table>
<thead>
<tr>
<th>Sr. No</th>
<th>Particulars</th>
<th>Old Provision</th>
<th>New Provision</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i)</td>
<td>Body Corporate at a general meeting of which not less than 25% of the total voting power may be exercised or controlled by any director, or by two or more directors, together</td>
<td>No</td>
<td>Yes*</td>
</tr>
<tr>
<td>(j)</td>
<td>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</td>
<td>No</td>
<td>Yes*</td>
</tr>
</tbody>
</table>
Loan to Directors

* Terms & Conditions
  * Pass special resolution
  * Explanatory statement to contain detailed disclosures
  * Loan, guarantee, security to be utilised for principal business
## Loan to Directors (Penalty)

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Old Provision</th>
<th>New Provision</th>
<th>Remark</th>
</tr>
</thead>
<tbody>
<tr>
<td>Company</td>
<td>Yes</td>
<td>Yes</td>
<td>Rs. 5,00,000 to Rs. 25,00,000</td>
</tr>
<tr>
<td>Director or other person to whom loan, guarantee or security advanced</td>
<td>Yes</td>
<td>Yes</td>
<td>Imprisonment extending to 6 months and/or fine of Rs. 5,00,000</td>
</tr>
<tr>
<td>Officer of the Company in default</td>
<td>No</td>
<td>Yes</td>
<td>Imprisonment extending to 6 months or fine of Rs. 5,00,000 to Rs. 25,00,000</td>
</tr>
</tbody>
</table>
Loan and Investment by the Company
Explanation inserted.—For the purposes of this sub-section, the word "person" does not include any individual who is in the employment of the company

Whether employees excluded from entire section or only Section 186(2)
* Investments made by Investment Company is Exempted
* Definition of “Investment Company” stated:
  * “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

* Investment in Shares of Body Corporate in Rights Issue
Related Party Transactions
Restriction on voting by relatives in the general meeting shall not apply to a company in which 90% or more members in numbers are relatives of promoters or related parties.

Transaction not in compliance with Section 188 shall be voidable at the option of the Board or shareholder.
Section 194 and 195 (Notified w.e.f 09.02.2018)

* Section 194: Prohibition on forward dealings in securities of the company by director or KMP
* Section 195: Prohibition on insider trading of securities

* These sections are now omitted
Managerial Remuneration
Section 196, 197, 198: Managerial Remuneration

- Appointment of MD/WTD age more than 70 years -
  - Special Resolution OR
  - If Special Resolution is not passed but votes cast in favor of the motion exceeds against the motion &
  - Approval of Central Government
Managerial Remuneration

[In case of inadequacy of Profit]

* In case of inadequacy of profits- payment of managerial remuneration in excess of 11%
  * Approval of lender in case of default before the approval in general meeting
  * Special Resolution
* Auditor to make statement whether remuneration paid is in accordance with the provisions [CARO 2016]
In case of payment of managerial remuneration in excess of the limit prescribed,
* need to obtain waiver -
  * Approval of lender in case of default before the approval in general meeting
  * Special Resolution within two years from the date the sum becomes refundable

OR
* Need to **Refund**
  * Refund within **2 years or lesser period** as may be allowed by the Company
Filing Fee
The minimum additional fees of Rs.100 per day in case of delay in filing of Financial Statements and Annual Return.

Further, if there is default on two (2) or more occasions in filing, the higher additional fees may be charged which shall not be lesser than twice of the additional fees mentioned above i.e., minimum of Rs.200 per day.
The additional fee is proposed to be prescribed for different classes of companies in other cases.
Reference of Section 403 is eliminated in the following Sections:

- Section 89: Declaration in respect of beneficial interest in any share (MGT-6)
- Section 92: Annual Return (MGT-7)
- Section 117: Resolutions and agreements to be filed (MGT-14)
- Section 121: Report on AGM (MGT-15)
- Section 137: Copy of financial statement to be filed with Registrar (AOC-4)
- Section 157: Intimation of DIN (DIR-3C)
Compounding of Offences
**Section 441: Compounding of certain offences (Notified w.e.f. 09.02.2018)**

<table>
<thead>
<tr>
<th>Type of penalty</th>
<th>Previous scenario</th>
<th>Existing/New provisions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fine</td>
<td>If penalty &lt; 5 lakhs – RD</td>
<td>If penalty &lt; 5 lakhs – RD</td>
</tr>
<tr>
<td></td>
<td>If penalty ≥ 5 Lakhs – tribunal</td>
<td>If penalty ≥ 5 Lakhs – tribunal</td>
</tr>
<tr>
<td>Imprisonment OR Fine</td>
<td>Compoundable with special court permission</td>
<td>If penalty &lt; 5 lakhs – RD</td>
</tr>
<tr>
<td></td>
<td></td>
<td>If penalty ≥ 5 Lakhs – tribunal</td>
</tr>
<tr>
<td>Imprisonment</td>
<td>Non Compoundable</td>
<td>Non Compoundable</td>
</tr>
<tr>
<td>Imprisonment AND Fine</td>
<td>Non Compoundable</td>
<td>Non Compoundable</td>
</tr>
</tbody>
</table>
Due to this amendment, NCLT has got the power to compound the offences whose penalty is imprisonment or fine (earlier only fine).

However, as per Section 441(6) of the Companies Act, 2013, approval of special court is required for compounding offences punishable with imprisonment or fine, or with imprisonment or fine or with both.
Section 441: Anomaly

* **Does it means to compound the offences; permission of special court is required?**

* This anomaly was resolved by the **Supreme Court** judgement dated 10\(^{th}\) May, 2013, passed in *VIS Finance vs. Union of India*, wherein it was held that prior permission of the Court is not necessary for compounding of offence, when power of compounding is exercised by the Company Law Board. (Now NCLT)
Conversion of Firm into Company
Section 366: allow conversions of partnership firms, LLP, etc. with two or more partners into private companies
Summary

* Comparative Study and Reconciliations help
* Lot of clarificatory Provisions
* **Stringent Provisions like Se.42, 73, 89, 403**
* **Relaxed Provisions like 185, Private Listed Company etc.**
THANK YOU

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98205 03721