

AS INTRODUCED IN LOK SABHA

Bill No. 73 of 2016

THE COMPANIES (AMENDMENT) BILL, 2016

BILL

further to amend the Companies Act, 2013.

BE it enacted by Parliament in the Sixty-seventh Year of the Republic of India as follows:—

Short title and commencement.

1. (1) This Act may be called the Companies (Amendment) Act, 2016.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act and any reference in any provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

Amendment of section 2.

2. In section 2 of the Companies Act, 2013 (hereinafter referred to as the principal Act),—

Associate Company:

(i) in clause (6), for the *Explanation*, the following *Explanation* shall be substituted, namely:—

'Explanation.—For the purpose of this clause—

(a) the expression "significant influence" means control of at least twenty per cent of total voting power, or control of or participation in business decisions under an agreement;

(b) the expression "joint venture" means a joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement;

Cost Accountant:

(ii) for clause (28), the following clause shall be substituted, namely:—

'(28) "Cost Accountant" means a cost accountant as defined in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959 and who holds a valid certificate of practice under sub-section (1) of section 6 of that Act;'

Debenture :

(iii) in clause (30), the following proviso shall be inserted, namely:— "Provided that—

(a) the instruments referred to in Chapter III-D of the Reserve Bank of India Act, 1934; and

(b) such other instrument, as may be prescribed by the Central Government in consultation with Reserve Bank of India, issued by a company,

shall not be treated as debenture;

Financial Year:

(iv) in clause (41), in the first proviso, after the word "subsidiary", the words "or associate company" shall be inserted;

Holding Company :

(v) in clause (46), the following *Explanation* shall be inserted, namely:—

Explanation.—For the purposes of this clause, the expression "company" includes any body corporate;

Interested Director:

(vi) clause (49) shall be omitted;

Key Managerial Personnel:

(vii) in clause (51),—

(a) in sub-clause (iv), the word "and" shall be omitted;

The word and after the word 'CFO' and before 'such other officer as may be prescribed' omitted

(b) for sub-clause (v), the following sub-clauses shall be substituted, namely:—

"(v) such other officer, not more than one level below the directors who is in whole-time employment, designated as key managerial personnel by the Board; and

(vi) such other officer as may be prescribed;

Net Worth:

(viii) in clause (57), for the words "and securities premium account", the words ", securities premium account and debit or credit balance of profit and loss account," shall be substituted;

Public Company:

(ix) in clause (71), in sub-clause (a), after the word "company;", the word "and" shall be inserted;

Compliance of both conditions are required to be met i.e. not being a private limited and having minimum prescribed paid up capital.

Related Party:

(x) in clause (76), for sub-clause (viii), the following sub-clause shall be substituted, namely:—

"(viii) 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;

(C) an ^{or} investing company or the venturer of a company;

Small Company:

(xi) in clause (85),—

(a) in sub-clause (i), for the words "five crore rupees", the words "ten crore rupees" shall be substituted;

(b) in sub-clause (ii),—

(A) for the words "as per its last profit and loss account", the words "as per profit and loss account for the immediately preceding financial year" shall be substituted;

(B) for the words "twenty crore rupees", the words "one hundred crore rupees" shall be substituted;

Subsidiary Company:

(*xii*) in clause (87),—

(*a*) in sub-clause (*ii*), for the words "total share capital", the words "total voting power" shall be substituted;

(*b*) the proviso shall be omitted;

(*c*) in the *Explanation*, item (*d*) shall be omitted;

Turnover:

(*xiii*) for clause (91), the following clause shall be substituted, namely:—

'(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;

Insertion of new section 3A.

Members severally liable certain cases.

3. After section 3 of the principal Act, the following section shall be inserted, namely:—

"3A.If at any time the **number** of members of a company is **reduced**, in the case of a public company, below seven, in the case of a private company, below two, and the company **carries on business for more than six months** while the number of members is so 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 with less than seven members or two members, as the case may be, shall be **severally liable** for the payment of the whole debts of the company contracted during that time, and may be **severally sued** therefor.

Amendment of section 4.: MOA

4. In section 4 of the principal Act,—
(i) in sub-section (1), for clause (c), the following clause shall be substituted, namely:—

"(c) that the company may engage in any lawful act or activity or business, or any act or activity or business to pursue any specific object or objects, as per the law for the time being in force:

Provided that in case a company proposes to pursue any specific object or objects or restrict its objects, the Memorandum shall state the said object or objects for which the company is incorporated and any matter considered necessary in furtherance thereof and in such case the company shall not pursue any act or activity or business, other than specific objects stated in the Memorandum;

(ii) in sub-section (5), in clause (i), for the words "sixty days from the date of the application", the words "twenty days from the date of approval or such other period as may be prescribed" shall be substituted;

Name application approval validity reduced to 20 days from the date of approval.

(iii) after sub-section (6), the following sub-sections shall be inserted, namely:—

"(6A) A company may adopt the **model memorandum** applicable to such a company.

(6B) In case of any company, which is registered after the commencement of the Companies (Amendment) Act, 2016, in so far as the registered memorandum of such company does not exclude or modify the contents in the model memorandum applicable to such company, those contents shall, so far as applicable, be the contents of the Memorandum of that company in the same manner and to the extent as if that was contents of the duly registered memorandum of the company."

Amendment of section 7. Incorporation of Company

5. In section 7 of the principal Act, in sub-section (1), in item (c), for the words "an affidavit", the words "a declaration" shall be substituted.

Amendment of section 12. Registered office

6. In section 12 of the principal Act,—

(i) in sub-section (1), for the words "on and from the fifteenth day of its incorporation", the words "within thirty days of its incorporation" shall be substituted;

(ii) in sub-section (4), for the words "within fifteen days", the words "within thirty days" shall be substituted.

Amendment of section 21. Authentication of Documents

7. In section 21 of the principal Act, for the words "an officer of the company", the words "an officer or employee of the company" shall be substituted.

Amendment of section 26. Matter to be stated in Prospectus

8. In section 26 of the principal Act, in sub-section (1),—

(i) after the words "signed and shall", the following shall be inserted, namely:—

"state such information and set out such reports on financial information as may be specified by the Securities and Exchange Board in consultation with the Central Government:

Provided that until the Securities and Exchange Board specifies the information and reports on financial information under this sub-section, the regulations made by the Securities and Exchange Board under the Securities and Exchange Board of India Act, 1992, in respect of such financial information or reports on financial information shall apply.";

(ii) the clauses (a) and (b) shall be omitted.

Corresponding omission specifying information to be covered in prospectus in line with insertion (i) above

Amendment of section 35. Civil liability for misstatement

9. In section 35 of the principal Act, in sub-section (2), after clause (b), the following clause shall be inserted, namely:—

"(c) that, as regards every misleading statement purported to be made by an expert or contained in what purports to be a copy of or an extract from a report or valuation of an expert, it was a correct and fair representation of the statement, or a correct copy of, or a correct and fair extract from, the report or valuation ; and he had reasonable ground to believe and did up to the time of the issue of the prospectus believe, that the person making the statement was competent to make it and that the said person had given the consent required by sub-section (5) of section 26 to the issue of the prospectus and had not withdrawn that consent before delivery of a copy of the prospectus for registration or, to the defendant's knowledge, before allotment thereunder."

Substitution of section 42.: Issue of shares on private placement basis.

10. For section 42 of the principal Act, the following section shall be substituted, namely:—

'42. (1) A company may, subject to the provisions of this section, make a private placement of securities.

(2) A private placement shall be made only to a select group of persons who have been identified by the Board (herein referred to as "identified persons"), whose number shall not exceed fifty or such higher number as may be prescribed [excluding the qualified institutional buyers and employees of the company being offered securities under a scheme of employees stock option in terms of provisions of clause (b) of sub-section (1) of section 62], in a financial year subject to such conditions as may be prescribed.

(3) A company making private placement shall issue private placement offer and application in such form and manner as may be prescribed to identified persons, whose names and addresses are recorded by the company in such manner as may be prescribed:

Provided that the private placement offer and application shall not carry any right of renunciation.

Explanation 1.—"private placement" means any offer or invitation to subscribe or issue of securities to a select group of persons by a company (other than by way of public offer) through private placement offer-cum-application, which satisfies the conditions specified in this section.

Explanation II.—"qualified institutional buyer" means the qualified institutional buyer as defined in the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009, as amended from time to time, made under the Securities and Exchange Board of India Act, 1992.

Explanation III.—If a company, listed or unlisted, makes an offer to allot or invites subscription, or allots, or enters into an agreement to allot, securities to more than the prescribed number of persons, whether the payment for the securities has been received or not or whether the company intends to list its securities or not on any recognised stock exchange in or outside India, the same shall be deemed to be an offer to the public and shall accordingly be governed by the provisions of Part I of this Chapter.

(4) Every identified person willing to subscribe to the private placement issue shall apply in the private placement and application issued to such person alongwith subscription money paid either by cheque or demand draft or other banking channel and not by cash:

Provided that a company shall not utilise monies raised through private placement unless allotment is made and the return of allotment is filed with the Registrar in accordance with sub-section (8).

(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.

(6) A company making an offer or invitation under this section shall allot its securities within sixty days from the date of receipt of the application money for such securities and if the company is not able to allot the securities within that period, it shall repay the application money to the subscribers within fifteen days from the expiry of sixty days and if the company fails to repay the application money within the aforesaid period, it shall be liable to repay that money with interest at the rate of twelve per cent. per annum from the expiry of the sixtieth day:

Provided that monies received on application under this section shall be kept in a separate bank account in a scheduled bank and shall not be utilised for any purpose other than—

(a) for adjustment against allotment of securities;
or

(b) for the repayment of monies where the company is unable to allot securities.

(7) No company issuing securities under this section shall release any public advertisements or utilise any media, marketing or distribution channels or agents to inform the public at large about such an issue.

(8) A company making any allotment of securities under this section, shall file with the Registrar a return of allotment within fifteen days from the date of the allotment in such manner as may be prescribed, including a complete list of all allottees, with their full names, addresses, number of securities allotted and such other relevant information as may be prescribed.

(9) If a company defaults in filing the return of allotment within the period prescribed under sub-section (8), the company, its promoters and directors shall be liable to a penalty for each default of one thousand rupees for each day during which such default continues but not exceeding twenty-five lakh rupees.

(10) Subject to sub-section (11), if a company makes an offer or accepts monies in contravention of this section, the company, its promoters and directors shall be liable for a penalty which may extend to the amount raised through the private placement or two crore rupees, whichever is lower, and the company shall also refund all monies with interest as specified in sub-section (6) to subscribers within a period of thirty days of the order imposing the penalty.

(11) Notwithstanding anything contained in sub-section (9) and sub-section (10), any private placement issue not made in compliance of the provisions of the sub-section (2) shall be deemed to be a public offer and all the provisions of this Act and the Securities Contracts (Regulation) Act, 1956 and Securities and Exchange Board of India Act, 1992 shall be applicable.

Amendment of section 47: Voting Rights

11. In section 47, in sub-section (1), for the words, figures and brackets "provisions of section 43 and sub-section (2) of section 50", the words, figures and brackets "provisions of section 43, sub-section (2) of section 50 and sub-section (1) of section 188" shall be substituted.

Amendment of section 53: Prohibition on issue of shares at Discount

12. In section 53 of the principal Act,—

- (i) in sub-section (2), for the words "discounted price", the word "discount" shall be substituted;
- (ii) after sub-section (2), the following sub-section shall be inserted, namely:—

"(2A) Notwithstanding anything contained in sub-sections (1) and (2), 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 the Reserve Bank of India under the Reserve Bank of India Act, 1934 or the Banking (Regulation) Act, 1949."

Amendment of section 54. Sweat Equity Shares:

13. In section 54, in sub-section (1), clause (c) shall be omitted.

Restriction on issue of **sweat equity shares** within 1 year from the date of commencement of business is proposed to be removed. This would facilitate startups structuring.

Amendment of section 62. Further Issue of share capital

14. In section 62 of the principal Act,—

(i) in sub-section (1), in clause (c), for the words "of a registered valuer subject to such conditions as may be prescribed", the words and figures "of a registered valuer, subject to the compliance with the **applicable provisions of Chapter III** and any other conditions as may be prescribed" shall be substituted;

(ii) for sub-section (2), the following sub-section shall be substituted, namely:—

"(2) The **notice** referred to in sub-clause (i) of clause (a) of sub-section (1) shall be dispatched through registered post or speed post or through electronic mode or **courier or any other mode having proof of delivery** to all the existing shareholders at least three days before the opening of the issue.

Amendment of section 73. Deposits

15. In section 73 of the principal Act, in sub-section (2),—

(i) for clause (c), the following clause shall be substituted, namely:—

"(c) depositing, on or before the 30th day of April each year, such sum which shall not be less than twenty per cent of the amount of its deposits maturing during the following financial year and kept in a scheduled bank in a separate bank account to be called deposit repayment reserve account;

(ii) clause (d) shall be omitted;

Condition of deposit insurance for public deposits is proposed to be removed

(iii) in clause (e), for the words "such deposits;", the following shall be substituted, namely:—

"such deposits and where a default had occurred, the company made good the default and a period of five years had lapsed since the date of making good the default;".

Amendment of section 74. Repayment of deposits accepted before commencement of CA, 2013

16. In section 74, in sub-section (1), for clause (b), the following clause shall be substituted, namely:—

"(b) repay within three years from such commencement or on or before expiry of the period for which the deposits were accepted, whichever is earlier:

Provided that renewal of any such deposits shall be done in accordance with the provisions of Chapter V and the rules made thereunder."

Amendment of section 76A. Punishment for contravention of section 73 or section 76.

17. In section 76A of the principal Act, in clause (a), for the words "one crore rupees", the words "one crore rupees or twice the amount of deposit accepted by the company, whichever is lower" shall be substituted.

Amendment of section 77. Duty to register charge

18. In section 77 of the principal Act, in sub-section (1), after the third proviso, the following proviso shall be inserted, namely:—

"Provided also that this section shall not apply to such charges as may be prescribed in consultation with the Reserve Bank of India."

Amendment of section 78. Application for registration of charge

19. In section 78 of the principal Act, for the words "register the charge within the period specified in section 77", the words "register the charge within the period of thirty days referred to in sub-section (1) of section 77" shall be substituted.

Amendment of section 82. Company to report satisfaction of charge

20. In section 82 of the principal Act, in sub-section (1),—

(i) the words "and the provisions of sub-section (1) of section 77 shall, as far as may be, apply to an intimation given under this section" shall be omitted;

(ii) the following proviso shall be inserted, namely:—

"Provided that the Registrar may, on an application by the company or the charge holder, allow such intimation of payment or satisfaction to be made within a period of three hundred days of such payment or satisfaction on payment of such additional fees as may be prescribed."

Amendment of section 89. Declaration in respect of beneficial interest in any shares

21. In section 89 of the principal Act, after sub-section (9), the following sub-section shall be inserted, namely:—

"(10) For the purposes of this section and section 90, 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."

Substitution of section 90. Investigation of beneficial ownership (Register of significant beneficial owners in a company)

22. For section 90 of the principal Act, the following section shall be substituted, namely:—

'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, holds beneficial interests, of not less than twenty-five per cent 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 (herein referred to as "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 or rights and any change thereof, as may be prescribed:

Provided that the Central Government may prescribe a class or classes of persons who shall not be required to make declaration under this sub-section.

(2) Every company shall maintain a register of the interest declared by individuals under sub-section (1) and changes therein which shall include the name of individual, his date of birth, address, details of ownership in the company and such other details as may be prescribed.

(3) The register maintained under sub-section (2) shall be open to inspection by any member of the company on payment of such fees as may be prescribed.

(4) Every company shall file a return of significant beneficial owners of the company and changes therein with the Registrar containing names, addresses and other details as may be prescribed within such time, in such form and manner as may be prescribed.

(5) A company shall give notice, in the prescribed manner, to any person (whether or not a member of the company) whom the company knows or has reasonable cause to believe—

(a) to be a significant beneficial owner of the company;

(b) to be having knowledge of the identity of a significant beneficial owner or another person likely to have such knowledge; or

(c) to have been a significant beneficial owner of the company at any time during the three years immediately preceding the date on which the notice is issued,

and who is not registered as a significant beneficial owner with the company as required under this section.

(6) The information required by the notice under sub-section (5) shall be given by the concerned

person within a period **not exceeding thirty days** of the date of the notice.

(7) The **company** shall,—

(a) where that person fails to give the company the information required by the notice within the time specified therein; or

(b) where the information given is not satisfactory, **apply to the Tribunal within a period of fifteen days** of the expiry of the period specified in the notice, 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) On any application made under sub-section (7), the Tribunal may, after giving an opportunity of being heard to the parties concerned, make **such order** restricting the rights attached with the shares within a period **of sixty days** of receipt of application or such other period as may be prescribed.

(9) The company or the person aggrieved by the order of the Tribunal may make an application to the Tribunal for relaxation or lifting of the restrictions placed under sub-section (8).

(10) If any person fails to make a declaration as required under sub-section (1), he shall be punishable with fine which shall not be less than one lakh rupees but which may extend to ten lakh rupees and where the failure is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the failure continues.

(11) If a company, required to maintain register under sub-section (2) and file the information under sub-section (4), fails to do so or denies inspection as provided therein, the company and every officer of the company who is in default shall be punishable with fine which shall not be less than ten lakh rupees but which may extend to fifty lakh rupees and where the failure is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the failure continues.

(12) If any person wilfully furnishes any false or incorrect information or suppresses any material information of which he is aware in the declaration made under this section, he shall be liable to action under section 447.'.

Amendment of section 92. Annual Return

23. In section 92 of the principal Act,—

(i) in sub-section (1),—

(a) clause (c) shall be omitted;

Indebtedness related information need not provided.

(b) in clause (j), the words "indicating their names, addresses, countries of incorporation, registration and percentage of shareholding held by them" shall be omitted;

Details of FIIs such as name, address, countries etc need not provided.

(c) after the proviso, the following proviso shall be inserted, namely:— "Provided further that the Central Government may prescribe abridged form of annual return for One Person Company and small company.";

(ii) for sub-section (3), the following sub-section shall be substituted, namely:—

"(3) Every company shall place a copy of the annual return on the website of the company, if any, and the web-link of such annual return shall be disclosed in the Board's report."

Omission of section 93. 93:Return to be filed in case of change

24. Section 93 of the principal Act shall be omitted.

Amendment of section 94. Place of keeping registers & returns

25. In section 94 of the principal Act,—

(i) in sub-section (1), in the **first proviso**, the words "and the Registrar has been given a copy of the **proposed special resolution in advance**" shall be **omitted**;

(ii) in sub-section (3), the following proviso shall be inserted, namely:—

"Provided that particulars of the register or index or return as may be prescribed shall not be available for inspection under sub-section (2) or for taking extracts or copies under this sub-section."

Amendment of section 96. Annual General Meeting

26. In section 96 of the principal Act, in sub-section (2), in the proviso, for the words "Provided that", the following shall be substituted, namely:—

"Provided that **annual general meeting** of an **unlisted company** may be held **at any place in India** if **consent** is given in writing or by electronic mode by **all the members** in advance:

Provided further that".

Amendment of section 100. EGM

27. In section 100 of the principal Act, in sub-section (1), the following proviso shall be inserted, namely:—

"Provided that an **extraordinary 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**."

Amendment of section 101. Notice of Meeting

28. In section 101 of the principal Act, in sub-section (1), for the proviso, the following proviso shall be substituted namely:—

"Provided that a general meeting may be called after giving shorter notice than that specified in this sub-section if consent, in writing or by electronic mode, is accorded thereto—

(i) in the case of an annual general meeting, by not less than ninety-five per cent of the members entitled to vote thereat; and

(ii) in the case of any other general meeting, by members of the company—

(a) holding, if the company has a share capital, not less than ninety-five per cent of such part of the paid-up share capital of the company as gives a right to vote at the meeting; or

(b) having, if the company has no share capital, not less than ninety-five per cent of the total voting power exercisable at that meeting:

Provided further that where any member of a company is entitled to vote only on some resolution or resolutions to be moved at a meeting and not on the others, those members shall be taken into account for the purposes of this sub-section in respect of the former resolution or resolutions and not in respect of the latter."

Amendment of section 110. Postal Ballot

29. In section 110 of the principal Act, in sub-section (1), the following proviso shall be inserted, namely:—

"Provided that any item of business required to be transacted by means of postal ballot under clause (a), may be transacted at a general meeting by a company which is required to provide the facility to members to vote by electronic means under section 108, in the manner provided in that section."

Amendment of section 117. Resolutions & Agreements to be filed

30. In section 117 of the principal Act,—

(i) in sub-section (2),—

(a) for the words "not be less than five lakh rupees" the words "not be less than one lakh rupees" shall be substituted;

(b) for the words "one lakh rupees", the words "fifty thousand rupees" shall be substituted;

Penalties for non filing proposed to be reduced

(ii) in sub-section (3),—

(a) clause (e) shall be omitted;

Borrowings & creation of charge related resolutions need not be filed.

(b) in clause (g), in the proviso, the word "and" shall be omitted and the following proviso shall be inserted, namely:—

"Provided further that nothing contained in this clause shall apply to a banking company in respect of a resolution passed to grant loans, or give guarantee or provide security in respect of loans under clause (f) of sub-section (3) of section 179 in the ordinary course of its business; and."

Amendment of section 123. Declaration of Dividend

31. In section 123 of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely:—

"(3) The Board of Directors of a company may declare interim dividend during any financial year or at any time during the period from closure of financial year till holding of the annual general meeting out of the surplus in the profit and loss account or out of profits of the financial year for which such interim dividend is sought to be declared or out of profits generated in the financial year till the quarter preceding the date of declaration of the interim dividend: Provided that 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 immediately preceding three financial years."

Amendment of section 129. Financial Statements

32. In section 129 of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely:—

"(3) Where a company has one or more subsidiaries or associate companies, it shall, in addition to financial statements provided under sub-section (2), prepare a consolidated financial statement of the company and of all the subsidiaries and associate companies in the same form and manner as that of its own and in accordance with applicable accounting standards, which shall also be laid before the annual general meeting of the company along with the laying of its financial statement under sub-section (2):

Provided that 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 in such form as may be prescribed:

Provided further that the Central Government may provide for the consolidation of accounts of companies in such manner as may be prescribed."

Amendment of section 130. Reopening of accounts

33. In section 130 of the principal Act,—

(i) in sub-section (1), in the proviso,—

(a) after the words "regulatory body or authorities concerned", the words "or any other person concerned" shall be inserted;

(b) after the words "the body or authority concerned", the words "or the other person concerned" shall be inserted;

(ii) after sub-section (2), the following sub-section shall be inserted, namely:—

"(3) No order shall be made under sub-section (1) in respect of re-opening of books of account relating to a period earlier than eight financial years immediately preceding the current financial year:

Provided that where a direction has been issued by the Central Government under the proviso to sub-section (5) of section 128 for keeping of books of account for a period longer than eight years, the books of account may be ordered to be re-opened within such longer period."

Amendment of section 132. Constitution of NFRA

34. In section 132 of the principal Act, in sub-section (4), in clause (c), in sub-clause (A), in item (11), for the words "ten lakh rupees", the words "five lakh rupees" shall be substituted.

Amendment of section 134. Financial Statements & Board's report

35. In section 134 of the principal Act,—

(a) for **sub-section (1)**, the following sub-section shall be **substituted**, namely:—

"(1) The financial statement, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board by the chairperson of the company where he is authorised by the Board or by two directors out of which one shall be managing director, if any, and the Chief Executive Officer, the Chief Financial Officer and the company secretary of the company, wherever they are appointed, or in the case of One Person Company, only by one director, for submission to the auditor for his report thereon.";

In addition to the prescribed signatories, CEO is required to sign the FS, CFS whether holding directorship or not.

(b) in sub-section (3),—

(i) for clause (a), the following clause shall be substituted, namely:—

"(a) the **web address**, if any, where **annual return** referred to in sub-section (3) of section 92 has been placed;"

(ii) in clause (p), for the words "annual evaluation has been made by the Board of its own performance and that of its committees and individual directors", the words **"annual evaluation of the performance of the Board, its Committees and of individual directors has been made"**

shall be substituted;

(iii) after clause (q), the following provisos shall be inserted, namely:—

"Provided that where disclosures referred to in this sub-section have been included in the financial statements, such disclosures shall be referred to instead of being repeated in the Board's report:

Provided further that where the policy referred to in clause (e) or clause (o) is made available on company's website, if any, it shall be sufficient compliance of the requirements under such clauses if the salient features of the policy and any change therein are specified in brief in the Board's report and the web-address is indicated therein at which the complete policy is available."

Policies relating to director's appointment, remuneration and CSR policy.

(c) after sub-section (3), the following sub-section shall be inserted, namely:— "(3A) The Central Government may prescribe an abridged Board's report, for the purpose of compliance with this section by a One Person Company or small company."

Amendment of section 135. CSR

36. In section 135 of the principal Act,—

(i) in sub-section (1),—

(a) for the words "any financial year", the words "the immediately preceding financial year" shall be substituted;

(b) the following proviso shall be inserted, namely:—

"Provided that where a company is not required to appoint an independent director under sub-section (4) of section 149, it shall have in its Corporate Social Responsibility Committee two or more directors."

(ii) in sub-section (3), in clause (a), for the words and figures "as specified in Schedule VII", the words and figures "in areas or subject, specified in Schedule VII" shall be substituted;

(iii) in sub-section (5), for the *Explanation*, the following *Explanation* shall be substituted, namely:—

*'Explanation.—*For the purposes of this section "net profit" shall not include such sums as may be prescribed, and shall be calculated in accordance with the provisions of section 198.*'*

Amendment of section 136. Right of member to copies of audited Financial Statements

37. In section 136 of the principal Act,-

(i) in sub-section (1),-

(a) the words and figures "Without prejudice to the provisions of section 101," shall be omitted;

(b) in the first proviso, for the words "Provided that", the following shall be **substituted**, namely: -

"Provided that if the **copies of the documents** are **sent less than twenty-one days** before the date of the meeting, they shall, notwithstanding that fact, be **deemed** to have been duly **sent** if it is so agreed by **ninety-five per cent of the members entitled to vote** at the meeting: Provided further that";

(c) in the second proviso, for the words "Provided further", the words, "Provided also" be substituted;

(d) for the **fourth proviso**, the following provisos shall be **substituted**, namely: -

'Provided also that every **listed** company **having a subsidiary or subsidiaries** shall **place separate audited accounts** in respect of each of subsidiary **on its website**, if any:

Provided also that a **listed** company which has a **subsidiary incorporated outside India** (herein referred to as "foreign subsidiary")-

(a) where such foreign subsidiary is **statutorily required** to **prepare consolidated financial** statement under any **law of the country of its incorporation**, the **requirement** of this proviso shall be **met if** consolidated financial statement of such foreign subsidiary is **placed on the website** of the listed

company;

(b) where such foreign subsidiary is not required to get its financial statement audited under any law of the country of its incorporation and which does not get such financial statement audited, the holding Indian listed company may place such unaudited financial statement on its website and where such financial statement is in a language other than English, a translated copy of the financial statement in English shall also be placed on the website.";

(ii) in sub-section (2), the following proviso shall be inserted, namely:—

"Provided that every company having a subsidiary or subsidiaries shall provide a copy of separate audited or unaudited financial statements, as the case may be, as prepared in respect of each of its subsidiary to any member of the company who asks for it."

Amendment of section 137. Filing of Financial Statements with ROC

38. In section 137 of the principal Act, in sub-section (1), after the fourth proviso, the following proviso shall be inserted, namely:—

'Provided also that in the case of a subsidiary which has been incorporated outside India (herein referred to as "foreign subsidiary"), which is not required to get its financial statement audited under any law of the country of its incorporation and which does not get such financial statement audited, the requirements of the fourth proviso shall be met if the holding Indian listed company files such unaudited financial statement along with a declaration to this effect and where such financial statement is in a language other than English, along with a translated copy of the financial statement in English.'

Amendment of section 139. Appointment of auditors

39. In section 139 of the principal Act, in sub-section (1), the first proviso shall be omitted.

Provision in respect of placing of matter before the members in the AGM, relating to ratification of appointment of auditor is proposed to be omitted.

Amendment of section 140. Removal, resignation of auditor

40. In section 140 of the principal Act, in sub-section (3), for the words "fifty thousand rupees", the words "fifty thousand rupees or the remuneration of the auditor, whichever is less," shall be substituted.

Amendment of section 141. Eligibility, qualifications and disqualifications of auditors

41. In section 141 of the principal Act, in sub-section (3),—
(i) in clause (d), the following *Explanation* shall be inserted, namely:—

Explanation.—For the purposes of this clause, the term "relative" means the spouse of a person; and includes a parent, sibling or child of such person or of the spouse, financially dependent on such person, or who consults such person in taking decisions in relation to his investments;

(ii) for clause (i), the following clause shall be substituted, namely:—

'(i) a person who, directly or indirectly, renders any service referred to in section 144 to the company or its holding company or its subsidiary company.

Explanation.—For the purposes of this clause, the term "directly or indirectly" shall have the meaning assigned to it in the *Explanation to section 144.*'

Amendment of section 143. Powers and duties of auditors and auditing standards

42. In section 143 of the principal Act, —

(i) in sub-section (1), in the proviso, for the words "its subsidiaries", at both the places, the words "its subsidiaries and associate companies" shall be substituted;

(ii) in sub-section (3), in clause (i), for the words "internal financial controls system", the words "internal financial controls with reference to financial statements" shall be substituted;

(iii) in sub-section (14), in clause (a), for the words "cost accountant in practice", the words "cost accountant" shall be substituted.

Amendment of section 147. Punishment for contravention

43. In section 147 of the principal Act,—

(i) in sub-section (2),—

(a) after the words "five lakh rupees", the words "or four times the remuneration of the auditor, whichever is less" shall be inserted;

(b) in the proviso, for the words "and with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees", the words "and with fine which shall not be less than fifty thousand rupees but which may extend to twenty-five lakh rupees or eight times the remuneration of the auditor, whichever is less" shall be substituted;

(ii) in sub-section (3), in clause (ii), for the words "or to any other persons", the words "or to members or creditors of the company" shall be substituted;

(iii) in sub-section (5), the following proviso shall be inserted, namely:—

"Provided that 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."

Amendment of section 148. Central Government to specify audit of items of cost in respect of certain companies

44. In section 148 of the principal Act,— (i) in sub-section (3),—

(a) for the words "Cost Accountant in practice", the words "cost accountant" shall be substituted;

(b) in the *Explanation*, for the words "Institute of Cost and Works Accountants of India", the words "Institute of Cost Accountants of India" shall be substituted;

(ii) in sub-section (5), in the proviso, for the words "cost accountant in practice", the words "cost accountant" shall be substituted.

Amendment of section 149. Company to have Board of Directors

45. In section 149 of the principal Act,—

(i) for **sub-section (3)**, the following sub-section shall be substituted, namely:—

"(3) Every company shall have at least one director **who stays in India** for a total period of not less than one hundred and eighty-two days **during the financial year**:

Provided that in case of a **newly incorporated company** the requirement under this sub-section **shall apply proportionately** at the end of the financial year in which it is incorporated."

(ii) in **sub-section (6)**,—

(a) in clause (c), for the words "**pecuniary relationship**", the words "pecuniary relationship, other than remuneration as such director or having transaction not exceeding ten per cent. of his total income or such amount as may be prescribed," shall be substituted;

(b) for clause **(d)**, the following clause shall be substituted, namely:—

"(d) **none of whose relatives—**

(i) is **holding any security of or interest in the company**, its holding, subsidiary or associate company **during the two immediately** preceding financial years or **during the current** financial year:

Provided that the relative **may hold** security or interest in the **company of face value not exceeding fifty lakh rupees or two per cent. of the paid-up capital of the company**, its holding,

subsidiary or associate company or such higher sum as may be prescribed;

(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

(iv) has any other pecuniary transaction or relationship with the company, or its subsidiary, or its holding or associate company amounting to two per cent or more of its gross turnover or total income singly or in combination with the transactions referred to in sub-clause (i), (ii) or (iii);";

(c) in clause (e), in sub-clause (i), the following proviso shall be inserted, namely:—

"Provided that in case of a relative who is an employee, the restriction under this clause shall not apply for his employment during preceding three financial years."

Amendment of section 152. Appointment of directors

46. In section 152 of the principal Act,—

(a) in sub-section (3), after the word and figures "section 154", the words and figures "or any other number as may be prescribed under section 153" shall be inserted;

(b) in sub-section (4), after the word "Number", the words and figures "or such other number as may be prescribed under section 153" shall be inserted.

Amendment of section 153. Application for allotment of Director Identification Number

47. In section 153 of the principal Act, the following proviso shall be inserted, namely:—

"Provided that the Central Government may prescribe any identification number which shall be treated as Director Identification Number for the purposes of this Act and in case any individual holds or acquires such identification number, the requirement of this section shall not apply or apply in such manner as may be prescribed."

Amendment of section 160. Right of persons other than retiring directors to stand for directorship

48. In section 160 of the principal Act, in sub-section (1), the following proviso shall be inserted, namely:—

"Provided that requirements of deposit of amount shall not apply in case of appointment of an independent director or a director recommended by the Nomination and Remuneration Committee, if any, constituted under sub-section (1) of section 178."

Amendment of section 161. Appointment of additional director, alternate director and nominee director

49. In section 161 of the principal Act,—

(i) in sub-section (2), after the words "alternate directorship for any other director in the company", the words "or holding directorship in the same company" shall be inserted;

(ii) in sub-section (4),—

(a) the words "In the case of a public company," shall be omitted;

(b) after the words "meeting of the Board", the words "which shall be subsequently approved by members in the immediate next general meeting" shall be inserted.

Amendment of section 164. Disqualifications for appointment of director

50. In section 164 of the principal Act,—

(i) in sub-section (2), the following proviso shall be inserted, namely:—

"Provided that where a person is appointed as a director of a company which is in default of clause (a) or clause (b), he shall not incur the disqualification for a period of six months from the date of his appointment."

(ii) in sub-section (3), for the proviso, the following proviso shall be substituted, namely:—

"Provided that the disqualifications referred to in clauses (d), (e) and (g) of sub-section (1) shall continue to apply even if the appeal or petition has been filed against the order of conviction or disqualification."

Amendment of section 165. Number of directorships

51. In section 165 of the principal Act, in sub-section (1), the Explanation shall be renumbered as Explanation I and after Explanation I as so numbered, the following Explanation shall be inserted, namely:—

"Explanation II.—For reckoning the limit of directorships of twenty companies, the directorship in a dormant company shall not be included."

Amendment of section 167. Vacation of office of director

52. In section 167 of the principal Act, in sub-section (1),—

(i) in clause (a), the following proviso shall be inserted, namely:—

"Provided that where he incurs disqualification under sub-section (2) of section 164, the office of the director shall become vacant in all the companies, other than the company which is in default under that sub-section.";

(ii) in clause (f), for the proviso the following proviso shall be substituted, namely,—

"Provided that the office shall not be vacated by the director in case of orders referred to in clauses (e) and (f)—

(i) for thirty days from the date of conviction or order of disqualification;

(ii) where an appeal or petition is preferred within thirty days as aforesaid against the conviction resulting in sentence or order, until expiry of seven days from the date on which such appeal or petition is disposed of; or

(iii) where any further appeal or petition is preferred against order or sentence within seven days, until such further appeal or petition is disposed of."

Amendment of section 168. Resignation of director

53. In section 168 of the principal Act, in sub-section (1), in the proviso, for the words, "director shall also forward", the words, "director may also forward" shall be substituted.

Amendment of section 173. Meetings of Board

54. In section 173 of the principal Act, in sub-section (2), after the first proviso, the following proviso shall be inserted, namely:—

"Provided further that where there is quorum in a meeting through physical presence of directors, any other director may participate through video conferencing or other audio visual means in such meeting on any matter specified under the first proviso."

Amendment of section 177. Audit committee

55. In section 177 of the principal Act,—

(i) in sub-section (1), for the words "every listed company", the words "every listed public company" shall be substituted;

(ii) in sub-section (4), in clause (iv), after the proviso, the following provisos shall be inserted, namely:—

"Provided further that in case of transaction, other than transactions referred to in section 188, and where Audit Committee does not approve the transaction, it shall make its recommendations to the Board:

Provided also that in case any transaction involving any amount not exceeding one crore rupees is entered into by a director or officer of the company without obtaining the approval of the Audit Committee and it is not ratified by the Audit Committee within three months from the date of the transaction, such transaction shall be voidable at the option of the Audit Committee and 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:

Provided also that the provisions of this clause shall not apply to a transaction, other than a transaction referred to in section 188, between a holding company and its wholly owned subsidiary company."

Amendment of section 178. Nomination and remuneration committee and stakeholders relationship committee

56. In section 178 of the principal Act,—

(i) in sub-section (1), for the words "every listed company", the words "every listed public company" shall be substituted;

(ii) in sub-section (2), for the words "shall carry out evaluation of every director's performance", the words "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 the Nomination and Remuneration Committee or by an independent external agency and review its implementation and compliance" shall be substituted;

(iii) in sub-section (4), in clause (c), for the proviso, the following proviso shall be substituted , namely:—

Provided that such policy shall be placed on the website of the company, if any, and the salient features of the policy and changes therein, if any, along with the web address of the policy, if any, shall be disclosed in the Board's report.";

(iv) in sub-section (8), in the proviso, for the words "non-consideration of resolution of any grievance", the words "inability to resolve or consider any grievance" shall be substituted.

Amendment of section 180. Restrictions on powers of Board

57. In section 180 of the principal Act, in sub-section (1), in item (c), for the words "paid-up share capital and free reserves", the words "paid-up share capital, free reserves and securities premium" shall be substituted.

Amendment of section 184. Disclosure of interest by director

58. In section 184 of the principal Act,—

(i) in sub-section (4), the words "shall not be less than fifty thousand rupees but which" shall be omitted;

(ii) in sub-section (5), for clause (b), the following clause shall be substituted, namely:—

"(b) shall apply to any contract or arrangement entered into or to be entered into between two companies or between one or more companies and one or more bodies corporate where any of the directors of the one company or body corporate or two or more of them together holds or hold not more than two per cent. of the paid-up share capital in the other company or the body corporate."

Substitution of section 185. Loan to directors, etc. **Loans to directors, etc.**

59. For section 185 of the principal Act, the following section shall be substituted, namely:—

'185. (1) No company shall, directly or indirectly, advance any loan, including any loan represented by a book debt to, or give any guarantee or provide any security in connection with any loan taken by,—

(a) any director of company, or of a company which is its holding company or any partner or relative of any such director; or

(b) any firm in which any such director or relative is a partner.

(2) A company may advance any loan including any loan represented by a book debt, or give any guarantee or provide any security in connection with any loan taken by any person in whom any of the director of the company is interested, subject to the condition that—

(a) a special resolution is passed by the company in general meeting: Provided that the explanatory statement to the notice for the relevant general meeting shall disclose the full particulars of the loans given, or guarantee given or security provided and the purpose for which the loan or guarantee or security is proposed to be utilised by the recipient of the loan or guarantee or security and any other relevant fact; and

(b) the loans are utilised by the borrowing company for its principal business activities.

Explanation.—For the purposes of this sub-section, the expression "any person in whom any of the director of the company is interested" means—

(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 twenty-five per cent. 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.

(3) Nothing contained in sub-sections (1) and (2) shall apply to

(a) the giving of any loan to a managing or whole-time director—

(i) as a part of the conditions of service extended by the company to all its employees; or

(ii) pursuant to any scheme approved by the members by a special resolution; or

(b) a company which in the ordinary course of its business provides loans or gives guarantees or securities for the due repayment of any loan and in respect of such loans an interest is charged at a rate not less than the rate of prevailing yield of one year, three year, five year or ten year Government security closest to the tenor of the loan; or

(c) any loan made by a holding company to its wholly owned subsidiary company or any guarantee given or security provided by a holding company in respect of any loan made to its wholly owned subsidiary company; or

(d) any guarantee given or security provided by a holding company in respect of loan made by any bank or financial institution to its subsidiary company:

Provided that the loans made under clauses (c) and (d) are utilised by the subsidiary company for its principal business activities.

(4) If any loan is advanced or a guarantee or security is given or provided or utilised in contravention of the provisions of this section, the company shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees, and the director or the other person to whom any loan is advanced or guarantee or security is given or provided in connection with any loan taken by him or the other person, shall be punishable with imprisonment which may extend to six months or with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees, or with both.'

Amendment of section 186. Loan and investment by company

60. In section 186 of the principal Act,—

- (i) sub-section (1) shall be omitted;
- (ii) in sub-section (2), the following *Explanation* shall be inserted, namely:—

Explanation.—For the purposes of this sub-section, the word "person" does not include any individual who is in the employment of the company.'

- (iii) for sub-section (3), the following sub-section shall be substituted, namely:—

'(3) Where the aggregate of the loans and investment so far made, the amount for which guarantee or security so far provided to or in all other bodies corporate along with the investment, loan, guarantee or security proposed to be made or given by the Board, exceed the limits specified under sub-section (2), 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:

Provided that where a loan or guarantee is given or where a security has been provided by a company to its wholly owned subsidiary company or a joint venture company, or acquisition is made by a holding company, by way of subscription, purchase or otherwise of, the securities of its wholly owned subsidiary company, the requirement of this sub-section shall not apply:

Provided further that the company shall disclose the details of such loans or guarantee or security or acquisition in the financial statement as provided under sub-section (4).

(iv) for sub-section (11), the following sub-section shall be substituted, namely:—

"(11) Nothing contained in this section shall apply—

(a) to any loan made, any guarantee given or any security provided or any investment made by a banking company, or an insurance company, or a housing finance company in the ordinary course of its business, or a company established with the object of and engaged in the business of financing industrial enterprises, or of providing infrastructural facilities;

(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;

(iii) made, in respect of investment or lending activities, by a non-banking financial company registered under Chapter III-B of the Reserve Bank of India Act, 1934 and whose principal business is acquisition of securities.";

(v) in the Explanation, in clause (a), after the words "other securities" the following shall be inserted, namely:—

"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 fifty per cent of its total assets, or if its income derived from investment business constitutes not less than fifty per cent as a proportion of its gross income."

Amendment of section 188. Related party transactions

61. In section 188 of the principal Act,—

(i) in sub-section (1), after second proviso, the following proviso shall be inserted, namely:—

"Provided also that nothing contained in the second proviso shall apply to a company in which ninety per cent. or more members, in number, are relatives of promoters or are related parties:"

(ii) in sub-section (3), for the words "shall be voidable at the option of the Board", the words "shall be voidable at the option of the Board or, as the case may be, of the shareholders" shall be substituted.

Omission of section 194. Prohibition on forward dealings in securities of company by director or KMP

62. Section 194 of the principal Act shall be omitted.

Omission of section 195. Prohibition on insider trading of securities

63. Section 195 of the principal Act shall be omitted.

Amendment of section 196. Appointment of MD, WTD or Manager

64. In section 196, in sub-section (4), for the words "specified in that Schedule", the words "specified in Part I of that Schedule" shall be substituted.

Amendment of section 197. Overall maximum managerial remuneration and managerial remuneration in case of absence or inadequacy of profits

65. In section 197 of the principal Act,— (a) in sub-section (1),—

(i) in the first proviso, the words "with the approval of the Central Government," shall be omitted;

(ii) in the second proviso, after the words "general meeting," the words "by a special resolution," shall be inserted;

(iii) after the second proviso, the following proviso shall be inserted, namely:—

"Provided also that, where any term loan of any bank or public financial institution is subsisting or the company has defaulted in payment of dues to non-convertible debenture holders or any other secured creditor, the prior approval of the bank or public financial institution concerned or the non-convertible debenture holders or other secured creditor, as the case may be, shall be obtained by the company before obtaining the approval in the general meeting.";

(b) in sub-section (3), the words "and if it is not able to comply with such provisions, with the previous approval of the Central Government" shall be omitted;

(c) for sub-section (9), the following sub-section shall be substituted, namely:—

"(9) If any director draws or receives, directly or indirectly, by way of remuneration any such sums in excess of the limit prescribed by this section or without approval required under this section, he shall refund such sums to the company, within two years of such lesser period as may be allowed by the company, and until such sum is refunded, hold it in trust for the company.";

(d) in sub-section (10),—

(i) for the words "permitted by the Central Government", the words "approved by the company by special resolution within two years from the date the sum becomes refundable" shall be substituted;

(ii) the following proviso shall be inserted, namely:—

"Provided that where any term loan of any bank or public financial institution is subsisting or the company has defaulted in payment of dues to non-convertible debenture holders or any other secured creditor, the prior approval of the bank or public financial institution concerned or the non-convertible debenture holders or other secured creditor, as the case may be, shall be obtained by the company before obtaining approval of such waiver.";

(e) in sub-section (11), the words "and if such conditions are not being complied, the approval of the Central Government had been obtained" shall be omitted;

(f) after sub-section (15), the following sub-sections shall be inserted, namely:—

"(16) The auditor of the company shall, in his report under section 143, make a statement as to whether the remuneration paid by the company to its directors is in accordance with the provisions of this section, whether remuneration paid to any director is in excess of the limit laid down under this section and give such other details as may be prescribed.

(17) On and from the commencement of the Companies (Amendment) Act, 2016, any application made to the Central Government under the provisions of this section [as it stood before such commencement], which is pending with that Government shall abate, and the company shall, within one year of such commencement, obtain the approval in accordance with the provisions of this section, as so amended."

Amendment of section 198. Calculation of profits

66. In section 198 of the principal Act,—

(i) in sub-section (3), in clause (a), after the words "sold by the company", the words "unless the company is an investment company as referred to in the Explanation to section 186" shall be inserted;

(ii) in sub-section (4), in clause (l), the words "which begins at or after the commencement of this Act" shall be omitted.

Amendment of section 200. Central Government or company to fix limit with regard to remuneration

67. In section 200 of the principal Act, the words "the Central Government or" appearing at both the places shall be omitted.

Amendment of section 201. Forms of, and procedure in relation to, certain applications

68. In section 201 of the principal Act,—

(a) in sub-section (1), for the words "this Chapter", the word and figures "section 196" shall be substituted;

(b) in sub-section (2), in clause (a), for the words "any of the sections aforesaid", the word and figures "section 196" shall be substituted.

Amendment of section 216. Investigation of ownership of company

69. In section 216 of the principal Act, in sub-section (1),—

(i) in clause (b), for the word "company", the words "company; or" shall be substituted;

(ii) after clause (b), the following clause shall be inserted, namely:—

"(c) who have or had beneficial interest in shares of a company or who are or have been beneficial owners or significant beneficial owner of a company."

Amendment of section 223. Inspector's report

70. In section 223 of the principal Act, in sub-section (3), after the words "may be obtained", the words "by members, creditors or any other person whose interest is likely to be affected" shall be inserted.

Amendment of section 236. Purchase of minority shareholding

71. In section 236 of the principal Act, in sub-sections (4), (5) and (6), for the words, "transferor company", wherever they occur, the words "company whose shares are being transferred" shall be substituted.

Amendment of section 247. Valuation by registered valuers

72. In section 247 of the principal Act, in sub-section (2), in clause (d), for the words "during or after the valuation of assets", the words "during a period of three years prior to his appointment as valuer or three years after the valuation of assets was conducted by him" shall be substituted.

Amendment of section 366. Companies capable of being registered

73. In section 366 of the principal Act, in sub-section (2),—

(i) for the words "seven or more members", the words "two or more members" shall be substituted;

(ii) in the proviso, after clause (vi), the following clause shall be inserted, namely:—

"(vii) a company with less than seven members shall register as a private company."

Amendment of section 379. Application of Act to foreign companies

74. Section 379 of the principal Act shall be renumbered as sub-section (2) thereof and before sub-section (2) as so renumbered, the following sub-section shall be inserted, namely:—

"(1) Sections 380 to 386 (both inclusive) and sections 392 and 393 shall apply to all foreign companies:

Provided that the Central Government may, by Order published in the Official Gazette, exempt any class of foreign companies, specified in the Order, from any of the provisions of sections 380 to 386 and sections 392 and 393 and a copy of every such order shall, as soon as may be after it is made, be laid before both Houses of Parliament."

Amendment of section 384. Debentures, annual return, registration of charges, books of account and their inspection

75. In section 384 of the principal Act, in sub-section (2), after the word and figures "section 92", the words and figures "and section 135" shall be inserted.

Amendment of section 403. Fee for filing, etc.

76. In section 403 of the principal Act,—

(i) in sub-section (1), for the first and second provisos, the following provisos shall be substituted, namely:—

"Provided that where any document, fact or information required to be submitted, filed, registered or recorded, as the case may be, under section 89, 92, 117, 121, 137 or 157 is not submitted, filed, registered or recorded, as the case may be, within the period provided in those sections, it may be submitted, filed, registered or recorded, as the case may be, within a period of two hundred and seventy days from the expiry of the period so provided in those sections, on payment of such additional fee as may be prescribed:

Provided further that where the document, fact or information, is not submitted, filed, registered or recorded, as the case may be,—

(a) in case of document, fact or information referred to in section 89, 92, 117, 121, 137 or 157, within the period of two hundred and seventy days as provided in the first proviso; or

(b) in any other case within the period in the relevant section, it may, without prejudice to any other legal action or liability under this Act, be submitted, filed, registered or recorded, as the case may be, on payment of such higher additional fee or additional fee, as may be prescribed:

Provided also that where there is default on two or more occasions in submitting, filing, registering or recording of the document, fact or information under section 89,

92, 117, 121, 137 or 157, the provisions of the first and second provisos shall not apply, until the document, fact or information is submitted, filed, registered or recorded, as the case may be, with additional fee, without prejudice to any legal action or liability under this Act.";

(ii) in sub-section (2), for the words "first proviso to that sub-section", the words "relevant section" shall be substituted.

Provision relating to *Nidhis* and its application, etc.

Substitution of section 406. Power to modify Act in its application to *Nidhis*

77. For section 406 of the principal Act, the following section shall be substituted, namely:—

'406. (1) In this section, "*Nidhi*" or "**Mutual Benefit Society**" means a company which the Central Government may, by notification in the Official Gazette, declare to be a *Nidhi* or Mutual Benefit Society, as the case may be.

(2) The Central Government may, by notification in the Official Gazette, direct that any of the provisions of this Act specified in the notification—

(a) shall not apply to any *Nidhi* or Mutual Benefit Society; or

(b) shall apply to any *Nidhi* or Mutual Benefit Society with such exceptions, modifications and adaptations as may be specified in the notification.

(3) A copy of every notification proposed to be issued under sub-section (2), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days, and if, both Houses agree in disapproving the issue of notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses.

(4) In reckoning any such period of thirty days as is referred to in sub-section (3), no account shall be taken of any period during which the House referred to in sub-

section (3) is prorogued or adjourned for more than four consecutive days.

(5) The copies of every notification issued under this section shall, as soon as may be after it has been issued, be laid before each House of Parliament.'

Amendment of section 409. Qualification of President and Members of Tribunal

78. In section 409 of the principal Act, in sub-section (3),—
(i) in clause (a), for the words "out of which at least three years shall be in the pay scale of Joint Secretary to the Government of India or equivalent or above in that service", the words "and has been holding the rank of Secretary or Additional Secretary to the Government of India" shall be substituted;

(ii) for clause (e) the following clause shall be substituted namely:—

"(e) is a person of proven ability, integrity and standing having special knowledge and professional experience of not less than fifteen years in industrial finance, industrial management, industrial reconstruction, investment and accountancy."

Amendment of section 411. Qualifications of chairperson and Members of Appellate Tribunal

79. In section 411 of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely:—

"(3) A technical member shall be a person of proven ability, integrity and standing having special knowledge and professional experience of not less than twenty-five years in industrial finance, industrial management, industrial reconstruction, investment and accountancy."

Amendment of section 412. Selection of Members of Tribunal and Appellate Tribunal.

80. In section 412 of the principal Act, for sub-section (2), the following sub-sections shall be substituted, namely:—

"(2) The Members of the Tribunal and the Technical Members of the Appellate Tribunal shall be appointed on the recommendation of a Selection Committee consisting of—

(a) Chief Justice of India or his nominee - Chairperson;

(b) a senior Judge of the Supreme Court or Chief Justice of High Court - Member;

(c) Secretary in the Ministry of Corporate Affairs - Member;
and

(d) Secretary in the Ministry of Law and Justice - Member.

(2A) Where in a meeting of the Selection Committee, there is equality of votes on any matter, the Chairperson shall have a casting vote."

Establishment of Special Courts.

Amendment of section 435. Establishment of Special Courts.

81. For **section 435** of the principal Act, the following shall be **substituted**, namely:—

"435.(1) The Central Government may, for the purpose of providing speedy trial **of offences** under this Act, by notification, **establish or designate** as many Special Courts as may be necessary.

(2) A Special Court shall consist of—

(a) a **single judge** holding office as Session Judge or Additional Session Judge, in case of offences **punishable under this Act with imprisonment of two years or more**; and

(b) a **Metropolitan Magistrate** or a **Judicial Magistrate** of the **First Class**, in **the case of other offences**, who shall be appointed by the Central Government with the concurrence of the Chief Justice of the High Court within whose jurisdiction the judge to be appointed is working."

Amendment of section 438. Application of Code to proceedings before Special Court

82. In section 438 of the principal Act, for the words "deemed to be a Court of Session", the words "deemed to be a Court of Session or the court of Metropolitan Magistrate or a Judicial Magistrate of the First Class, as the case may be," shall be substituted.

Amendment of section 439. Offences to be non-cognizable

83. In section 439 of the principal Act, in sub-section (2), after the words "a shareholder", the words "or a member" shall be inserted.

Amendment of section 440. Transitional provisions

84. In section 440 of the principal Act, for the words "Court of Session", at both the places, the words "Court of Session or the court of Metropolitan Magistrate or a Judicial Magistrate of the First Class, as the case may be" shall be substituted.

Amendment of section 441. Compounding of certain offences

85. In section 441 of the principal Act, in sub-section (1), for the words "with fine only", the words "not being an offence punishable with imprisonment only, or punishable with imprisonment and also with fine" shall be substituted.

Factors for determining level of punishment.

Insertion of new section 446A.

86. After section 446 of the principal Act, the following sections shall be inserted, namely:—

"446A. The court or the Special Court, while deciding the amount of fine or imprisonment under this 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; and
- (e) repetition of the default.

Lesser penalties for One Person Companies or small companies.

446B. Notwithstanding anything contained in this Act, if a One Person Company or a small company fails to comply with the provisions of sub-section (5) of section 92, clause (c) of sub-section (2) of section 117, sub-section (3) of section 137, such company and officer in default of such company shall be punishable with fine or imprisonment or fine and imprisonment, as the case may be, which shall not be more than one-half of the fine or imprisonment or fine and imprisonment, as the case may be, of the minimum or maximum fine or imprisonment or fine and imprisonment, as the case may be, specified in such sections."

Amendment of section 447. Punishment for fraud

87. In section 447 of the principal Act,—

(i) after the words "guilty of fraud", the words "involving an amount of at least ten lakh rupees or one percent. of the turnover of the company, whichever is lower" shall be inserted;

(ii) after the proviso, the following proviso shall be inserted, namely:—

"Provided further that where the fraud involves an amount less than ten lakh rupees or one per cent 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 five years or with fine which may extend to twenty lakh rupees or with both."

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