



**THE INSTITUTE OF
Company Secretaries of India**
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IN PURSUIT OF PROFESSIONAL EXCELLENCE
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HIGHLIGHTS OF THE COMPANIES (AMENDMENT) ACT, 2017

The Companies (Amendment) Act, 2017 which was passed by the Lok Sabha on July 27, 2017 and by the Rajya Sabha on December 19, 2017, has received the assent of the President of India on January 3, 2018 and subsequently published in the Gazette of India.

The amendment Act 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 the Act.

The said Amendment Act is placed at the link: http://www.mca.gov.in/Ministry/pdf/CAAct2017_05012018.pdf

The amendments under the Companies (Amendment) Act, 2017, are broadly aimed at:

- addressing difficulties in implementation owing to stringent compliance requirements;
- facilitating ease of doing business in order to promote growth with employment;
- harmonisation with the Accounting Standards, the Securities and Exchange Board of India Act, 1992 and the regulations made thereunder, and the Reserve Bank of India Act, 1934 and the regulations made thereunder;
- rectifying omissions and inconsistencies in the Act.

Highlights of the Companies (Amendment) Act, 2017 are given hereunder:



S. No.	Section	Existing Provision	Amendments as per Companies (Amendment) Act, 2017	Revised Provision	Explanation
AMENDMENTS TO ADDRESS DIFFICULTIES IN IMPLEMENTATION					
A. Name Reservation / Approval					
1.	Section 4(5)	<p>Section 4(5)(i)-</p> <p>‘Upon receipt of an application under sub-section (4), the Registrar may, on the basis of information and documents furnished along with the application, reserve the name for a period of sixty days from the date of the application.’</p>	<p>In section 4 of the principal Act, in sub-section (5), for clause (i), the following shall be substituted, namely:-</p> <p>“(i) Upon receipt of an application under sub-section (4), the Registrar may, on the basis of information and documents furnished along with the application, reserve the name for a period of twenty days from the date of approval or such other period as may be prescribed:</p> <p>Provided that in case of an application for reservation of name or for change of its name by an existing company, the Registrar may reserve the</p>	<p>Revised Section 4(5)(i)-</p> <p>“Upon receipt of an application under sub-section (4), the Registrar may, on the basis of information and documents furnished along with the application, reserve the name for a period of twenty days from the date of approval or such other period as may be prescribed:</p> <p>Provided that in case of an application for reservation of name or for change of its name by an existing company, the Registrar may reserve the name for a period of sixty days from the date of approval.”</p>	<p>The period for reservation of name is substituted from ‘sixty days from the date of the application’ to ‘twenty days from the date of approval or such other period as may be prescribed’.</p> <p>There were concerns that the period of sixty days for reservation of name should be from date of approval and not from the date of application. This concern is addressed.</p> <p>A provision for existing companies is also provided. In case of an application for reservation of name or for change of its name by an existing company, the Registrar may reserve the name for a period of sixty days from the date of approval.</p>



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			name for a period of sixty days from the date of approval.”		
B. Registered Office of Company					
2.	Section 12(1) & (4)	<p>Section 12(1)- ‘A company shall, on and from the fifteenth day of its incorporation and at all times thereafter, have a registered office capable of receiving and acknowledging all communications and notices as may be addressed to it.’</p> <p>Section 12(4)- ‘Notice of every change of the situation of the registered office, verified in the manner prescribed, after the date of incorporation of the company, shall be given to the Registrar within fifteen days of the</p>	<p>In section 12 of the principal Act,—</p> <p>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;</p> <p>In sub-section (4), for the words "within fifteen days", the words "within thirty days" shall be substituted.</p>	<p>Revised Section 12(1)- “A company shall, within thirty days of its incorporation and at all times thereafter, have a registered office capable of receiving and acknowledging all communications and notices as may be addressed to it.”</p> <p>Revised Section 12(4)- “Notice of every change of the situation of the registered office, verified in the manner prescribed, after the date of incorporation of the company, shall be given to the Registrar within thirty days of the change, who shall record the same.”</p>	<p>Section 12(1) requires that a company shall, on and from the fifteenth day of its incorporation, and at all times thereafter, have a registered office. This does not allow a company to have its registered office immediately on incorporation, or earlier than the fifteenth day of its incorporation, whereas a company could have its office from the day of its incorporation. The amendment provides for a company to have its registered office within 30 days of its incorporation.</p> <p>The time period for giving notice of change of situation of registered office is increased from 15 days to 30 days.</p> <p>There were difficulties in filing the prescribed form for change of the registered office of a company with</p>



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		change, who shall record the same.’			the Registrar. The concern was that the period of fifteen days is too short as certain documents like lease deeds, rent agreements and other related documents are required to be submitted besides various approvals that may have to be obtained. Accordingly to address the concerns, the period is increased to thirty days.
C. Effect of number of members falling below the minimum requirement					
3.	Section 3A	--	<p>After section 3 of the principal Act, the following section shall be inserted, namely:—</p> <p>“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,</p>	<p>Section 3A-</p> <p>“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</p>	<p>Section 3(1) of the Act provides for the minimum number of persons required for formation of a company.</p> <p>A new section 3A has been inserted which prescribes that if at any time the number of members of a company is reduced below the minimum prescribed and the company carries on business for more than six months while the number of members is so reduced, then every person who is a member of the company during that time, shall be severally liable for the</p>



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			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 therefore.”	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 therefore.”	payment of the whole debts of the company contracted during that time, and may be severally sued.

D. Financial Statements

4.	Section 129(3)	Section 129(3)- ‘Where a company has one or more subsidiaries, 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	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	Revised Section 129(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	While preparing the consolidated financial statements, the main concern was whether to include associate companies or not. After the amendment the concern gets addressed as the term “associate companies” is inserted in addition to the subsidiaries. The consolidated financial
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		<p>in the same form and manner as that of its own 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):</p> <p>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:</p> <p>Provided further that the Central Government may provide for the consolidation of accounts of companies in such manner as may be prescribed.</p>	<p>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):</p> <p>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 and associate company or companies in such form as may be prescribed:</p>	<p>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):</p> <p>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 and associate company or companies in such form as may be prescribed:</p> <p>Provided further that the Central Government may provide for the consolidation of accounts of companies in such manner as may be prescribed."</p>	<p>statement of the company, its subsidiaries and associates should be in accordance with the applicable accounting standards and be laid before the Annual General Meeting.</p>



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			<p>Provided further that the Central Government may provide for the consolidation of accounts of companies in such manner as may be prescribed.”</p>		
E. Reopening of Accounts of Companies					
5.	Section 130(3)	<p>Section 130(2)- Without prejudice to the provisions contained in this Act the accounts so revised or re-cast under sub-section (1) shall be final.</p>	<p>In section 130 of the principal Act,— 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</p>	<p>Section 130(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.</p>	<p>Re-opening of books of accounts is limited to 8 financial years immediately preceding the current financial year. The order for reopening of accounts can be made upto eight years unless there is a specific direction under section 128(5) from the Central Government for longer period.</p>



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			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.”		

F. Financial Statement, Board’s Report. Etc.

6.	Section 134(1), (3)	Section 134(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 at least 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 and	In section 134 of the principal Act,— 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	Revised Section 134(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	(a) Chief Executive Officer whether appointed as director or not shall sign the financial statement. Before amendment, provisions of section 134 required that, amongst others, the financial statement shall be signed by the Chief Executive Officer, if he is a director in the company. The amendment provides that the Chief Executive Officer shall sign the financial statements irrespective of the fact whether he is a director or not because Chief Executive Officer is a Key
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		<p>the Chief Executive Officer, if he is a director in the company, the Chief Financial Officer and the company secretary of the company, wherever they are appointed, or in the case of a One Person Company, only by one director, for submission to the auditor for his report thereon.’</p> <p>Section 134(3)(a)-</p> <p>‘(a) the extract of the annual return as provided under sub-section (3) of section 92.’</p>	<p>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."</p> <p>In sub-section (3),—</p> <p>(i) for clause (a), the following clause shall be substituted, namely:—</p> <p>"(a) the web address, if any, where annual return referred to in sub-section (3) of section 92 has been</p>	<p>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.”</p> <p>Revised Section 134(3)(a)-</p> <p>“(a) the web address, if any, where annual return referred to in sub-section (3) of section 92 has been placed;”</p>	<p>Managerial Personnel, and is responsible for the overall management of the company. Further, since the appointment of a managing director is not mandatory for all companies, insertion of the words “if any”, after the words “managing director”. [Section 134]</p> <p>(b)The Requirement of having extract of Annual return (Form MGT-9) has been done away with by placing the copy of annual return on website of the company (if any) and the web address/ link disclosed in the Board’s Report.</p> <p>Alignment of provisions of sections 134 (3)(p), 178(2) and schedule IV with respect to performance evaluation of directors.</p>



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		<p>Section 134(3)(p)- ‘(p) in case of a listed company and every other public company having such paid-up share capital as may be prescribed, a statement indicating the manner in which formal annual evaluation has been made by the Board of its own performance and that of its committees and individual directors.’</p> <p>Section 134(3)(q)- ‘(q) such other matters as may be prescribed.’</p>	<p>placed;"</p> <p>(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;</p> <p>(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</p>	<p>Revised Section 134(3)(p)- “(p) in case of a listed company and every other public company having such paid-up share capital as may be prescribed, a statement indicating the manner in which formal annual evaluation of the performance of the Board, its Committees and of individual directors has been made.”</p> <p>Insertion of Proviso to Section 134(3)- “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</p>	<p>Sections 134(3)(p) provides for performance evaluation by the Board. Section 178 (2) provides that the Nomination & Remuneration Committee shall carry out evaluation of every director’s performance. Schedule IV provides that: a) the independent directors shall review the performance of non-independent directors, the Board as a whole and the Chairperson of the Company; b) the performance evaluation of independent directors shall be done by the entire board of directors, excluding the director being evaluated.</p> <p>With this amendment, the provisions of the sections are harmonised. Amendment in sub-section (2) of section 178 provide that the Nomination & Remuneration Committee shall specify the manner for effective evaluation of performance of Board, its committees and individual directors to be carried</p>



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			<p>disclosures shall be referred to instead of being repeated in the Board's report:</p> <p>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."</p> <p>After sub-section (3), the following sub-section shall be inserted, namely:—</p> <p>"(3A) The Central Government may prescribe</p>	<p>Board's report:</p> <p>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."</p> <p>Section 134(3A)-</p> <p>"(3A) The Central Government may prescribe an abridged Board's report, for the purpose of</p>	<p>out either by the Board, by the Nomination and Remuneration Committee or by an independent external agency and review its implementation and compliance.</p> <p>(c)The Central Government is empowered to prescribe an abridged Board's Report for One</p>



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			an abridged Board's report, for the purpose of compliance with this section by a One Person Company or small company."	compliance with this section by a One Person Company or small company."	Person Company and Small Company.
G. Corporate Social Responsibility					
7.	Section 135	Section 135(1)- ‘Every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during any financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director.’	In section 135 of the principal Act,— 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	Revised Section 135(1)- “Every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during the immediately preceding financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director. Provided that where a company is not required to appoint an independent director under sub-	The provisions relating to Corporate Social Responsibility are amended to bring more clarity in the existing provisions. (i) Section 135 is applicable to companies which falls within the threshold of the specified net worth or turnover or net profit and are required to constitute the CSR Committee in any financial year. The words “any financial year” are replaced by the words ‘immediately preceding financial year’. Amendment to Section 135 of the Act allows composition of CSR committee with two or more directors in case the



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		<p>Section 135(3)(a)-</p> <p>‘(a) formulate and recommend to the Board, a Corporate Social Responsibility Policy which shall indicate the activities to be undertaken by the company as specified in Schedule VII.’</p> <p>Explanation to Section 135(5)-</p> <p>‘For the purposes of this section “average net profit” shall be calculated in accordance with the provisions of section 198.’</p>	<p>(4) of section 149, it shall have in its Corporate Social Responsibility Committee two or more directors."</p> <p>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;</p> <p>In sub-section (5), for the Explanation, the following Explanation shall be substituted, namely:—</p> <p>“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.”</p>	<p>section (4) of section 149, it shall have in its Corporate Social Responsibility Committee two or more directors.”</p> <p>Revised Section 135(3)(a)-</p> <p>“(a) formulate and recommend to the Board, a Corporate Social Responsibility Policy which shall indicate the activities to be undertaken by the company in areas or subject, specified in Schedule VII.”</p> <p>Revised Explanation to Section 135(5)</p> <p>“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.”</p>	<p>company is not required to appoint Independent Director under section 149(4).</p> <p>Rule 5(1) of CSR Policy Rules, 2014, permits unlisted companies to have the Committee without Independent Directors, where they are not required to appoint Independent Directors. Likewise, this rule provides for some relaxation for private companies and foreign companies.</p> <p>So, in case of companies where Independent Directors are not required to be appointed as per Rule 5(1), it was not clear as to how many minimum directors are required in CSR Committee. With the amendment, it is clarified that in case of such companies, the CSR Committee may be formed with two or more Directors.</p> <p>(ii) The Amendment Act modified sub-section (3) of the section to</p>



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					<p>refer to areas or subjects as provided in Schedule VII within which CSR activities could be taken up by an eligible company.</p> <p>Schedule VII indicates the broad areas of activities for spending as CSR. Accordingly, for liberal interpretation and to bring more clarity, instead of providing that CSR policy has to indicate the activities to be undertaken by the company as specified in Schedule VII, it should indicate the activities to be undertaken in areas or subjects specified in Schedule VII.</p> <p>(iii) CSR Rules define the term, 'net profit'. The Rules also provide for calculation of net profit for the purposes of foreign company. However, explanation to Section 135(5) provides that for the purpose of this provision, the 'average net profit' shall be calculated in accordance with Section 198.</p>



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					<p>Accordingly, there was disharmony in the Act and the Rules. The High Level CSR Committee had also recommended in para 4.16 of the Report that for the term “average net profit” as provided in Explanation below Section 135(5) to be replaced with the words “net profit”, to bring harmony.</p> <p>Further, the manner of calculation of ‘net profits’ of a foreign company, is provided under the CSR Rules, while referring to Section 381. As it is substantive issue, it should form part of the Act.</p> <p>Accordingly, the explanation is substituted to address both the issues.</p>
H. Right of Member to Copies of Audited Financial Statement					
8.	Section 136(1)-	Section 136(1)- ‘Without prejudice to the	In section 136 of the principal Act,—	Revised Section 136(1)- “A copy of the financial	Amendment to sub-section (1) of section 136 to provide that copies of audited financial statements and



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		<p>provisions of section 101, a copy of the financial statements, including consolidated financial statements, if any, auditor's report and every other document required by law to be annexed or attached to the financial statements, which are to be laid before a company in its general meeting, shall be sent to every member of the company, to every trustee for the debenture-holder of any debentures issued by the company, and to all persons other than such member or trustee, being the person so entitled, not less than twenty-one days before the date of the meeting.</p> <p>Provided that in the case of a listed company, the provisions of this sub-section shall be deemed</p>	<p>(i) in sub-section (1),—</p> <p>a. the words and figures "Without prejudice to the provisions of section 101," shall be omitted;</p> <p>b. in the first proviso, for the words "Provided that", the following shall be substituted, namely:—</p> <p>"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 members-</p> <p>(a) holding, if the company has a share capital, majority in number entitled to vote and who represent not less than ninety-five per</p>	<p>statements, including consolidated financial statements, if any, auditor's report and every other document required by law to be annexed or attached to the financial statements, which are to be laid before a company in its general meeting, shall be sent to every member of the company, to every trustee for the debenture-holder of any debentures issued by the company, and to all persons other than such member or trustee, being the person so entitled, not less than twenty-one days before the date of the meeting.</p> <p>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 members-</p> <p>(a) holding, if the company has a share capital , majority in number entitled to vote and</p>	<p>other documents may be sent at shorter notice if ninety five percent of members entitled to vote at the meeting agree for the same.</p> <p>Section 101 of the Act provides that the consent of members holding at least ninety-five percent of the voting power be obtained to call a general meeting at a notice shorter than twenty-one days.</p> <p>For circulation of annual accounts to members, the MCA had clarified by way of a circular dated 21st July 2015 that the shorter notice period would also apply to the circulation of annual accounts.</p> <p>It is now provided in the Amendment Act itself.</p>



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		<p>to be complied with, if the copies of the documents are made available for inspection at its registered office during working hours for a period of twenty-one days before the date of the meeting and a statement containing the salient features of such documents in the prescribed form or copies of the documents, as the company may deem fit, is sent to every member of the company and to every trustee for the holders of any debentures issued by the company not less than twenty-one days before the date of the meeting unless the shareholders ask for full financial statements:</p> <p>Provided further that the Central Government may prescribe the manner of</p>	<p>cent. of such part of the paid-up share capital of the company as gives a right to vote at the meeting; or</p> <p>(b) Having, if the company has no share capital, not less than ninety-five per cent. of the total voting power exercisable at the meeting.”</p> <p>Provided further that”;</p> <p>c. in the second proviso, for the words "Provided further", the words, "Provided also" be substituted;</p> <p>d. for the fourth proviso, the following provisos shall be substituted, namely:—</p> <p>'Provided also that every listed company having a subsidiary or subsidiaries</p>	<p>who represent 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</p> <p>(b) having, if the company has no share capital, not less than ninety-five per cent. of the total voting power exercisable at the meeting:</p> <p>Provided further that in the case of a listed company, the provisions of this sub-section shall be deemed to be complied with, if the copies of the documents are made available for inspection at its registered office during working hours for a period of twenty-one days before the date of the meeting and a statement containing the salient features of such documents in the prescribed form or copies of the documents, as the company may deem fit, is sent to every member of the company and to every trustee for the holders of any</p>	



S. No.	Section	Existing Provision	Amendments as per Companies (Amendment) Act, 2017	Revised Provision	Explanation
		<p>circulation of financial statements of companies having such net worth and turnover as may be prescribed:</p> <p>Provided also that a listed company shall also place its financial statements including consolidated financial statements, if any, and all other documents required to be attached thereto, on its website, which is maintained by or on behalf of the company:</p> <p>Provided also that every company having a subsidiary or subsidiaries shall,—</p> <p>(a) place separate audited accounts in respect of each of its subsidiary on its website, if any;</p> <p>(b) provide a copy of</p>	<p>shall place separate audited accounts in respect of each of subsidiary on its website, if any:</p> <p>Provided also that a listed company which has a subsidiary incorporated outside India (herein referred to as "foreign subsidiary")—</p> <p>(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;</p> <p>(b) where such foreign</p>	<p>debentures issued by the company not less than twenty-one days before the date of the meeting unless the shareholders ask for full financial statements:</p> <p>Provided also that the Central Government may prescribe the manner of circulation of financial statements of companies having such net worth and turnover as may be prescribed:</p> <p>Provided also that a listed company shall also place its financial statements including consolidated financial statements, if any, and all other documents required to be attached thereto, on its website, which is maintained by or on behalf of the company:</p> <p>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:</p>	<p>Listed companies have to place on its website, separate audited accounts of its each subsidiary.</p>



S. No.	Section	Existing Provision	Amendments as per Companies (Amendment) Act, 2017	Revised Provision	Explanation
		<p>separate audited financial statements in respect of each of its subsidiary, to any shareholder of the company who asks for it.</p>	<p>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."</p>	<p>Provided also that a listed company which has a subsidiary incorporated outside India (herein referred to as "foreign subsidiary")—</p> <p>(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;</p> <p>(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</p>	<p>In respect of foreign subsidiary if audit of accounts is not prescribed as per law of the country, then unaudited accounts is to be placed before AGM & considered for consolidation.</p>



S. No.	Section	Existing Provision	Amendments as per Companies (Amendment) Act, 2017	Revised Provision	Explanation
		<p>Section 136 (2) - A company shall allow every member or trustee of the holder of any debentures issued by the company to inspect the documents stated under sub-section (1) at its registered office during business hours.</p>	<p>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."</p>	<p>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." Revised Section 136 (2) - A company shall allow every member or trustee of the holder of any debentures issued by the company to inspect the documents stated under sub-section (1) at its registered office during business hours. 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.</p>	<p>The Amendment Act also mandates a Company having subsidiary/ subsidiaries, to provide a copy of separate audited/ unaudited financial statements of its subsidiary/ subsidiaries to any member of the Company who asks for it.</p>
I. Ratification of Auditors					
9.	Section 139	First Proviso to Section 139(1)-	In section 139 of the principal Act, in sub-	First Proviso to section has been Omitted.	The first proviso to section 139(1) requires that the matter relating to



S. No.	Section	Existing Provision	Amendments as per Companies (Amendment) Act, 2017	Revised Provision	Explanation
		<p>‘Provided that the company shall place the matter relating to such appointment for ratification by members at every annual general meeting.’</p>	<p>section (1), the first proviso shall be omitted.</p>		<p>appointment of auditor be placed for ratification by the members in each AGM.</p> <p>The requirement related to annual ratification of appointment of auditors by members is omitted.</p> <p>Provision of ratification was defeating the objective of giving five year term to the auditors. Further there was no clarity in case the shareholders choose not to ratify the auditor’s appointment as per Section 139 (1).</p> <p>Further, in case the shareholders take decision not to ratify any appointment during the period of five-years, as this would be similar to removal of the auditor and provisions of Section 140(1) should come into play. Whereas, explanation to Rule 3 of Companies (Audit and Auditors) Rules, 2014, provides for such a situation and requires that the Board shall appoint another individual or firm as the auditor (s) after following the</p>



S. No.	Section	Existing Provision	Amendments as per Companies (Amendment) Act, 2017	Revised Provision	Explanation
					<p>procedure laid down in this behalf under the Act.</p> <p>Accordingly, this is an inconsistency in these two provisions, wherein removal would require a special resolution and approval of the Central Government while removal through non-ratification would need only a Board resolution.</p> <p>Accordingly, to remove the inconsistency, the omission of the provisions with respect to ratification is provided.</p>



AMENDMENTS TO FACILITATE EASE OF DOING BUSINESS

A. 'Self Declaration' to replace 'Affidavit'

10.	Section 7-	Section 7(1)(c)- '(c) an affidavit from each of the subscribers to the memorandum and from persons named as the first directors, if any, in the articles that he is not convicted of any offence in connection with the promotion, formation or management of any company, or that he has not been found guilty of any fraud or misfeasance or of any breach of duty to any company under this Act or any previous company law during the preceding five years and that all the documents filed with the Registrar for registration of the company contain information that is correct and complete and	In section 7 of the principal Act, in subsection (1), in item (c), for the words "an affidavit", the words "a declaration" shall be substituted.	Revised Section 7(1)(c)- “(c) a declaration from each of the subscribers to the memorandum and from persons named as the first directors, if any, in the articles that he is not convicted of any offence in connection with the promotion, formation or management of any company, or that he has not been found guilty of any fraud or misfeasance or of any breach of duty to any company under this Act or any previous company law during the preceding five years and that all the documents filed with the Registrar for registration of the company contain information that is correct and complete and true to the best of his knowledge and belief.”	With reference to incorporation of a company, 'affidavit' has been replaced by "self declaration" from the first subscribers to memorandum and first directors. This will ease the additional documentary burden and avoid delay in the incorporation process.
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		true to the best of his knowledge and belief.’			
B. Disclosures under Board’s Report					
11.	Section 92(1)	<p>Section 92(1)-</p> <p>‘Every company shall prepare a return (hereinafter referred to as the annual return) in the prescribed form containing the particulars as they stood on the close of the financial year regarding—</p> <p>(a) its registered office, principal business activities, particulars of its holding, subsidiary and associate companies;</p> <p>(b) its shares, debentures and other securities and shareholding pattern;</p> <p>(c) its indebtedness;</p> <p>(d) its members and debenture-holders along with changes therein since the close of the previous</p>	<p>In section 92 of the principal Act,—</p> <p>(i) in sub-section (1),—</p> <p>(a) clause (c) shall be omitted;</p> <p>(b) in clause (j), the words "indicating their names, addresses, countries of incorporation, registration and percentage of shareholding held by them" shall be omitted;</p> <p>(c) after the proviso, the following proviso shall be inserted, namely:—</p> <p>"Provided further that the Central Government may prescribe abridged form of annual return for One Person Company, small company and such other class or classes of</p>	<p>Revised Section 92(1)-</p> <p>“Every company shall prepare a return (hereinafter referred to as the annual return) in the prescribed form containing the particulars as they stood on the close of the financial year regarding—</p> <p>(a) its registered office, principal business activities, particulars of its holding, subsidiary and associate companies;</p> <p>(b) its shares, debentures and other securities and shareholding pattern;</p> <p>(c) <i>deleted</i></p> <p>(d) its members and debenture-holders along with changes therein since the close of the previous financial year;</p> <p>(e) its promoters, directors, key managerial personnel along with changes therein since the close of the previous financial year;</p> <p>(f) meetings of members or a</p>	<p>With a view to facilitate ease of doing business and for reducing the burden of One Person Company and Small Company, the Central Government is empowered to prescribe an abridged form of Annual Return.</p> <p>Indebtedness omitted.</p> <p>Mandatory to place the entire annual return on website and by providing its link in Board’s Report.</p> <p>Provision needs to be prescribed for companies not having website.</p>



	<p>financial year;</p> <p>(e) its promoters, directors, key managerial personnel along with changes therein since the close of the previous financial year;</p> <p>(f) meetings of members or a class thereof, Board and its various committees along with attendance details;</p> <p>(g) remuneration of directors and key managerial personnel;</p> <p>(h) penalty or punishment imposed on the company, its directors or officers and details of compounding of offences and appeals made against such penalty or punishment;</p> <p>(i) matters relating to certification of compliances, disclosures as may be prescribed;</p> <p>(j) details, as may be prescribed, in respect</p>	<p>companies as may be prescribed.”</p>	<p>class thereof, Board and its various committees along with attendance details;</p> <p>(g) remuneration of directors and key managerial personnel;</p> <p>(h) penalty or punishment imposed on the company, its directors or officers and details of compounding of offences and appeals made against such penalty or punishment;</p> <p>(i) matters relating to certification of compliances, disclosures as may be prescribed;</p> <p>(j) details, as may be prescribed, in respect of shares held by or on behalf of the Foreign Institutional Investors; and</p> <p>(k) such other matters as may be prescribed,</p> <p>and signed by a director and the company secretary, or where there is no company secretary, by a company secretary in practice: Provided that in relation to One Person Company, small company and such other class or classes of companies as may be prescribed, the annual return shall be signed by the company secretary, or</p>	
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	<p>of shares held by or on behalf of the Foreign Institutional Investors indicating their names, addresses, countries of incorporation, registration and percentage of shareholding held by them; and</p> <p>(k) such other matters as may be prescribed,</p> <p>and signed by a director and the company secretary, or where there is no company secretary, by a company secretary in practice:</p> <p>Provided that in relation to One Person Company and small company, the annual return shall be signed by the company secretary, or where there is no company secretary, by the director of the company.'</p>		<p>where there is no company secretary, by the director of the company.</p> <p>Provided further that the Central Government may prescribe abridged form of annual return for One Person Company, small company and such other class or classes of companies as may be prescribed."</p>	
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12.	Section 92(3)	Section 92(3)- 'An extract of the annual return in such form as may be prescribed shall form part of the Board's report.'	In section 92 of the principal Act,— 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."	Revised Section 92(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."	The requirement to attach an extract of Annual Return with the Board's Report is omitted. Section 92(3) mandated that an extract of the annual return should form part of the Board's report. Most of the information in the extract is also required to be specified in financial statement or is available on the website of the company leading to duplication of information being reported to the shareholders. Accordingly, this requirement is omitted. It is also provided that web address/weblink of the information may be provided in the Board's Report.
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C. General Meetings

13.	Section 96(2)	Section 96(2) – Every annual general meeting shall be called during business hours, that is, between 9 a.m. and 6 p.m. on any day that is not a National Holiday and shall be held	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:—	Revised Section 96(2) Every annual general meeting shall be called during business hours, that is, between 9 a.m. and 6 p.m. on any day that is not a National Holiday and shall be held either at the registered office	The unlisted company to hold its AGM anywhere in India if consented by all members in writing or in electronic mode obtained in advance.
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		<p>either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situate:</p> <p>Provided that the Central Government may exempt any company from the provisions of this sub-section subject to such conditions as it may impose.</p> <p>Explanation.—For the purposes of this sub-section, “National Holiday” means and includes a day declared as National Holiday by the Central Government.</p>	<p>"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:</p> <p>Provided further that".</p>	<p>of the company or at some other place within the city, town or village in which the registered office of the company is situate:</p> <p>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:</p> <p>Provided further that the Central Government may exempt any company from the provisions of this sub-section subject to such conditions as it may impose.</p> <p>Explanation.—For the purposes of this sub-section, “National Holiday” means and includes a day declared as National Holiday by the Central Government.</p>	
14.	Section 100(1)	<p>Section 100(1)-</p> <p>‘The Board may, whenever it deems fit, call an extraordinary general meeting of the company.’</p>	<p>In section 100 of the principal Act, in sub-section (1), the following proviso shall be inserted, namely:—</p> <p>“Provided that an extraordinary general meeting of the company,</p>	<p>Proviso to Section 100(1)-</p> <p>“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.”</p>	<p>The wholly owned subsidiary of a company incorporated outside India has been allowed to hold its extraordinary general meeting outside India. Such wholly owned subsidiary can hold EGM at any place in the world.</p> <p>Likely to save the time and energy</p>



			other than of the wholly owned subsidiary of a company incorporated outside India, shall be held at a place within India.”		of many companies. For holding of EGM a proviso is inserted to restrict the companies to hold EGM at any place in India.
15.	Section 110(1)	Section 110(1)- ‘Notwithstanding anything contained in this Act, a company— (a) shall, in respect of such items of business as the Central Government may, by notification, declare to be transacted only by means of postal ballot; and (b) may, in respect of any item of business, other than ordinary business and any business in respect of which directors or auditors have a right to be heard at any meeting, transact by means of postal ballot,	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."	Proviso to Section 110(1)- “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.”	The items required to be passed mandatorily by postal ballot may now be transacted at a general meeting, in case the company is mandatorily required to provide the facility of electronic voting. The mandatory requirement of a postal ballot was no longer relevant for companies which are required to conduct voting using electronic means, as this mode equally provides for that no shareholder is deprived of his right to vote on resolutions in case he cannot attend the AGM/general meeting. The impact would be- <ul style="list-style-type: none"> • Enable maximum shareholders to participate in the meeting and discussions and then vote electronically. • Saving the cost of conducting postal ballot & general meeting.



		in such manner as may be prescribed, instead of transacting such business at a general meeting.’			
16.	Section 160	<p>Section 160(1)-</p> <p>‘A person who is not a retiring director in terms of section 152 shall, subject to the provisions of this Act, be eligible for appointment to the office of a director at any general meeting, if he, or some member intending to propose him as a director, has, not less than fourteen days before the meeting, left at the registered office of the company, a notice in writing under his hand signifying his candidature as a director or, as the case may be, the intention of such member to propose him as a candidate for that office, along with the deposit of one lakh</p>	<p>In section 160 of the principal Act, in sub-section (1), the following proviso shall be inserted, namely:—</p> <p>"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 or a director recommended by the Board of Directors of the Company, in the case of a company not required to constitute Nomination and Remuneration Committee."</p>	<p>Proviso to Section 160(1)-</p> <p>“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 or a director recommended by the Board of Directors of the Company, in the case of a company not required to constitute Nomination and Remuneration Committee.”</p>	<p>The requirement of deposit of rupees one lakh with respect to nomination of directors shall not be applicable in case of appointment of independent directors or directors nominated by nomination and remuneration committee.</p> <p>The exemptions/modifications have already been notified for wholly owned Government companies, Section 8 companies and Nidhis.</p>



		rupees or such higher amount as may be prescribed which shall be refunded to such person or, as the case may be, to the member, if the person proposed gets elected as a director or gets more than twenty-five per cent. of total valid votes cast either on show of hands or on poll on such resolution.’			
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D. Disclosures to Registrar

17.	Section 93	Section 93- ‘Every listed company shall file a return in the prescribed form with the Registrar with respect to change in the number of shares held by promoters and top ten shareholders of such company, within fifteen days of such change.’	Section 93 of the principal Act shall be omitted.		Section 93 has been omitted which requires every listed company to file a return with the Registrar with respect to change in number of shares held by promoters and top ten shareholders of such company. This information is also required to be filed with Stock Exchanges/ SEBI, it would lead to duplication of reporting. This was leading to an increase in the amount of filings being made under the Act.
18.	Section 94(1)	First Proviso to Section 94(1)-	In section 94 of the principal Act,—	Revised First Proviso to Section 94(1)-	The requirement of filing with Register a copy of special



		<p>Provided that such registers or copies of return may also be kept at any other place in India in which more than one-tenth of the total number of members entered in the register of members reside, if approved by a special resolution passed at a general meeting of the company and the Registrar has been given a copy of the proposed special resolution in advance:</p>	<p>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;</p>	<p>Provided that such registers or copies of return may also be kept at any other place in India in which more than one-tenth of the total number of members entered in the register of members reside, if approved by a special resolution passed at a general meeting of the company:</p>	<p>resolution in advance in respect of members approval for keeping register/returns at any other place in India then registered office under Section 94 has been omitted.</p> <p>Filing of advance copy of proposed special resolution did not serve any purpose, particularly because the special resolution was in any case to be filed as per the requirements of Section 117(3)(a).</p>
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E. Participation through video-conferencing

19.	Section 173(2)	Section 173(2)- ‘The participation of directors in a meeting of the Board may be either in person or through video conferencing or other audio visual means, as may be prescribed, which are capable of recording and recognising the	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	Second Proviso to Section 173(2)- “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.”	The directors are allowed to participate through video conferencing or other audio visual means on certain restricted items, if there is quorum through physical presence of directors. Rule 4 of the Companies (Meetings of Board and its Powers) Rules, 2014 specifies matters which shall not be dealt with in any meeting held through video conferencing or
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		<p>participation of the directors and of recording and storing the proceedings of such meetings along with date and time:</p> <p>Provided that the Central Government may, by notification, specify such matters which shall not be dealt with in a meeting through video conferencing or other audio visual means.'</p>	<p>participate through video conferencing or other audio visual means in such meeting on any matter specified under the first proviso."</p>		<p>other audio-visual means. This requirement completely banned participation in these specified matters of the Board meetings through video conferencing, which unnecessarily restricts wider participation even if the necessary quorum as specified in Section 174 is physically present. Accordingly, flexibility is provided to allow participation of Directors through video conferencing, subject to such participation not being counted for the purpose of quorum.</p> <p>This will provide relief to non-resident directors to participate in the discussion and voting on important matters like approval of financial statements etc. without traveling to the place of meeting.</p>
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HARMONISATION

A. Disclosures in the Prospectus

20.	Section 26	<p>Section 26(1)-</p> <p>‘Every prospectus issued by or on behalf of a public company either with reference to its formation or subsequently, or by or on behalf of any person who is or has been engaged or interested in the formation of a public company, shall be dated and signed and shall—</p> <p>(a) state the following information, namely:—</p> <p>(i) names and addresses of the registered office of the company, company secretary, Chief Financial Officer, auditors, legal advisers, bankers, trustees, if any,</p>	<p>In section 26 of the principal Act, in sub-section (1),—</p> <p>(i) after the words "signed and shall", the following shall be inserted, namely:—</p> <p>"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:</p> <p>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</p>	<p>Revised Section 26(1)-</p> <p>‘Every prospectus issued by or on behalf of a public company either with reference to its formation or subsequently, or by or on behalf of any person who is or has been engaged or interested in the formation of a public company, shall be dated and signed and shall</p> <p>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:</p> <p>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,</p>	<p>Disclosures in the prospectus required under the Companies Act, 2013 and the Securities and Exchange Board of India Act, 1992 and the Regulations made thereunder are aligned by omitting the information, reports and declarations required in the Companies Act, 2013. The information and reports required may be specified by the Securities and Exchange Board of India in consultation with the Central Government.</p>
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	<p>underwriters and such other persons as may be prescribed;</p> <p>(ii) dates of the opening and closing of the issue, and declaration about the issue of allotment letters and refunds within the prescribed time;</p> <p>(iii) a statement by the Board of Directors about the separate bank account where all monies received out of the issue are to be transferred and disclosure of details of all monies including utilised and unutilised monies out of the previous issue in the prescribed manner;</p> <p>(iv) details about underwriting of the issue;</p> <p>(v) consent of the directors, auditors, bankers to the issue, expert's opinion, if</p>	<p>India Act, 1992, in respect of such financial information or reports on financial information shall apply."</p> <p>(ii) the clauses (a), (b) and (d) shall be omitted.</p>	<p>1992, in respect of such financial information or reports on financial information shall apply.</p> <p>(a) Omitted</p> <p>(b) Omitted</p> <p>(c) make a declaration about the compliance of the provisions of this Act and a statement to the effect that nothing in the prospectus is contrary to the provisions of this Act, the Securities Contracts (Regulation) Act, 1956 (42 of 1956) and the Securities and Exchange Board of India Act, 1992 (15 of 1992) and the rules and regulations made thereunder; and</p> <p>(d) Omitted</p>	
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		<p>any, and of such other persons, as may be prescribed;</p> <p>(vi) the authority for the issue and the details of the resolution passed therefore;</p> <p>(vii) procedure and time schedule for allotment and issue of securities;</p> <p>(viii) capital structure of the company in the prescribed manner;</p> <p>(ix) main objects of public offer, terms of the present issue and such other particulars as may be prescribed;</p> <p>(x) main objects and present business of the company and its location, schedule of implementation of the project;</p> <p>(xi) particulars relating to—</p> <p>(A) management perception of risk factors specific to the project;</p> <p>(B) gestation period of</p>			
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		<p>the project;</p> <p>(C) extent of progress made in the project;</p> <p>(D) deadlines for completion of the project; and</p> <p>(E) any litigation or legal action pending or taken by a Government Department or a statutory body during the last five years immediately preceding the year of the issue of prospectus against the promoter of the company;</p> <p>(xii) minimum subscription, amount payable by way of premium, issue of shares otherwise than on cash;</p> <p>(xiii) details of directors including their appointments and remuneration, and such particulars of the nature and</p>			
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		<p>extent of their interests in the company as may be prescribed; and</p> <p>(xiv) disclosures in such manner as may be prescribed about sources of promoter's contribution;</p> <p>(b) set out the following reports for the purposes of the financial information, namely:—</p> <p>(i) reports by the auditors of the company with respect to its profits and losses and assets and liabilities and such other matters as may be prescribed;</p> <p>(ii) reports relating to profits and losses for each of the five financial years immediately preceding the</p>			
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	<p>financial year of the issue of prospectus including such reports of its subsidiaries and in such manner as may be prescribed:</p> <p>Provided that in case of a company with respect to which a period of five years has not elapsed from the date of incorporation, the prospectus shall set out in such manner as may be prescribed, the reports relating to profits and losses for each of the financial years immediately preceding the financial year of the issue of prospectus including such reports of its subsidiaries;</p> <p>(iii) reports made in the prescribed manner by the auditors upon the profits and losses of the business of the company for each of</p>			
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the five financial years immediately preceding issue and assets and liabilities of its business on the last date to which the accounts of the business were made up, being a date not more than one hundred and eighty days before the issue of the prospectus:

Provided that in case of a company with respect to which a period of five years has not elapsed from the date of incorporation, the prospectus shall set out in the prescribed manner, the reports made by the auditors upon the profits and losses of the business of the company for all financial years from the date of its incorporation, and assets and liabilities of its business on the last date before the issue of prospectus; and



	<p>(iv) reports about the business or transaction to which the proceeds of the securities are to be applied directly or indirectly.</p> <p>(c) make a declaration about the compliance of the provisions of this Act and a statement to the effect that nothing in the prospectus is contrary to the provisions of this Act, the Securities Contracts (Regulation) Act, 1956 (42 of 1956) and the Securities and Exchange Board of India Act, 1992 (15 of 1992) and the rules and regulations made thereunder; and</p> <p>(d) state such other matters and set out such other reports, as may be prescribed.'</p>			
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21.	Section 194 & 195	Section 194 and 195 of the principal Act shall be omitted. Since SEBI Regulations are comprehensive and cover the provisions, sections relating to prohibition on forward dealings in securities of company and insider trading of securities by director or key managerial personnel are deleted.
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B. Rationalising Penal Provisions

Penalties:

The Act aims to provide for a regime of offences and penalties which is commensurate to the gravity of the offence.

Quantum of penalty is being levied taking into consideration the size of company, nature of business, injury to public interest, nature and gravity of default, repetition of default, etc.

- The penal provisions for procedural and technical defaults are rationalised and liabilities are reduced.
- Sections 76A, 132, 140, 147 etc. has been amended to reduce the quantum of fine in a move towards rationalising the severe penalties provided under the Act.
- Section (466B) with respect to factors for determining the level of punishment and for lesser penalties for one person companies and small companies has been inserted.
- In Section 76A, penal provisions with respect to repayment of the amount of deposit and the interest due has been modified. Amendment Act relaxes the minimum penalty of a company by linking this with the amount of deposits accepted, accordingly, the minimum fine is as rupees one crore or twice the amount of deposit accepted by the company, whichever is lower. Further every officer of the company who is in default shall be punishable with imprisonment which may extend to seven years and with fine which shall not be less than twenty-five lakh rupees. Maximum penalty remains unchanged.



OTHER IMPORTANT PROVISIONS

22.	Section 153	<p>Section 153</p> <p>‘Every individual intending to be appointed as director of a company shall make an application for allotment of Director Identification Number to the Central Government in such form and manner and along with such fees as may be prescribed.’</p>	<p>In section 153 of the principal Act, the following proviso shall be inserted, namely:—</p> <p>“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.”</p>	<p>Proviso to Section 153-</p> <p>“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.”</p>	<p>The Central Government is now empowered to recognise any other universally accepted identification number as an identification document similar to director identification number.</p>
23.	Section 185-	<p>For section 185 of the principal Act, the following section shall be substituted, namely:—</p> <p>“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,—</p> <p>(a) any director of company, or of a company which is its holding company or any partner or relative of any such director; or</p> <p>(b) any firm in which any such director or relative is a partner.</p>	<p>To address the difficulties being faced in genuine transactions due to the complete embargo on providing loans to subsidiaries with common directors, the companies are permitted to give loans to entities in which directors are interested after passing special resolution and adhering to disclosure requirements. This would give big relief to the companies.</p>		



	<p>(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—</p> <p>(a) a special resolution is passed by the company in general meeting:</p> <p>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</p> <p>(b) the loans are utilised by the borrowing company for its principal business activities.</p> <p>Explanation.—For the purposes of this sub-section, the expression "any person in whom any of the director of the company is interested" means—</p> <p>(a) any private company of which any such director is a director or member;</p> <p>(b) any body corporate at a general meeting of which 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</p> <p>(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.</p> <p>(3) Nothing contained in sub-sections (1) and (2) shall apply to—</p> <p>(a) the giving of any loan to a managing or whole-time director—</p> <p>(i) as a part of the conditions of service extended by the company to all its employees; or</p> <p>(ii) pursuant to any scheme approved by the members by a special resolution; or</p> <p>(b) a company which in the ordinary course of its business provides loans or gives</p>	<p>Granting of loan, guarantee or security (referred as assistance) is nicely categorized as prohibited, conditional and exempted.</p> <p>The prohibition has been made applicable for assistance to director of the company/or of holding company or his partner or relative or a firm in which such director or relative is a partner.</p> <p>The conditional assistance is possible to any person in whom the director is interested (other than prohibited categories). Company has to pass a special resolution & explanatory statement to the notice should disclose all the facts & particulars.</p> <p>If the borrower is a Company then loan should be utilized for its principal business activity.</p> <p>The exempted categories are loan to MD/ WTD as a part of service condition or scheme and loans by companies in their ordinary course of business by charging interest as per tenure and loan, guarantee or security by holding company to its</p>
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		<p>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</p> <p>(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</p> <p>(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:</p> <p>Provided that the loans made under clauses (c) and (d) are utilised by the subsidiary company for its principal business activities.</p> <p>(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,-</p> <p>(i) 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,</p> <p>(ii) every officer of the company who is in default shall be punishable with imprisonment for a term 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; and</p> <p>(iii) 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.”</p>	<p>WOS and guarantee or security by holding company to its subsidiary company with a condition to use it for its principal activity.</p> <p>In the list of offenses under this section, specific offence of contravention in utilization of loan has been added.</p>
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A. Significant beneficial owner

24.	Section 89	Section 89(6)-	In section 89 of the principal Act,	Revised Section 89(6)-	Definition of the term beneficial interest in shares, is linked with the
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	<p>‘Where any declaration under this section is made to a company, the company shall make a note of such declaration in the register concerned and shall file, within thirty days from the date of receipt of declaration by it, a return in the prescribed form with the Registrar in respect of such declaration with such fees or additional fees as may be prescribed, within the time specified under section 403.’</p> <p>Section 89(7)-</p> <p>‘If a company, required to file a return under sub-section (6), fails to do so before the expiry of the time specified under the first proviso to sub-section (1) of section 403, the company and every officer of the company who is in default shall be</p>	<p>(i) In sub-section (6), the words and figures, “within the time specified under section 403” shall be omitted;</p> <p>(ii) In sub-section (7), for the words and figures, “under the first proviso to sub-section (1) of section 403”, the word “therein”, shall be substituted;</p>	<p>‘Where any declaration under this section is made to a company, the company shall make a note of such declaration in the register concerned and shall file, within thirty days from the date of receipt of declaration by it, a return in the prescribed form with the Registrar in respect of such declaration with such fees or additional fees as may be prescribed.’</p> <p>Revised Section 89(7)-</p> <p>‘If a company, required to file a return under sub-section (6), fails to do so before the expiry of the time specified therein, the company and every officer of the company who is in default shall be punishable with fine which shall not be less than five hundred rupees but which may extend to one thousand rupees and where the failure is a continuing one,</p>	<p>right or entitlement of a person to exercise rights attached to shares or to participate or receive the dividend or other distributions relating to shares.</p> <p>The Amendment Act amended section 89 to explain the term "beneficial interest in a share".</p> <p>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—</p> <p>(i) exercise or cause to be exercised any or all of the rights attached to such share; or receive or participate in any dividend or other distribution in respect of such share.</p> <p>(ii) Section 89 of the Companies Act, 2013 deals with the concept of beneficial interest in a share which obligates every person acquiring/holding beneficial interest in a share as well as the legal owner to make a declaration to the company in respect of such beneficial</p>
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		<p>punishable with fine which shall not be less than five hundred rupees but which may extend to one thousand 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.’</p>	<p>(iii) after sub-section (9), the following sub-section shall be inserted, namely:—</p> <p>"(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—</p> <p>(i) exercise or cause to be exercised any or all of the rights attached to such share; or</p> <p>(ii) receive or participate in any dividend or other distribution in respect of such share."</p>	<p>with a further fine which may extend to one thousand rupees for every day after the first during which the failure continues.’</p> <p>Inserted Section 89(10)-</p> <p>“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—</p> <p>(i) exercise or cause to be exercised any or all of the rights attached to such share; or</p> <p>(ii) receive or participate in any dividend or other distribution in respect of such share."</p>	<p>interest. In view of the absence of a definition of beneficial interest in a share in a company, the term has been defined.</p> <p>Complex structures and chains of corporate vehicles are used to hide the real owner behind the transactions made using these structures. Realising this, obligation on a company to collect information on beneficial ownership and to maintain a separate register on beneficial ownership will be required under the amended section.</p>
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25.	Section 90	<p>For section 90 of the principal Act, the following section shall be substituted, namely:—</p> <p>“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:</p> <p>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.</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> <p>(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—</p> <p>(a) to be a significant beneficial owner of the company;</p> <p>(b) to be having knowledge of the identity of a significant beneficial owner or another person likely to have such knowledge; or</p>	<p>A declaration is required to be given to the company by the person who is a significant beneficial owner. “Significant beneficial owner” includes 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 percentage as may be prescribed in shares of a company or the right to exercise, or the actual exercising of significant influence or control under clause (27) of section 2 over the company.</p> <ul style="list-style-type: none">• New terminology of significant beneficial ownership, in line with the international governance standards and OECD principles.• Would be applicable to each and every company.• Every individual shareholder holding beneficial interest either alone or together or through one or more persons or trust including non residents of not less than 25% in the shares of the Company or the right to exercise, or actual exercising of
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	<p>(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.</p> <p>(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.</p> <p>(7) The company shall,—</p> <p>(a) where that person fails to give the company the information required by the notice within the time specified therein; or</p> <p>(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.</p> <p>(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.</p> <p>(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).</p> <p>(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</p>	<p>significant influence or control over the company is required to make a declaration about influence and his nature of interest etc.</p> <ul style="list-style-type: none">• Company has to register such individuals as Significant Beneficial Owners.• Company to file periodic return.• Power has also given to the company to enquire into the significant beneficial ownership by giving a notice to an individual.• Upon non compliance of provisions of this section, Tribunal on application by Company can pass an order for placing restrictions on rights attached to such shares.
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	<p>continues.</p> <p>(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.</p> <p>(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.”</p>	
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B. Re-opening of Accounts

26.	Section 130	Proviso to Section 130(1)- ‘Provided that the court or the Tribunal, as the case may be, shall give notice to the Central Government, the Income-tax authorities, the Securities and Exchange Board or any other statutory regulatory body or authority concerned and shall take into consideration the representations, if any, made by that	In section 130 of the principal Act,— 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	Revised Proviso to Section 130(1)- Provided that the court or the Tribunal, as the case may be, shall give notice to the Central Government, the Income-tax authorities, the Securities and Exchange Board or any other statutory regulatory body or authority concerned or any other person concerned and shall take into consideration the representations, if any, made by that Government or the authorities, Securities and	In the interest of the principle of natural justice, other concerned parties, like a company or the Auditor/Chartered Accountant of the company should also be given an opportunity to present their point of view. Accordingly, in the provision relating to re-opening of accounts, before passing an order, the Tribunal will require to serve a notice to ‘any other person concerned’ also, who may submit their concerns in the form of representations, before passing of order for re-opening of accounts by Court or Tribunal.
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		Government or the authorities, Securities and Exchange Board or the body or authority concerned before passing any order under this section.’	concerned" shall be inserted;’	Exchange Board or the body or authority concerned or the other person concerned before passing any order under this section.”	
C. Managerial Remuneration					
27.	Section 197(1)	First Proviso to Section 197(1)- ‘Provided that the company in general meeting may, with the approval of the Central Government, authorise the payment of remuneration exceeding eleven per cent. of the net profits of the company, subject to the provisions of Schedule V.’ Second Proviso to Section 197(1)- ‘Provided further that, except with the approval of the company in	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;	Revised First Proviso to Section 197(1)- “Provided that the company in general meeting may, authorise the payment of remuneration exceeding eleven per cent. of the net profits of the company, subject to the provisions of Schedule V:” Revised Second Proviso to Section 197(1)- “Provided further that, except with the approval of the company in general meeting by a special resolution ,— (i) the remuneration payable to any one managing director; or whole-time director or	No Central Govt. approval will be required for public companies for payment of remuneration to directors including MD and WTD and Manager even exceeding 11% of net profits. Approval of the central government would be needed only for variance to the conditions specified in part I of Schedule V for the appointment of abovementioned managerial persons.



	<p>general meeting.</p> <p>(i) the remuneration payable to any one managing director; or whole-time director or manager shall not exceed five per cent. of the net profits of the company and if there is more than one such director remuneration shall not exceed ten per cent. of the net profits to all such directors and manager taken together;</p> <p>(ii) the remuneration payable to directors who are neither managing directors nor whole-time directors shall not exceed,—</p> <p>(A) one per cent. of the net profits of the company, if there is a</p>	<p>(iii) after the second proviso, the following proviso shall be inserted, namely:—</p> <p>"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."</p>	<p>manager shall not exceed five per cent. of the net profits of the company and if there is more than one such director remuneration shall not exceed ten per cent. of the net profits to all such directors and manager taken together;</p> <p>(ii) the remuneration payable to directors who are neither managing directors nor whole-time directors shall not exceed,—</p> <p>(A) one per cent. of the net profits of the company, if there is a managing or whole-time director or manager;</p> <p>(B) three per cent. of the net profits in any other case.</p> <p>Revised Third Proviso to Section 197(1)-</p> <p>"Provided also that, where the company has defaulted in payment of dues to any bank or public financial institution or non-convertible debenture holders or any other secured</p>	<p>For payment of remuneration exceeding limits or for waiver of recovery of excess remuneration, prior approval of banks, financial institutions, non convertible debenture holders or secured creditors will be required, in case</p>
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		<p>managing or whole-time director or manager;</p> <p>(B) three per cent. of the net profits in any other case.’</p> <p>Sub-section (3) –</p> <p>(3) Notwithstanding anything contained in sub-sections (1) and (2), but subject to the provisions of Schedule V, if, in any financial year, a company has no profits or its profits are inadequate, the company shall not pay to its directors, including any managing or wholetime director or manager, by way of remuneration any sum exclusive of any fees payable to directors under sub-section (5) hereunder except in accordance with the provisions of Schedule V and if it is not able to comply with such</p>	<p>(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;</p>	<p>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.”</p> <p>Revised sub-section (3) –</p> <p>“Notwithstanding anything contained in sub-sections (1) and (2), but subject to the provisions of Schedule V, if, in any financial year, a company has no profits or its profits are inadequate, the company shall not pay to its directors, including any managing or wholetime director or manager, by way of remuneration any sum exclusive of any fees payable to directors under sub-section (5) hereunder except in accordance with the provisions of Schedule V.”</p> <p>Revised sub-section (9)</p> <p>If any director draws or receives, directly or indirectly, by way of remuneration any such sums in</p>	<p>the company has defaulted in payment of their dues.</p>
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	<p>provisions, with the previous approval of the Central Government.</p> <p>Sub-section (9)</p> <p>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 the prior sanction of the Central Government, where it is required, he shall refund such sums to the company and until such sum is refunded, hold it in trust for the company.</p> <p>Sub-section (10)</p> <p>The company shall not waive the recovery of any sum refundable to it under sub-section (9) unless permitted by the Central Government.</p>	<p>(c) for sub-section (9), the following sub-section shall be substituted, namely:—</p> <p>"(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 or such lesser period as may be allowed by the company, and until such sum is refunded, hold it in trust for the company.";</p> <p>(d) in sub-section (10),—</p> <p>(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</p>	<p>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 or such lesser period as may be allowed by the company, and until such sum is refunded, hold it in trust for the company."</p> <p>Revised sub-section (10) –</p> <p>The company shall not waive the recovery of any sum refundable to it under sub-section (9) unless approved by the company by special resolution within two years from the date the sum becomes refundable.</p> <p>Provided that where the company has defaulted in payment of dues to any bank or public financial institution or non-convertible debenture holders or any other secured</p>	<p>Director should repay the excess remuneration to the Company within a maximum period to 2 years.</p>
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		<p>Sub-section (11)</p> <p>In cases where Schedule V is applicable on grounds of no profits or inadequate profits, any provision relating to the remuneration of any director which purports</p>	<p>refundable" shall be substituted;</p> <p>(ii) the following proviso shall be inserted, namely:—</p> <p>"Provided that where the company has defaulted in payment of dues to any bank or public financial institution or non-convertible debenture holders or any other secured creditor, 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.";</p> <p>(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;</p>	<p>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.</p> <p>Revised sub-section (11) –</p> <p>In cases where Schedule V is applicable on grounds of no profits or inadequate profits, any provision relating to the remuneration of any director which purports to increase or has the effect of increasing the amount thereof, whether the provision be contained in the company's memorandum or articles, or in an agreement entered into by it, or in any resolution passed by the company in general meeting or its Board,</p>	
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		<p>to increase or has the effect of increasing the amount thereof, whether the provision be contained in the company's memorandum or articles, or in an agreement entered into by it, or in any resolution passed by the company in general meeting or its Board, shall not have any effect unless such increase is in accordance with the conditions specified in that Schedule and if such conditions are not being complied, the approval of the Central Government had been obtained.</p>	<p>(f) after sub-section (15), the following sub-sections shall be inserted, namely:—</p> <p>"(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.</p> <p>(17) On and from the commencement of the Companies (Amendment) Act, 2017, any application made to the Central Government under the provisions of this section [as it stood before such commencement], which is</p>	<p>shall not have any effect unless such increase is in accordance with the conditions specified in that Schedule.</p> <p>Inserted sub-sections (16) and (17) -</p> <p>"(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.</p> <p>(17) On and from the commencement of the Companies (Amendment) Act, 2017, 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</p>	<p>Duty casted on auditors - Report payment of remuneration in conformity with the provisions of the Act and disclose any excess remuneration.</p>
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			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."	commencement, obtain the approval in accordance with the provisions of this section, as so amended.	
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D. Foreign Company

28.	Section 379	Section 379- Where not less than fifty per cent. of the paid-up share capital, whether equity or preference or partly equity and partly preference, of a foreign company is held by one or more citizens of India or by one or more companies or bodies corporate incorporated in India, or by one or more citizens of India and one or more companies or bodies corporate incorporated in India, whether singly or in the aggregate, such company shall comply with the provisions of this	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	Revised Section 379- “(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. (2) Where not less than fifty per cent. of the paid-up share capital,	Foreign companies having incidental transactions through electronic mode are exempted from registering and compliance regime under the Act. The amendment Act clearly provides that the remaining body corporate as covered within the definition of foreign company would need to comply with the provisions of Chapter XXII, as applicable. Due to disconnect between the definition of foreign company Sec 2(42) and Sec 379, there is confusion about applicability of the Act to the Branch, Liaison or Project Offices established by foreign company in India.
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		Chapter and such other provisions of this Act as may be prescribed with regard to the business carried on by it in India as if it were a company incorporated in India.	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."	whether equity or preference or partly equity and partly preference, of a foreign company is held by one or more citizens of India or by one or more companies or bodies corporate incorporated in India, or by one or more citizens of India and one or more companies or bodies corporate incorporated in India, whether singly or in the aggregate, such company shall comply with the provisions of this Chapter and such other provisions of this Act as may be prescribed with regard to the business carried on by it in India as if it were a company incorporated in India."	By amendment, it will be confirmed that all such offices in India needs registration.
29.	Section 384	Section 384(2) - The provisions of section 92 shall, subject to such exceptions, modifications and adaptations as may be made therein by rules made under this Act, apply to a foreign company as they apply to a company incorporated in India.	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.	Revised Section 384(2) - The provisions of section 92 and section 135 shall, subject to such exceptions, modifications and adaptations as may be made therein by rules made under this Act, apply to a foreign company as they apply to a company incorporated in India.	The amendment Act brings clarity with respect to applicability of CSR provisions to Foreign Companies.



E. Filing Fees

30.	Section 403	<p>Provisos Section 403(1)-</p> <p>‘Provided that any document, fact or information may be submitted, filed, registered or recorded, after the time specified in relevant provision for such submission, filing, registering or recording, within a period of two hundred and seventy days from the date by which it should have been submitted, filed, registered or recorded, as the case may be, on payment of such additional fee as may be prescribed.</p> <p>Provided further that any such document, fact or information may, without prejudice to any other legal action or liability under the Act, be also submitted, filed, registered or recorded,</p>	<p>In section 403 of the principal Act,—</p> <p>In sub-section (1), for the first and second provisos, the following provisos shall be substituted, namely:—</p> <p>“Provided that where any document, fact or information required to be submitted, filed, registered or recorded, as the case may be, under section 92 or 137 is not submitted, filed, registered or recorded, as the case may be, within the period provided in those sections, without prejudice to any other legal action or liability under this Act, it may be submitted, filed, registered or recorded, as the case may be, after expiry of the period so provided in those sections, on payment of such additional fee as may be prescribed, which shall not</p>	<p>Revised Provisos to Section 403(1)-</p> <p>“Provided that where any document, fact or information required to be submitted, filed, registered or recorded, as the case may be, under section 92 or 137 is not submitted, filed, registered or recorded, as the case may be, within the period provided in those sections, without prejudice to any other legal action or liability under this Act, it may be submitted, filed, registered or recorded, as the case may be, after expiry of the period so provided in those sections, on payment of such additional fee as may be prescribed, which shall not be less than one hundred rupees per day and different amounts may be prescribed for different classes of companies:</p> <p>Provided further that where the document, fact or information, as the case may be, in cases other than referred to in the first proviso, is not submitted, filed, registered or recorded, as the case</p>	<p>The objective to ensure enhancing the filings by providing for condonation of delay, payment of higher fees was not really helping, so in order to make the compliance requirement less onerous with the reasonable time period for all companies and to avoid strict penalties, section 403 has been amended.</p> <p>Delayed filing fees will vary depending on number of defaults and nature of form to be filed.</p> <p>FS & Annual Return can be filed with delayed filing fees of Rs. 100/- per day (after prescribed 30/60 days), different amount may be specified for different classes of companies.</p> <p>For other forms – additional fees will be prescribed; different amount may be specified for different classes of companies.</p> <p>In case of subsequent 2 or more defaults in submission of forms, higher fees may be prescribed.</p>
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		<p>after the first time specified in first proviso on payment of fee and additional fee specified under this section.’</p>	<p>be less than one hundred rupees per day and different amounts may be prescribed for different classes of companies:</p> <p>Provided further that where the document, fact or information, as the case may be, in cases other than referred to in the first proviso, is not submitted, filed, registered or recorded, as the case may be, within the period provided 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 additional fee as may be prescribed and different fees may be prescribed for different classes of companies:</p> <p>Provided also that where there is default on two or more occasions in submitting, filing,</p>	<p>may be, within the period provided 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 additional fee as may be prescribed and different fees may be prescribed for different classes of companies:</p> <p>Provided also that where there is default on two or more occasions in submitting, filing, registering or recording of the document, fact or information, 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 a higher additional fee, as may be prescribed and which shall not be lesser than twice the additional fee provided under the first or the second proviso as applicable.”</p>	
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			<p>registering or recording of the document, fact or information, 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 a higher additional fee, as may be prescribed and which shall not be lesser than twice the additional fee provided under the first or the second proviso as applicable.”</p>		
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F. Private Placement

31.	Section 42	<p>For section 42 of the principal Act, the following section shall be substituted, namely:—</p> <p>“(1) A company may, subject to the provisions of this section, make a private placement of securities.</p> <p>(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 subsection (1) of section 62], in a financial year subject to such conditions as may be prescribed.</p> <p>(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</p>	<p>The Private Placement process is simplified by doing away with separate offer letter details to be kept by company and reducing number of filings to Registrar.</p> <p>There would be ease in the private placement offer related documentation to enable quick access to funds.</p> <p>Change in definition of private placement is proposed to cover all</p>
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	<p>names and addresses are recorded by the company in such manner as may be prescribed:</p> <p>Provided that the private placement offer and application shall not carry any right of renunciation.</p> <p>Explanation I.—"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.</p> <p>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.</p> <p>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.</p> <p>(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:</p> <p>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).</p> <p>(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:</p> <p>Provided that, subject to the maximum number of identified persons under subsection (2), a</p>	<p>securities offer and invitations other than right.</p> <p>There is condensed format of private placement offer letter and application form likely to be introduced.</p> <p>The Companies would be allowed to make offer of multiple security instruments simultaneously.</p> <p>Restriction on utilization of subscription money before making actual allotment and additionally before filing the allotment return to the registrar. Since contract is concluding on allotment and return filing is just a post conclusion compliance, there may be difficulty in compliance.</p> <p>The penalty provisions for raising of capital has been rationalized by linking it to the amount involved in the issue (twice the amount involved or 2 crores whichever is lower).</p> <p>Period for filing return of allotment has been reduced to 15 days.</p>
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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



		<p>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.</p> <p>(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 subsection (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.”</p>	
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G. Definitions

32.	Section 2(6)	Associate company Explanation to Section 2(6)- ‘Explanation— For the purposes of this clause, “significant influence” means control of at least twenty per cent of total share capital, or of business decisions under an agreement.’	In section 2 of the Companies Act, 2013 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	Revised Explanation to Section 2(6)- “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.”	The amendment Act substitutes the explanation of the term ‘significant influence’ under the definition of an associate company in Section 2(6) to mean control of at least 20% of the voting power (in place of total share capital) or control or participation in business decision under an agreement. The Impact would be - <ul style="list-style-type: none"> • Total voting power defined in 2(89) to be referred • Control through total voting power only & not just by holding capital • Agreement is essential
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			"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.'		<p>element to establish control through participation</p> <ul style="list-style-type: none"> • Term JV clarified – covers all partner of JV • Definition crucial in view of consolidation of accounts, RPT, disclosures provisions etc.
33.	Section 2(28)	Section 2(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 (23 of 1959);	In section 2 of the Companies Act, 2013 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;”	Revised Section 2(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;	Change in definition of ‘cost accountant’ to include the persons holding certificate of practice.
34.	Section 2(30)	Section 2(30)- "Debenture" includes debenture stock, bonds or any other instrument of a company evidencing a	In Section 2 in clause (30), the following proviso shall be inserted, namely:— "Provided that—	Proviso to Section 2(30)- “Provided that— (a) the instruments referred to in Chapter III-D of the Reserve	The instruments referred to in Chapter III-D of the Reserve Bank of India Act 1934 and such other instruments prescribed by the Central Government in consultation



		debt, whether constituting a charge on the assets of the company or not.	(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."	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."	with the RBI has been excluded from the definition of 'debenture'.
35.	Section 2(41)	Financial year First Proviso to Section 2(41)- ‘Provided that on an application made by a company or body corporate, which is a holding company or a subsidiary of a company incorporated outside India and is required to follow a different financial year for consolidation of its accounts outside India, the Tribunal may, if it is	In Section 2 in clause (41), in the first proviso, after the word "subsidiary", the words "or associate company" shall be inserted.	Revised First Proviso to Section 2(41)- “Provided that on an application made by a company or body corporate, which is a holding company or a subsidiary or associate company of a company incorporated outside India and is required to follow a different financial year for consolidation of its accounts outside India, the Tribunal may, if it is satisfied, allow any period as its financial year, whether or not that period is a year.”	Associate company of a company incorporated outside India can also apply to the Tribunal for a different financial year.



		satisfied, allow any period as its financial year, whether or not that period is a year.’			
36.	Section 2(46)	Section 2(46)- "Holding company", in relation to one or more other companies, means a company of which such companies are subsidiary companies.	In Section 2 in clause (46), the following Explanation shall be inserted, namely:— “Explanation.—For the purposes of this clause, the expression "company" includes any body corporate;”	Explanation to Section 2(46)- “Explanation.—For the purposes of this clause, the expression "company" includes any body corporate;”	For the purpose of definition of the term ‘holding company’, the expression "company" will include any body corporate.
37.	Section 2(49)	Section 2(49)- “interested director” means a director who is in any way, whether by himself or through any of his relatives or firm, body corporate or other association of individuals in which he or any of his relatives is a partner, director or a member, interested in a contract or arrangement, or proposed contract or arrangement, entered into or to be entered into by or on	In Section 2, clause (49) shall be omitted;		Since definition of interested directors is also given in Section 184(2), the definition in definition clause has been omitted.



		behalf of a company;			
38.	Section 2(51)	<p>Section 2(51)- “Key managerial personnel” in relation to a company, means—</p> <p>(i) the Chief Executive Officer or the managing director or the manager;</p> <p>(ii) the company secretary;</p> <p>(iii) the whole-time director;</p> <p>(iv) the Chief Financial Officer; and</p> <p>(v) such other officer as may be prescribed.</p>	<p>In Section 2 in clause (51),—</p> <p>(a) in sub-clause (iv), the word "and" shall be omitted;</p> <p>(b) for sub-clause (v), the following sub-clauses shall be substituted, namely:—</p> <p>“(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</p> <p>(vi) such other officer as may be prescribed;”</p>	<p>Revised Section 2(51)- “Key managerial personnel” in relation to a company, means—</p> <p>(i) the Chief Executive Officer or the managing director or the manager;</p> <p>(ii) the company secretary;</p> <p>(iii) the whole-time director;</p> <p>(iv) the Chief Financial Officer;</p> <p>(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</p> <p>(vi) such other officer as may be prescribed;”</p>	<p>Under the definition of the term “Key Managerial Personnel”, the following has been included: “such other officer not more than one level below the directors who is in whole time employment and designated as KMP by the Board”</p>
39.	Section 2(57)	<p>Section 2(57)- “Net worth” means the aggregate value of the paid-up share capital and all reserves created out of the profits and securities</p>	<p>In Section 2 in clause (57), for the words "and securities premium account", the words ", securities premium account and debit or credit balance of profit and loss</p>	<p>Revised Section 2(57)- “Net worth” means the aggregate value of the paid-up share capital and all reserves created out of the profits, securities premium account and debit or credit</p>	<p>The debit or credit balance of profit and loss account in the calculation of net worth has been included.</p>



		premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation.	account," shall be substituted.	balance of profit and loss account , after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation.	
40.	Section 2(71)	Clause (a) of Section 2(71)- '(a) is not a private company;'	In Section 2 in clause (71), in sub-clause (a), after the word "company;", the word "and" shall be inserted;	Revised Clause (a) of Section 2(71)- “(a) is not a private company; and ”	To bring more clarity, the word ‘and’ has been inserted between the two items (a) and (b).
41.	Section 2(72)	Clause (A) of Proviso to Section 2(72)- '(A) it has been established or constituted by or under any Central or State Act; or'	In Section 2 in clause (72), in the proviso, in clause (A), after the words “State Act”, the words “other than this Act or the previous company law” shall be inserted;'	Revised Clause (A) of Proviso to Section 2(72)- “(A) it has been established or constituted by or under any Central or State Act other than this Act or the previous company law; or ”	The Central Government may notify other institution which has been established or constituted by or under any Central or State Act other than the Companies Act, 2013 or previous Company Law after consultation with the RBI as “public financial institution”
42.	Section 2(76)(vii)	Section 2(76)(viii)- '(viii) any company	In Section 2 in clause (76), for sub-clause (viii), the following sub-clause shall	Revised Section 2(76)(viii)- “(viii) any body corporate which	The amendment Act expands the prevailing definition to include “an



	<p>i)</p>	<p>which is—</p> <p>(A) a holding, subsidiary or an associate company of such company; or</p> <p>(B) a subsidiary of a holding company to which it is also a subsidiary.’</p>	<p>be substituted, namely:—</p> <p>“(viii) any body corporate which is—</p> <p>A. a holding, subsidiary or an associate company of such company;</p> <p>B. a subsidiary of a holding company to which it is also a subsidiary; or</p> <p>C. an investing company or the venturer of the company;</p> <p>Explanation.— For the purpose of this clause, “the investing company or the venturer of a company” means a body corporate whose investment in the company would result in the company becoming an associate company of the body corporate.”</p>	<p>is—</p> <p>A. a holding, subsidiary or an associate company of such company;</p> <p>B. a subsidiary of a holding company to which it is also a subsidiary; or</p> <p>C. an investing company or the venturer of the company;</p> <p>Explanation.— For the purpose of this clause, “the investing company or the venturer of a company” means a body corporate whose investment in the company would result in the company becoming an associate company of the body corporate.”</p>	<p>investing company or the venturer of a company” in Section 2(76).</p> <p>The impact would be:</p> <ul style="list-style-type: none"> • Linked with the concept of venture capital & PE. • Investment in assets, shares, land, JV, HR, technology likely to get covered. • Explanation says BC investment resulting in formation of associate relationship. – While Definition of Associate restricts only to Companies.
43.	<p>Section 2(85)</p>	<p>Section 2(85)-</p> <p>“Small company” means a company, other than a public company,—</p>	<p>In Section 2 in clause (85)—</p> <p>(a) in sub-clause (i), for the words "five crore</p>	<p>Revised Section 2(85)-</p> <p>“Small Company means a company, other than a public company,—</p>	<p>The maximum paid-up share capital for the purpose of determining a company as a small company has been increased from five crore</p>



		<p>(i) paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than five crore rupees; and</p> <p>(ii) turnover of which as per its last profit and loss account does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than twenty crore rupees.</p>	<p>rupees", the words "ten crore rupees" shall be substituted;</p> <p>(b) in sub-clause (ii),—</p> <p>(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;</p> <p>(B) for the words "twenty crore rupees", the words "one hundred crore rupees" shall be substituted;</p>	<p>(i) paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than ten crore rupees; and</p> <p>(ii) turnover of which as per profit and loss account for the immediately preceding financial year does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than one hundred crore rupees."</p>	<p>rupees to ten crore rupees and turnover from twenty crore rupees to one hundred crore rupees.</p> <p>Further, turnover should be as per profit and loss account for the immediately preceding financial year and not as per its last profit and loss account.</p>
44.	Section 2(87)	<p>Clause (ii) to Section 2(87)-</p> <p>‘(ii) exercises or controls more than one-half of the total share capital either at its own or together with one or more of its subsidiary companies.’</p>	<p>In Section 2 in clause (87), in sub-clause (ii), for the words “total share capital”, the words “total voting power” shall be substituted.</p>	<p>Revised Clause (ii) to Section 2(87)-</p> <p>“(ii) exercises or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiary companies.”</p>	<p>A subsidiary company or subsidiary – in relation to any other company (the holding company) – means a company where the holding company controls the composition of the Board of Directors or exercises or controls more than one-half of the total voting power either on its own or together with</p>



					<p>one or more of its subsidiary companies.</p> <p>The Impact would be</p> <ul style="list-style-type: none"> • Replacement of share capital parameter to “total voting power” – narrowed down the applicability • Bodies corporate carrying voting capital or board of directors in their constitution can only be subsidiaries – LLP ruled out. 	
45.	Section 2(91)	<p>Section 2(91)-</p> <p>"turnover" means the aggregate value of the realisation of amount made from the sale, supply or distribution of goods or on account of services rendered, or both, by the company during a financial year;</p>	<p>In Section 2 for clause (91), the following clause shall be substituted, namely:—</p> <p>“(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;”</p>	Revised Section 2(91)-	<p>“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;</p>	<p>The definition of turnover has been substituted.</p> <p>The Impact would be</p> <ul style="list-style-type: none"> • Value realization of sales etc replaced with revenue recognized in P & L Account • Turnover concept referred in small company, certification of AR, Secretarial Audit, Applicability of Cost Audit, CSR, Woman Director etc.



H. Fraud					
46.	Section 447	<p>Section 447-</p> <p>‘Without prejudice to any liability including repayment of any debt under this Act or any other law for the time being in force, any person who is found to be guilty of fraud, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud.</p> <p>Provided that where the fraud in question involves public interest,</p>	<p>In section 447 of the principal Act,—</p> <p>(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;</p> <p>(ii) after the proviso, the following proviso shall be inserted, namely:—</p> <p>“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</p>	<p>Revised Section 447-</p> <p>“Without prejudice to any liability including repayment of any debt under this Act or any other law for the time being in force, any person who is found to be guilty of fraud involving an amount of at least ten lakh rupees or one percent. of the turnover of the company, whichever is lower, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud.</p> <p>Provided that where the fraud in question involves public interest, the term of imprisonment shall not be less than three years.</p> <p>Provided further that where the</p>	<p>Section 447 of the Act has been amended to bring thresholds with respect to compounding provisions relating to fraud without imprisonment.</p> <p>Frauds, which involve at least an amount of rupees ten lakh or one percent of the turnover of the company, whichever is lower, will be punishable under Section 447 (and non-compoundable).</p> <p>Frauds below the limits, which do not involve public interest, will be given a differential treatment and compoundable since the cost of prosecution may exceed the quantum involved. However, where such fraud involves public interest, the penalty has been specified.</p>



		the term of imprisonment shall not be less than three years.’	which may extend to five years or with fine which may extend to twenty lakh rupees or with both.”	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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I. Deposits Repayment Reserve Account

47.	Section 73	<p>Section 73(2)(c)- ‘(c) depositing such sum which shall not be less than fifteen per cent of the amount of its deposits maturing during a financial year and the financial year next following, and kept in a scheduled bank in a separate bank account to be called as deposit repayment reserve account.’</p> <p>Section 73(2)(d)-</p>	<p>In section 73 of the principal Act, in sub-section (2),—</p> <p>(i) for clause (c), the following clause shall be substituted, namely:—</p> <p>“(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</p>	<p>Revised Section 73(2)(c)- “(c) depositing such sum which shall not be less than fifteen per cent of the amount of its deposits maturing during a financial year and the financial year next following, and kept in a scheduled bank in a separate bank account to be called as deposit repayment reserve account.”</p>	<p>Maintenance of Deposit Repayment Reserve for Public Deposits has been changed to 20% of the amounts maturing during the next finance year in place of 15%. This will strike the perfect balance between security and liquidity and will reduce the cost of borrowings.</p> <p>Condition of deposit insurance for public deposits has been removed permanently.</p>
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	<p>‘(d) providing such deposit insurance in such manner and to such extent as may be prescribed.’</p> <p>Section 73(2)(e)-</p> <p>‘(e) certifying that the company has not committed any default in the repayment of deposits accepted either before or after the commencement of this Act or payment of interest on such deposits.’</p>	<p>bank in a separate bank account to be called deposit repayment reserve account;"</p> <p>(ii) clause (d) shall be omitted;</p> <p>(iii) in clause (e), for the words "such deposits;", the following shall be substituted, namely:—</p> <p>“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;”</p>	<p>Revised Section 73(2)(e)-</p> <p>“(e) certifying that the company has not committed any default in the repayment of deposits accepted either before or after the commencement of this Act or payment of interest on 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;”</p>	<p>Considering the fact that none of the insurance companies are offering insurance products for covering company deposit default risks, the requirement to have deposit insurance is omitted.</p> <p>In case of defaulting company-Permanent ban from raising deposits to be reduced to a period of 5 years from the date of making default good.</p>
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J. Selection of members of the Tribunal

48.	The Constitution of Selection Committee is aligned with Supreme Court’s directions. The members of Tribunal and Appellate Tribunal shall be appointed on recommendation of selection committee. In case of equality of votes in a meeting of selection committee, the chairperson shall have a casting vote.
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