



## Inside this edition

- Lok Sabha passes Companies (Amendment) Bill, 2017
- Applicability of section 143 (3) (i) for exemption given to certain private companies
- Shifting of Registered office of the Company
- Filing of Appeal or application before Tribunal
- Exemption to companies for appointment of minimum number of Independent Directors
- Surrender of DIN
- Participation by director in meeting of Board of directors through electronic mode.

## Lok Sabha passes Companies (Amendment) Bill, 2017

Lok Sabha on July 27, 2017 passed the Companies (Amendment) Bill, 2016 as Companies (Amendment) Bill, 2017 to amend the companies law seeking to strengthen corporate governance standards, initiate strict action against defaulting companies, which would now further be referred to Rajya Sabha for consideration and for passing.



Main amendments of the bill are as follows:-

### i) Section 2 sub-section (76): Related Party:

Earlier provision: Clause (viii) defined “Related Party” as any company which is:

- (A) a holding, subsidiary or an associate company of such company or
- (B) a subsidiary of a holding company to which it is also a subsidiary

Amendment as per Companies Bill 2017:

Clause (viii) has been substituted as follow:-  
any body corporate which is:

- (a) a holding, subsidiary or an associate company of such company or
- (b) a subsidiary of a holding company to which it is also a subsidiary
- (c) **an investing company or the venturer of a company.**

**Explanation:** Investing company or the Venture company: means a body corporate whose investment in the company would result in the company becoming an associate company of the body corporate.

### ii) Section 4 sub-section (5): Memorandum: Alteration in period of reservation of name:

Earlier provision: 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.

Amendment as per Companies Bill 2017:

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 the approval or such other period as may be prescribed.

**Provided that in case of an application for reservation of name or for change of name is by an existing company, the registrar may reserve the name for a period of 60 days from the date of approval.**

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

Earlier provision: (a) the company shall, in addition to the payment of the amount of deposit or part thereof and the interest due, be punishable with fine which shall not be less than one crore rupees but which may extend to ten crore rupees and



(b) every officer of the company who is in default shall be punishable with imprisonment which may extend to seven years or with fine which shall not be less than twenty-five lakh rupees but which may extend to two crore rupees, or with both.

Amendment as per Companies Bill 2017:

(a) the company shall, in addition to the payment of the amount of deposit or part thereof and the interest due, be punishable with fine which shall not be less than one crore rupees **or twice the amount of deposit accepted by the company whichever is lower but which may extend to ten crore rupees** and

(b) 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 but which may extend to two crore rupees **(the word “or with both” has been removed)**



**(v) Section 92 (4) & (5): Annual Return:**

Earlier provision:

As per sub- section (4) Every company shall file with the Registrar a copy of the annual return, within sixty days from the date on which the annual general meeting is held or where no annual general meeting is held in any year within sixty days from the date on which the annual general meeting should have been held together with the statement specifying the reasons for not holding the annual general meeting, with such fees or additional fees as may be prescribed, within the time as specified, under section 403.

As per sub- section (5) If a company fails to file its annual return under sub-section (4), before the expiry of the period specified under section 403 with additional fee, the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakhs rupees and



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 fifty thousand rupees but which may extend to five lakh rupees, or with both.

Amendment as per Companies Bill 2017:

Now the companies shall be required to file the Annual Return within 60 days of AGM **else from 61st day it shall be considered as default. Now the additional time period of 270 days has been removed from this sub section.**

**In case of company fails to file Annual return within 60 days of AGM, the company and the officer shall be liable to fine from the 61st day itself.**

**(vi) Section 137 (1) & (2): Financial statement:**

Earlier provision:

A copy of financial statements including consolidated financial statements whether adopted or not adopted in all cases where AGM is held or where no AGM is held, shall be filed with the Registrar of Companies within thirty days of the last date before which AGM was held or should have been held and in such manner, with such fees or additional fees as may be prescribed within the time specified under section 403.



Amendment as per Companies Bill 2017:

Now the companies shall be required to file the Financial Statement within 30 day of AGM **else from 31st day it shall be considered as**

default. Now the additional time period of 270 days has been removed from this sub section.

In case of company fails to file Financial Statement within 30 days of AGM, the company and the officer shall be liable to fine from the 31st day itself.

**(vii) Section 123 (1): Declaration of dividend:**

No Earlier provision:

Amendment as per Companies Bill 2017:

Provided that in computing profits any amount representing unrealized gains, notional gains or revaluation of assets and any change in carrying amount of an asset or of a liability on measurement of the asset or the liability at fair value shall be excluded.



**(viii) Section 196 (3): Appointment of managing director, whole-time director or manager**

Earlier provision: No company shall appoint or continue the employment of any person as managing director, whole-time director or manager who —

(a) is below the age of twenty-one years or has attained the age of seventy years:

Provided that appointment of a person who has attained the age of seventy years may be made by passing a special resolution in which case the explanatory statement annexed to the notice for such motion shall indicate the justification for appointing such person.

Amendment as per Companies Bill 2017:

**New Proviso** has been inserted:

Provided further that where no such special resolution is passed but votes cast in favour of the motion exceed the votes, if any, cast against the motion and the Central Government is satisfied, on an application made by the Board, that such appointment is most beneficial to the company, the appointment of the person who has attained the age of 75 years may be made.



Which further means that if **no special resolution is passed in the General Meeting for appointment of a person MD who have attained age of 75 years then company can pass the Ordinary Resolution and further take Central Government approval and appoint such person as Managing Director.**

**(ix) Section 374: Obligation of Companies Registered under this Act:**  
No Earlier provision:

Amendment as per Companies Bill 2017: **New Proviso** has been inserted:

Provided that upon registration as a company under this part a limited liability partnership incorporated under the LLP Act, 2008 shall be deemed to have been dissolved under that without any further act or deed.



Therefore now, **on conversion of LLP into company under this Act, Status of LLP shall be dissolved**

from the LLP Act, 2008 and no need of any further act or deed under LLP Act.

**(x) Section 403 (1): Fee for filing:**

Earlier provision: 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.

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, after the first time specified in first proviso on payment of fee and additional fee specified under this section

Amendment as per Companies Bill 2017:

**New Proviso** has been inserted:

• **If company fails to file Annual Return u/s 92 and Financial statement u/s 137 within time prescribed** under their specific sections “without prejudice to any other legal action or liability under this act,” it may be submitted by payment of **additional fees** “**which shall not be less than INR 100/- (Rupees Hundred) per day**” and different amount may be prescribed for different classes of Companies.



• If company fails to file any other documents, facts, information etc. other than section 92 and 137 “without prejudice to any other legal action or liability under this act,” it may be submitted by payment of additional fees as may be prescribed.



**HIGHER ADDITIONAL FEES:**

**New concept of higher additional fees has been introduced.**

a) **where there is default on Two or More occasions** in submitting, filling, registering, recorded of documents, without prejudice to any other legal action or liability under this act, may be file the form with “Higher Addition Fees” as may be prescribed and which shall not be lesser than “**twice the additional fee provided under first and second proviso**”



**(ix) Section 403 (2): Fee for filing:**

Earlier provision: Where a company fails or commits any default to submit, file, register or record any document, fact or information under sub-section (1) before the expiry of the period specified in the first proviso to that sub-section with additional fee, the company and the officers of the company who are in default, shall, without prejudice to the liability for payment of fee and additional fee, be liable for the penalty or punishment provided under this Act for such failure or default.



Amendment as per Companies Bill 2017:

Sub section 2 shall be **SUBSTITUTED** as follow:

Where a company fails or commits any default to submit, file register or record any document, fact or information under sub section (1) before the expiry of the period specified **in the relevant section**, the company and the officers of the company who are in default, shall without prejudice to the liability for the payment of fees and additional fee, be liable for the penalty or punishment provided under the Act for such failure or default.

**(x) Deletion of the words “within the time specified under section 403” from the following sections:**

Section	Particulars
89	Declaration in respect of beneficial interest in any share
92(4)	Annual Return
117(1)	Resolution & agreement to be filed
121(2), (3)	Report of Annual General Meeting
137(1), (2)	Copy of financial statement to be filed with Registrar
157(1)	Company to inform DIN to Registrar

### **Applicability of section 143(3)(i) for exemption given to certain private companies**

MCA has provided further clarification for notification no. G.S.R 583 (E) issued dated 13<sup>th</sup>

Clarification

June, 2017, regarding financial year in respect of which the said exemption shall be applicable to private companies. Therefore now the exemption shall be applicable for those audit reports in respect of financial statements pertaining to financial years commencing on or after 1<sup>st</sup> April, 2016, which are made on or after the date of the said notification.

### **Shifting of Registered office of the Company**

MCA has amended the Companies (Incorporation) Rules 2014 and has provided changed in Rules with regard to shifting of Registered Office of the company within the same Now the application may be put up for orders without hearing and the order either approving or rejecting the application shall be passed within 15 days of the receipt of the application.



### **(a) Within the same state from the jurisdiction of one Registrar of Companies to the jurisdiction of another Registrar of Companies:**

(1J) An application seeking confirmation from the Regional Director for shifting the registered office within the same State from the jurisdiction of one Registrar of Companies to the jurisdiction of another Registrar of Companies, shall be filed by the company with the Regional Director in Form No. **INC.23** along with the fee and following documents,-

- (a) Board Resolution for shifting of registered office;
- (b) Special Resolution of the members of the company approving the shifting of registered office;

(c) a declaration given by the Key Managerial Personnel or any two directors authorised by the Board, that the company has not defaulted in payment of dues to its workmen and has either the consent of its creditors for the proposed shifting or has made necessary provision for the payment thereof;

(d) a declaration not to seek change in the jurisdiction of the Court where cases for prosecution are pending;

(e) acknowledged copy of intimation to the chief Secretary of the state as to the proposed shifting and that the employees interest is not adversely affected consequent to proposed shifting".

**(b) From one state or Union territory to another state:**

(1) An application under sub-section (4) of section 13, for the purpose of seeking approval for alteration of memorandum with regard to the change of place of the registered office from one state Government or Union territory to another, shall be filed with the central Government in Form No. **INC.23** along with the fee and shall be accompanied by the following documents, namely:-



- (a) a copy of Memorandum of Association, with proposed alterations;
  - (b) a copy of the minutes of the general meeting at which the resolution authorizing such alteration was passed, giving details of the number of votes cast in favour or against the resolution;
  - (c) a copy of Board Resolution or Power of Attorney or the executed vakalatnama, as the case may be.
- (2) There shall be attached to the application, a list of creditors and debenture holders, drawn up to the latest practicable date

preceding the date of filing of application by not more than one month, setting forth the following details, namely:-

- (a) the list of creditors and debenture holders giving details of the names and address;
- (b) the nature and respective amounts due to the in respect of debts, claims or liabilities:

Provided that, the list of creditors and debenture holders to be accompanied by declaration signed by the company Secretary of the company, if any, and not less than two directors of the company, one of whom shall be a managing director, where there is one, stating that (i) they have made a full enquiry into the affairs of the company and, having done so, have concluded that the list of creditors are correct, and that the estimated value as given in the list of the debts or claims payable on a contingency or not ascertained are proper estimates of the values of such debts and claims and that there are no other debts of or claims against the company to their knowledge, and



(ii) no employee shall be retrenched as a consequence of shifting of the registered office from one state to another state and also there shall be an application filed by the company to the Chief secretary of the concerned State Government or the Union territory.

(3) A duly authenticated copy of the list of creditors shall be kept at the registered office of the company and any person desirous of inspecting the same may, at any time during the ordinary hours of business, inspect and take extracts from the same on payment of a sum not exceeding ten rupees per page to the company.

(4) There shall also be attached to the application a copy of the acknowledgment of service of a copy of the application with complete annexures to the Registrar and Chief Secretary of the State Government or Union territory where the registered office is situated at the time of filing the application.

(5) The company shall, not more than thirty days before the date of filing the application in Form No. INC.23 -

(a) advertise in the Form No. INC.26 in the vernacular newspaper in the principal vernacular language in the district and in English language in an English newspaper with the widest circulation in the state in which the registered office of the company is situated:

Provided that a copy of advertisement shall be served on the Central Government immediately on its publication.

(b) serve, by registered post with acknowledgement due, individual notice, to the effect set out in clause (a) on each debenture-holder and creditor of the company; and

(c) serve, by registered post with acknowledgement due, a notice together with the copy of the application to the Registrar and to the Securities and Exchange Board of India, in the case of listed companies and to the regulatory body, if the company is regulated under any special Act or law for the time being in force.

(6) There shall be attached to the application a duly authenticated copy of the advertisement and notices issued under sub-rule (5), a copy each of the objection received by the applicant, and tabulated details of responses along with the counter response from the company received either in the electronic mode or in physical mode in response to the advertisements and notices issued under sub-rule (5).



(7) Where no objection has been received from any person in response to the advertisement or notice under sub-rule (5) or otherwise, the application may be put up for orders without hearing and the order either approving or rejecting the application shall be passed within fifteen days of the receipt of the application.

(8) Where an objection has been received,

(i) the Central Government shall hold a hearing or hearings, as required and direct the company to file an affidavit to record the consensus reached at the hearing, upon executing which, the Central Government shall pass an order approving the shifting, within sixty days of filing the application.

(ii) where no consensus is reached at the hearings the company shall file an affidavit specifying the manner in which objection is to be resolved within a definite time frame, duly reserving the original jurisdiction to the objector for pursuing its legal remedies, even after the registered office is shifted, upon execution of which the Central Government shall pass an order confirming or rejecting the alteration within sixty days of the filing of application.

(9) The order passed by the Central Government confirming the alteration may be on such terms and conditions, if any, as it thinks fit, and may include such order as to costs as it thinks proper:

Provided that the shifting of registered office shall not be allowed if any inquiry, inspection or investigation has been initiated against the company or any prosecution is pending against the company under the Act.

(10) On completion of such inquiry, inspection or investigation as a consequence of which no prosecution is envisaged or no prosecution is pending, shifting of registered office shall be allowed".



## Filing of Appeal or application before Tribunal

(1) An appeal or application is to be filed at Tribunal in Form No. NCLT- 9 whereas earlier there was no prescribed format for filing appeal or application at Tribunal.



(2) The copy of appeal or application filed at tribunal shall be served at Registrar of Companies and on such other person as the Tribunal may direct, not less than 14 days before the date fixed for hearing of the appeal or application as the case may be.

(3) Upon hearing the appeal or the application or any adjourned hearing thereof, the Tribunal may pass appropriate order, as it deems fit.

(4) Where the Tribunal makes an order restoring the name of a company in the register of companies, the order shall direct that-

(a) the appellant or applicant shall deliver a certified copy to the Registrar of Companies within thirty days from the date of the order;

(b) on such delivery, the Registrar of Companies do, in his official name and seal, publish the order in the Official Gazette;

(c) the appellant or applicant do pay to the Registrar of Companies his costs of, and occasioned by, the appeal or application, unless the Tribunal directs otherwise; and

(d) the company shall file pending financial statements and annual returns with the Registrar and comply with the requirements of the Companies Act, 2013 and rules made thereunder within such time as may be directed by the Tribunal.

(5) An application filed by the Registrar of Companies for restoration of name of a company in the register of companies under second proviso to sub-section (l) of section 252 shall be in Form No. NCLT 9

and upon hearing the application or any adjourned hearing thereof, the Tribunal may pass an appropriate order, as it deems fit."

## Exemption to Companies for appointment of minimum number of Independent Directors

As per MCA notification issued dated 5<sup>th</sup> July, 2017 the provision related to appointment of minimum number of Independent Directors shall not apply to the following class of unlisted public company:

- (a) a joint venture
- (b) a wholly owned subsidiary
- (c) a dormant company

## Surrender of Director Identification Number (DIN)

DIN can be surrendered by DIN holder through filing of e-form DIR-5 at MCA. As compared to previous form the following information and details are added to form DIR-5 which are mandatorily required to be filled in form:



- (a) Father's name
- (b) Reason for surrender of DIN
- (c) Whether DIN holder is retaining any DIN
- (d) Specify the number of DIN (S) being surrendered by the applicant

## Participation by director in meeting of Board of directors through electronic mode

MCA in its notification dated 13<sup>th</sup> July, 2017 has amended the Companies (Meetings of Board and its Powers) Rules, 2014 which

may be called the Companies (Meetings of Board and its Powers) Rules, 2017, which shall come into force on the date of their publication in the Official Gazette.

(a) Amended clause (e) in sub-rule (3) of Rule 3

Earlier Provision: The director, who desire, to participate may intimate his intention of participation through the electronic mode at the beginning of the calendar year and such declaration shall be valid for one calendar year.



New Provision: Any director who **intends** to participate in the meeting through electronic mode may intimate about such participation at the beginning of the calendar year and such declaration shall be valid for **one year**.

**Provided that such declaration shall not debar him from participation in the meeting in person in which case he shall intimate the company sufficiently in advance of his intention to participate in person.**

(b) Amended clause (a) in sub-rule (11) of Rule 3

Earlier Provision: At the end of discussion on each agenda item, the Chairperson of the meeting shall announce the summary of the decision taken on such item along with names of the directors, if any, who dissented from the decision taken by majority.

New Provision: At the end of discussion on each agenda item, the Chairperson of the meeting shall announce the summary of the decision taken on such item along with names of the directors, if any, who dissented from the decision taken by majority and the draft minutes so recorded shall be preserved by the company till the confirmation of the draft minutes.

(c) Amended Rule 6 related to Committees of the Board

Earlier Provision: The Board of directors of every listed company and the following classes of companies shall constitute an Audit Committee and a Nomination and Remuneration Committee of the Board.

New Provision: The Board of directors of every listed company and a company **covered under rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014** shall constitute an 'Audit Committee' and a 'Nomination and Remuneration Committee of the Board'."

### Code for Independent directors

MCA in its notification dated 5<sup>th</sup> July, 2017 has amended duties of Independent Director as mentioned in Part III of Schedule IV of the Companies Act, 2013. The independent director shall-

(a) In paragraph III related to Re-appointment in sub- para (12):

**Earlier Provision:** acting within his authority, assists in protecting the legitimate interest of the company, shareholders and its employees

**New Provision:** act within their authority, assists in protecting the legitimate interest of the company, shareholders and its employees



(b) In paragraph VI related to Resignation or removal in sub- para (2):

**Earlier Provision:** An independent director who resigns or is removed from the Board of the company shall be replaced by a new independent director within a period of not more than 180 days from the date of such resignation or removal, as the case may be.

**New Provision:** An independent director who resigns or is removed from the Board of the company shall be replaced by a new independent director within a period of not more than **three months** from the date of such resignation or removal, as the case may be.

(c) In paragraph VII related to separate meetings in sub- para (1):

**Earlier Provision:** The independent directors of the company shall hold at least one meeting in a year, without the attendance of non-independent directors and members of the management.

**New Provision:** The independent directors of the company shall hold at least one meeting in a **financial** year, without the attendance of non-independent directors and members of the management.

(d) New provision added after paragraph VIII related to Evaluation Mechanism:

### **Amendment in provision related to applicability of Auditor's Report**

MCA issued corrigendum dated 13<sup>th</sup> July, 2017 in respect of notification no G.S.R 583 (E) dated 13<sup>th</sup> June, 2017

**Earlier Provision:** The provision shall not apply to a private company:-

(i) which is a one person company (OPC) or a small company; or  
(ii) which has turnover less than rupees fifty crores as per latest audited financial **statement or** which has aggregate borrowings from banks or financial institutions or anybody corporate at any point of time during the financial year less than rupees twenty five crore."

**Revised Provision:** The provision shall not apply to a private company:-



(i) which is a one person company (OPC) or a small company; or  
(ii) which has turnover less than rupees fifty crores as per latest audited financial **statement and** which has aggregate borrowings from banks or financial institutions or anybody corporate at any point of time during the financial year less than rupees twenty five crore."

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