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Companies (Amendment) Act, 2017

The Companies (Amendment) Bill, 2017 received the assent of President on 3rd January, 2018. It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act.



The main changes in the provisions of the principal Act are as follows:-

i) In Section 2 the following amendments have been done in:

- "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.
- "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.
- In the definition of holding company the expression "company" includes any body corporate.
- The definition of Interested director has been omitted.
- The definition of Key Managerial Personnel shall include: "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".
- In the definition of net worth for the words "and securities premium account", the words "securities premium account and debit or credit balance of profit and loss account" shall be substituted.
- In the definition of "Relative Party" following sub-clause shall be substituted, namely:—

"(viii) any body corporate which is:

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

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.

➤ In the definition of "Small Company"

a) higher limits of paid up share capital has been substituted by **ten crore rupees** and turnover by "**one hundred crore rupees**".

b) Turnover should be "**as per profit and loss account for the immediately preceding financial year**".

➤ "Subsidiary company" would be where the holding company "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"

➤ "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.



ii) New Section 3A inserted: Members severally

liable for payment of whole debts of the company contracted where the number of members of a company is reduced below prescribed limits and company carries on business for more than six months.

iii) Incorporation of company

- a) In case of incorporation, name reserved shall be valid for 20 days
- b) In case of change in name by an existing company, name reserved shall be valid for 60 days from the date of approval by the ROC.
- c) Declaration (instead of an affidavit) will be required by each subscriber.



iv) Registered Office of the Company (section 12)::

- a) Company shall within 30 days of its incorporation have registered office and notice of every change of the registered office is required to be intimated to the Registrar within a period of **30 days**.

v) Authentication of documents, proceedings and contracts (section 21): Apart from KMP and any officer of the company, an employee can also be authorized to authenticate documents on behalf of the company.

(vi) Matters to be stated in Prospectus (section 26)

Instead of detailed list of contents of the Prospectus, the prospectus shall state such information and set out such reports on financial information as may be specified by SEBI.

Till the time SEBI specifies the information and reports on financial information, regulations made under SEBI Act, 1992, in respect of such financial information or reports on financial information shall apply.

(vii) Private Placement (section 42):

- a) The major changes are:
 - a) A new proviso **barring any right of renunciation** being attached to the private placement offer letter and application has been inserted.
 - b) 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.

- c) The company is **not authorized to utilize the money** raised through private placement **unless** allotment has been made and **return of allotment has been filed with the Registrar**

- e) Return of Allotment needs to be filed within 15 days of allotment.
- f) If a company makes an offer or accepts monies in contravention of this section, the company, its promoters and directors shall be liable for a penalty which may extend to the amount raised through the private placement or two crore rupees, whichever is lower.

(viii) Prohibition on acceptance of deposits from public (section 73):

- a) An amount being not less than 20% of the amount of deposits, maturing during the following financial year be deposited on or before the 30th day of April each year and kept in a scheduled bank in a separate bank account to be called deposit repayment reserve account.
- b) Deposit Insurance- Omitted
- c) It is also proposed that companies which had defaulted in repayment of deposits, can also accept deposits after a period of 5 years from the date of making good the default.

(ix) Company to report satisfaction of charge (section 82)

Timeline for filing of satisfaction of charge increased by 300 days on payment of additional fee.



- (x) **Declaration in respect of beneficial interest in any share (section 89)** Filing can be filed at any time on payment of additional fee.

(xi) Annual Return (section 92): Disclosures under Board's Report:

a) Requirement of MGT-9 to form part of Board report **omitted**

b) Disclosure in respect of details of Indebtedness omitted.

c) The copy of annual return shall be uploaded on the website of the company, if any, and its link shall be disclosed in the Board's report.

d) 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. (new proviso inserted)



(xii) Annual General Meeting (Section 96) ('AGM'): AGM of unlisted company may be held at any place in India if prior consent is given in writing or by electronic mode by all the members.

(xiii) General Meetings (section 100):

EGM of wholly owned subsidiary of a company incorporated outside India, can be held at any place in the world.

(xiv) Resolutions and Agreements to be filed (section 117)

Resolutions and agreements can be filed at any time on payment of additional fee.

(xv) Declaration of dividend (section 123)

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

b) In the case of inadequate or absence of profits, dividend can be declared out of accumulated profits earned by the company in previous years and transferred by the company to free reserves.

c) It is also proposed that the Board of Directors of a company may declare interim dividend during any financial year or at any time during the period from closure of financial year till holding of the AGM out of the surplus in the profit and loss account or out of profits of the financial year for which such interim dividend is sought to be declared or out of profits generated in the financial year till the quarter preceding the date of declaration of the interim dividend.

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

(xvi) Financial Statements (section 129):

The explanation providing that subsidiary includes associate company and joint venture has been deleted. The section has been amended to provide for consolidation of the accounts of associate companies in addition to its subsidiaries in the same form and manner as that of its own in accordance with applicable accounting standards.

The company shall also attach along with its financial statement, a separate statement containing the salient features of the subsidiary and associate companies.

(xvii) Financial Statement, Board's report, etc. (section 134):

CEO whether appointed as a Director or not, will sign the financial statement, in case there is no chairperson of the Company.



Currently CEO is required to sign, only if he is also acting as a director.

a) Disclosures which have been provided in the financial statement shall not be required to be reproduced in the report again.

b) In place of extract of the annual return, only the web address, if any, where annual return has been placed shall be mentioned

c) In respect to performance evaluation, now required to include in the Board's report of listed companies and other prescribed public companies that annual evaluation of the performance of the Board, its Committees and of individual directors has been made.

d) Central Government may prescribe abridged Board Report for small and one person companies.

(xviii) Corporate Social Responsibility (section 135):

a) Eligibility criteria for the purpose of constituting the corporate social responsibility committee and incurring expenditure towards CSR is proposed to be calculated based on immediately preceding financial year.



b) Where a company is not required to appoint an independent director, it shall have in its Corporate Social Responsibility Committee two or more directors.

c) Central Government has been empowered to prescribe sums which shall not be included for calculating 'net profit' of a company under section 135.

(xix) Section 139: Ratification of Auditors

The requirement related to annual ratification of appointment of auditors by members is **omitted**.

(xx) Meetings of Board (section 173): New Proviso inserted:

Directors can participate on restricted items at Board meetings through video conferencing or other audio-visual means if there is quorum through physical presence of directors.

(xxi) Loan to directors, etc.(section 185):

Some of the key changes are:

Loan to following parties is allowed subject to special resolution of shareholders and certain other prescribed conditions

(i) any private company of which any such director is a director or member;

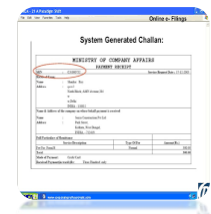
(ii) any body corporate at a general meeting of which not less than twenty- five per cent. of the total voting power may be exercised or controlled by any such director, or by two or more such directors, together; or

(iii) 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

(xxii) Fee for filing (section 403):

(a) Annual Return u/s 92 and Financial statement u/s 137 may be submitted, after expiry of the period so provided in those sections, on payment of such additional fee as may be prescribed which shall not be less than Rs. 100 per day and different amounts may be prescribed for different classes of companies.

(b) In case not submitted, 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, on payment of such additional fee as



may be prescribed and different fees may be prescribed for different classes of companies.

(c) In case of continuing default document u/s 92 and 137 can be submitted, filed, registered or recorded, 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.

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

(xxiii) Section 447: Fraud

New criteria and quantum of fraud provided

“Fraud specified as involving an amount of at least ten lakh rupees or one percent of the turnover of the company, whichever is lower.

Provided further that where the fraud involves an amount less than ten lakh rupees or one per cent of the turnover of the company, whichever is lower, and does not involve public interest, any person guilty of such fraud shall be punishable with imprisonment for a term which may extend to five years or with fine which may extend to twenty lakh rupees or with both.”

Condonation of Delay Scheme, 2018

The main features of the scheme are as follows:



1. The scheme is effective from 01.01.2018 and shall remain in force up to 31.03.2018.

2. The scheme is applicable to all defaulting companies (other than the companies which have been struck off/ whose names have been removed from the register of companies).

3. A defaulting company is permitted to file its overdue documents which were due for filing till 30.06.2017.

4. The DINs of the concerned disqualified directors de-activated at present, shall be temporarily activated during the validity of the scheme to enable them to file the overdue documents.

5. The defaulting company shall file the overdue documents in the prescribed e-Forms paying the statutory filing fee and additional fee and seek condonation of delay by filing form e-CODS available at MCA portal.

6. The fee for filing e-form CODS is Rs. 30,000/-.

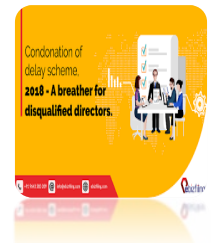
7. The DINs of the Directors associated with the defaulting companies that have not filed overdue documents and form e-CODS, and these are not taken on record in the MCA21 registry and are still found to be disqualified on the conclusion of the scheme shall be liable to be deactivated on expiry of the scheme period.

8. DIN of Director's of defaulting companies whose names have been removed from the register of companies under section 248 shall be re-activated only NCLT order of revival subject to filing of all overdue documents.

9. The scheme shall apply to filing of the following overdue documents only:

i. Form Number 208/MGT-7- For filing company having share capital.

ii. Form 21A/MGT-7- Particulars of Annual return



for the company not having share capital.

iii. Form 23AC, 23ACA, 23AC-XBRL, 23ACAXBRL, AOC-4, AOC-4(CFS), AOC (XBRL) and AOC-4(non-XBRL) - For filing Balance Sheet/Financial Statement and profit and loss account.

iv. Form 66 - For submission of Compliance Certificate with the Registrar.

v. Form 238/ADT-1- For intimation for Appointment of Auditors.

6. The Registrar concerned shall withdraw the prosecution(s) pending if any before the concerned Court(s) for all documents filed under the scheme.

However, civil and criminal liabilities, if any, of such disqualified directors during the period they remained disqualified would remain the unchanged.

7. At the completion of the time period of the applicability of the scheme, the Registrar shall take all necessary actions under the Companies Act, 1956/2013 against the companies who have not availed themselves of this Scheme and continue to be in default in filing the overdue documents.

8. E-Form CODS 2018 for availing benefit under this scheme would be available from 20.02.2018 or an alternate date, which will be intimated by the ministry on www.mca.gov.in



Companies (Cost Records and Audit) Amendment Rules

MCA in its notification dated 20th December, 2017 makes the following rules further to amend the Companies (Cost Records and Audit) Rules namely:

1. These rules may be called the Companies (cost records and audit) Second Amendment Rules, 2017.

2. In rule 2, for clause (aa) the following clause shall be substituted and shall be deemed to have been substituted with effect from the 1st day of July, 2017, namely:-

(aa) Customs Tariff Act Heading" means the heading as referred to in the Additional Notes in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).

3. In the principal rules, in rule 3, for the words "Central Excise Tariff Act Heading", occurring at both the places, the words "Customs Tariff Act Heading" shall be substituted and shall be deemed to have been substituted with effect from the 1st day of July, 2017.

4. In the principal rules, in the Annexure, in Form CRA-2, Form CRA-3 and Form.CRA-4, for the words "CETA Heading", wherever it occurs, the words "CTA Heading" shall be substituted and shall be deemed to have been substituted with effect from the 1st day of July, 2017.

Risk of investment in Virtual Currencies

Reserve Bank of India clarified that no licence/authorisation has been issued to any entity/company to operate such schemes or deal with Bitcoin or any Virtual Currencies.

It has awared members of public cautioning users, holders and traders of Virtual Currencies (VCs) including Bitcoins regarding the potential economic, financial, operational, legal, customer protection and security related risks associated in dealing with such Virtual Currencies.



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