



## Inside this edition

- Companies (Amendment) Bill, 2016 introduced in Lok Sabha- Key Highlights
- Name approval and Company Incorporation centralised with New Registrar Central Registration Centre (CRC)
- Amendment in Share Capital and Debentures Rules in relation to Buy Back
- Company (Share Capital and Debentures) Second Amendment Rules, 2016

## COMPANIES (Amendment) BILL, 2016 INTRODUCED IN LOK SABHA - KEY HIGHLIGHTS

On 16<sup>th</sup> March, 2016 Lok Sabha passed the Companies (Amendment) Bill 2016. A brief summary of key amendments proposed in the Bill are as below. The proposed changes in provisions are highlighted in blue.



### I. In section 2 of the Companies Act, 2013:

- **2(6) “Associate company”**- Change in the explanation of the term ‘significant influence’ under the definition of Associate Company has been proposed. Significant influence is proposed to mean control of at least 20% of the voting power or control or participation in business decision under an agreement. As under the earlier explanation of “significant influence” the words total share capital, or of business decisions under an agreement have been deleted. Further the term ‘Joint Venture’ not defined earlier, has also been defined as joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement.
- **2(30) “Debenture”**- In addition to the earlier explanation of debenture where debenture includes debenture stock, bonds or any other instrument of a company evidencing a debt, whether constituting a charge on the assets of the company or not, proposed provision has been added: “Provided that-

- a) the instruments referred to in Chapter III-D of Reserve Bank of India Act 1934: and
- b) such other instruments prescribed by the Central Government in consultation with RBI, issued by a company, shall not be treated as debentures”.

- **2(46) “Holding companies”**- In relation to one or more other companies, means a company of which such companies are subsidiary companies. For the purpose of this clause “company” includes any body corporate has been added.

- **2(49) “Interested director”**- To be omitted.

- **2(51) “Key managerial personnel”**- In the definition of KMP it is proposed to include officers not more than one level below the directors who is in whole time employment, designated as key managerial personnel by the Board.

- **2(76) “Related party”**- In the definition of Related party it is proposed to include Foreign subsidiaries, an investing company or a joint venture of a company.

- **2(57) “Net worth”**- means the aggregate value of the paid up share capital and all reserves created out of profits and securities premium account and debit or credit balance of profit and loss account, after deducting the



aggregate value of 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.

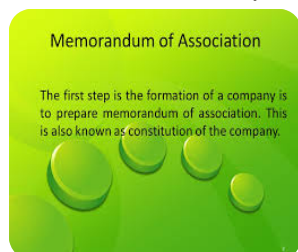
• **2(85) “Small company”**- means a company, other than a public company

(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 is added in place of five crore rupees.

(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 is added in place of twenty crore rupees.

It is proposed that a company will be treated as subsidiary in case the holding company exercises or controls more than one-half to the total voting power either at its own or together with one or more of its subsidiary companies.

**II. Section 4 memorandum-** It is proposed that instead of specific objects in the Memorandum of Association of the Company, the Memorandum may state that the company may engage in any lawful act or activity or business, or any act or activity or business to pursue any specific object or objects, as per the law for the time being in force. Provided that in case a



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

• It is proposed that name reserved by the ROC shall be valid for 20 days from date of the approval instead of 60 days from the date of application, as currently provided.

**III. Section 12 Registered office of company** It is proposed that the company shall within 30 days of its incorporation have a registered office instead of current requirement of 15 days.



**IV. Section 21 Authentication of documents, proceedings and contracts** Apart from KMP and any Officer of the Company, it is proposed that an employee can also be authorized to authenticate documents on behalf of the Company.

**V. Section 26- Matters to be stated in Prospectus** Instead of detailed disclosure in the Prospectus, it is proposed that information and reports in financial statement as specified by SEBI in consultation with the Central Government may prescribe, shall be provided.

**VI. Section 42- Private placement** Proposed changes related to private placement:

- a) Return of allotment has to be filed within 15 days instead of 30 days.
- b) Money received under the private placement shall not be utilized unless the return of allotment is filed with the ROC.
- c) Private Placement offer letter shall not contain any right of renunciation.

**VII. Section 54- Issue of Sweat Equity Shares-**It is proposed to allow issue of Sweat equity shares at any time after registration of the Company. Currently such shares can be issued only after the expiry of one year from the date of commencement of business.



**VIII. Section 62- Further issue of Share capital-** It is proposed that Right issue offer letter can be sent through courier.

**IX. Section 73- Prohibition on acceptance of deposits from public-**  
 In case of deposits, it is proposed that an amount not less than 20% of the amount of depositing, on or before the 30th day of April each year, such sum which shall not be less than twenty per cent. of the amount of its deposits maturing during the following financial year and kept in a scheduled bank in a separate bank account to be called deposit repayment reserve account. Currently at least 15% of such amount is required to be deposited.

- In case a company has made default in repayment of deposits and period of 5 years has elapsed since the date of making the default good,

then such company can accept the deposits further, is added to the existing provision in case of default by the companies.

**X. Section 74- Repayment of Deposits, etc., accepted before commencement of this act.** Where any amount of such deposit or part thereof or interest thereof remains unpaid on the commencement of the Companies Act 2013, it is proposed that such amount shall be repaid within 3 years from the date of commencement or before the expiry of the period for which the deposit was accepted, whichever is earlier. Currently the amount has to be repaid within 1 year or before the expiry of the period for which the deposit was accepted, whichever is earlier.



**XI. Section 89- Declaration in respect of beneficial interest in any share.** For the purpose of declaration of beneficial interest , it is proposed that 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:-

- a) exercise or cause to be exercised any or all of the rights attached to such share; or
- b) receive or participate in any dividend or other distribution in respect of such share.

**XII. Section 90 Investigation of beneficial ownership of shares in certain case.** The provisions are proposed to be revamped.

**XIII. Section 92 Annual Return-** The requirement of MGT-9 is proposed to be omitted. The copy of annual return shall be uploaded on the website of the Company, if any, and its link shall be disclosed in the director's report.



**XIV. Section 96 Annual General Meeting-** AGM of 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, is added to the existing provisions of AGM.

**XV. Section 100 Calling of Extraordinary General Meeting-** It is proposed that EGM of wholly owned subsidiary of a company incorporated outside India can be held outside India.

**XVI. Section 123 Declaration of Dividend-** It is 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 annual general meeting out of the surplus in the profit and loss account or out of profits of the financial year for which such interim dividend is sought to be declared or out of profits generated in the financial year till the quarter preceding the date of declaration of the interim dividend.



**XVII. Section 129 Financial Statements-** The requirement of

consolidating the accounts of a joint venture is proposed to be omitted.

**XVIII. Section 134 Financial Statements, Board's report, etc-** It is proposed that CEO whether appointed as a Director or not, will sign the financial statement. Currently CEO is required to sign, only if he is also acting as a director.

In case of Directors reports, it is proposed that a disclosure which has been provided in the financial statement shall not be required to be reproduced in the report again. Further instead of exact text of the policies, key feature of policies along with its web link shall be disclosed.

**XIX. Section 135 Corporate Social Responsibility-** 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. Currently this eligibility is decided based on preceding three financial years. Further it also proposed to empower the Central Government to prescribe sums which shall not be included for calculating 'net profit' of a company under section 135.



**XX. Section 137 Copy of Financial Statements to be filled with Registrar-** It is proposed to enable the filing of unaudited financial statements of



foreign subsidiaries which is not required to get its accounts audited.

**XXI. Section 139 Appointment of Auditors-** The requirement related to annual ratification of appointment of auditors by members is proposed to be omitted.

**XXII. Section 149 Company to have Board of Directors-** It is proposed that 182 days for determining whether a director is resident in India shall be computed with reference to the financial year. Currently it is calculated in reference to previous calendar year.

- Further it is proposed that in case of new companies, the requirement of period of 182 days shall apply proportionately.
- In the definition of Independent Director, the words 'pecuniary interest' is proposed to be substituted by "pecuniary relationship, other than remuneration as such director or having transaction not exceeding ten per cent. of his total income or such amount as may be prescribed"

**XXIII. Section 153 Application for allotment of Director Identification**



**Number-** It is proposed to empower the Central Government to recognize any other identification number to be treated as director identification number.

**XXIV. Section 160 Right of persons other than retiring directors to stand for directorship-** The following provision shall be inserted namely "Provided that the requirement of deposit of amount shall not apply in case of appointment of

independent director or director recommended by Nomination and Remuneration Committee".

**XXV. Section 165 Number of Directorship-** It is proposed that the directorship in a dormant company shall not be included in the limit of directorships of 20 companies.

**XXVI. Section 167 Vacation of office of director-** It is proposed that in case a director incurs any of disqualifications under section 164 (2), he shall vacate office in companies other than the company which is in default. It also seeks to amend section 167 with respect to appeal against conviction order.

**XXVII. Section 177 Audit Committee-** It is proposed that instead of listed company, listed public company shall constitute an audit committee.

- Further it is added that related party transactions other than those prescribed under section 188, if not approved by Audit committee, will require the approval of Board of Directors.



**XXVIII. Section 178 Nomination and remuneration Committee and Stakeholders Relationship Committee-** It is proposed that instead of listed company, listed public company shall constitute a Nomination and Remuneration Committee.



**XXXVI. Section 403 Fee for Filings, etc.-** It is proposed that any document, fact or information required to be submitted, filed, registered or recorded, as the case may be, under section 89 (Declaration in respect of beneficial interest in any share), 92 (Annual Return), 117 (Resolutions and agreements to be filed), 121 (Report on Annual General Meeting), 137 (Copy of financial statement to be filed with registrar) or 157 (Company to inform director identification number to registrar) may be submitted, filed, registered or recorded, as the case may be, within a period of two hundred and seventy days from the expiry of the period so provided in those sections, on payment of such additional fee as may be prescribed. Further it is proposed that in case of documents referred in section 89, 92, 117, 121, 137 or 157 is not submitted, filed, registered or recorded, as the case may be, within the period of two hundred and seventy days from the expiry of the period so provided in those sections or in any other case within the period prescribed under the relevant section, then such information, document or fact can be filed on payment of such higher additional fees as may be prescribed.



**XXXVII. Section 447 Punishment for Fraud-** It is proposed instead of any fraud, only 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 6 months but which may extend to ten years



and shall also be liable to a fine which shall not less than the amount involved in the fraud but which may extend to three times the amount involved in the fraud. 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.

### **NAME APPROVAL AND COMPANY INCORPORATION CENTRALISED WITH NEW REGISTRAR CENTRAL REGISTRATION CENTRE (CRC)**

MCA vide its notification dated March 23, 2016 hereby states that CRC at Manesar, Gurgaon, will now approve names of all Companies in India as well as approve incorporation of Companies all over India.

The CRC shall process forms pertaining to registration of companies i.e. e-forms(INC-2, INC-7 and INC-29 alongwith linked forms INC-22, DIR-12 and URC-1 and any other form as may be notified by the Central Government)filed along with the prescribed fee as provided in the Companies (Registration of Offices and Fees) Rules,2014.

Further in line with centralization of processing of forms related to registration of companies, format of Certificate of Incorporation has also been amended to bring in line with the centralization of company





registration process by amending the Companies (Incorporation) Rules 2016 through Companies (Incorporation) Second Amendment Rules 2016.

- The CRC to exercise jurisdiction over processing and approval of name or names proposed in e-form INC-29 whereas the Registrar of Companies within whose jurisdiction the registered office of the company is situated shall continue to exercise its jurisdiction over the companies incorporated by the Registrar, CRC under the Companies Act, 2013 for all the other provision of the Act and the rules made thereunder, which may be relevant after incorporation.

This notification shall come into force from 28<sup>th</sup> March, 2016.

### **AMENDMENT IN SHARE CAPITAL AND DEBENTURES RULES IN RELATION TO BUY BACK**

MCA vide its notification dated March 10, 2016 hereby states that the following provision shall be inserted in the Companies (Share Capital and Debentures) Rules, 2014, in rule 17, in sub rule (1), in clause (n) i.e in a report addressed to the Board of Directors by the company's auditors, after sub-clause (iii):

- Provided that where the audited accounts are more than six months old, the calculation with reference to buy back shall be on the basis of un-audited accounts not older than six months from the date of offer document which are subject to limited review by the auditors of the company.



### **COMPANY (SHARE CAPITAL AND DEBENTURES) SECOND AMENDMENT RULES, 2016**

MCA vide its notification dated March 29, 2016 has inserted the following provision in the Companies (Share Capital and Debentures) Rules, 2014, namely:-

“Provided that where all members of a company agree, the offer for buy-back may remain open for a period less than fifteen days”



# VERENDRA KALRA & CO

CHARTERED ACCOUNTANTS

## CONTACT DETAILS:

### Head Office

75/7 Rajpur Road, Dehradun

**T** +91.135.2743283, 2747084, 2742026

**F** +91.135.2740186

**E** info@vkalra.com

**W** www.vkalra.com

### Branch Office

80/28 Malviya Nagar, New Delhi

**E** info@vkalra.com

**W** www.vkalra.com



© 2016 Verendra Kalra & Co. All rights reserved.

This publication contains information in summary form and is therefore intended for general guidance only. It is not a substitute for detailed research or the exercise of professional judgment. Neither VKC nor any member can accept any responsibility for loss occasioned to any person acting or refraining from actions as a result of any material in this publication. On any specific matter, reference should be made to the appropriate advisor.