

# HAND PICKED ARTICLES & UPDATES

20th JANUARY, 2018

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## Section wise analysis of the Companies (Amendment) Act, 2017 89

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### Introduction

1. The Companies (Amendment) Act, 2017 ("Act, 2017") has seen the light of the day with the receipt of President's assent on January 03, 2018. The Companies (Amendment) Bill, 2017 ("Bill, 2017") was duly passed in both the Houses of the Parliament on July 27, 2017 and December 19, 2017. The Bill, 2017 as approved by Lok Sabha was *mutatis mutandis* adopted by Rajaya Sabha. The amendments under the Companies Act, 2013 ("Act, 2013") pursuant to Act, 2017 are listed below:

### The amendments

<i>Section</i>	<i>Heading</i>	<i>Brief of amendment</i>
2(6)	<b>Associate company</b>	To determine significant control at least 20% of total voting power shall be considered instead of total share capital.
2(30)	<b>Debenture</b>	Instruments referred to in Chapter III-D of the Reserve Bank of India Act, 1934; and such other instrument, as may be prescribed by the Central Government in consultation with the Reserve Bank of India, issued by a company, shall not be treated as debenture;
2(41)	<b>Application for adopting different financial years</b>	An associate foreign company of the company along with a holding and/or a subsidiary company will now be allowed to apply for exemption for following different Financial Years;
2(46)	<b>Holding Company</b>	Expression "company" in the definition of holding company will include body corporate.
2(51)	<b>Key Managerial Personnel</b>	Officer, not more than one level below the director who is in whole-time employment may be designated as key managerial personnel by the Board.
2(57)	<b>Net-worth</b>	While calculating net worth debit and credit balance in the profit and loss account shall be considered
2(72)	<b>Public Financial Institution</b>	Financial institutions which are established under the Act, 2013 or any other previous company law which are not government companies as per clause (B), shall be excluded from the definition of PFI.
2(76)	<b>Related Party</b>	An investing company or a venturer shall also become a related party as per the new list.

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*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.

- 2(85) **Small Company** Limit upto which maximum paid-up share capital and turnover of a small company can be prescribed has been increased from INR 5 crore and INR 20 crore to INR 10 crore and INR 100 crore. Further, it is clarified that for the purpose of computing turnover, profit and loss account of immediately preceding financial year shall be considered.
- 2(87) **Subsidiary** Previously, the company on which another company exercises controls more than one-half of the **total share capital** either at its own or together with one or more of its subsidiary companies shall be considered as holding. Now the term total share capital has been substituted with words "**total voting rights**" in order to consider only equity share capital for the same. However, one need to consider section 47 too, wherein the preference shareholders get right of voting in every resolution in case of non-payment of dividend for two years.
- 2(91) **Turnover** 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;  
Previous definition **provided** for **aggregate value of the realisation** of amount made from the sale, supply or distribution of goods or on account of services rendered.
- 3A **Reduction in members** All the members shall be severally liable in case the company carries on business for more than 6 months while the number of members is reduced below 7 or 2, in case of a public company or a private company, respectively.
- 4 **Name reservation in case of new company** The Registrar will reserve the name for 20 days only. In case of change of company by an existing company, there is no impact as the timelines are same.
- 7 **Furnishing of declaration by the subscribers to the** The requirement of furnishing an affidavit has been substituted with declaration.

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- memorandum and first directors.
- 12 **Timeline for having a registered office by a new company and reporting of shifting of registered office to the Registrar.** Timeline increased from 15 days to 30 days.
- 21 **Authentication of Documents** Documents and contracts can be authenticated by KMP or an officer or **employee** of the company duly authorized by Board.
- 26 **Contents of prospectus** Specific details which were specified in Section 26 have been deleted as those are covered under SEBI ICDR Regulations, 2009.
- 35 **Civil-liability for mis-statements in prospectus** Shield is provided to the persons from civil-liability for mis-statement in prospectus if he proves the following:
- ◆ every misleading statement purported to be made by an expert or contained in what purports to be a copy of or an extract from a report or valuation of an expert, it was a correct and fair representation of the statement, or a correct copy of, or a correct and fair extract from the report or valuation;
  - ◆ he had reasonable ground to believe and did up to the time of the issue of the prospectus believe, that the person making the statement was competent to make it;
  - ◆ the said person had given the consent required by sub-section (5) of section 26 to the issue of the prospectus and had not withdrawn that consent before delivery of a copy of the prospectus for registration or, to the defendant's knowledge, before allotment thereunder.
- 42 **Process of private placement:** **Whole section has been substituted. Major amendments are:**
- ◆ The group of persons whom the offer is to be made is to be identified by the Board.
  - ◆ Private Placement offer and application shall not carry right of renunciation.

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- ◆ Requirement to file Form GNL-2 has been discontinued;
- ◆ **Companies cannot use funds till return of allotment has been filed with ROC within 15 days from the date of allotment. Separate penalty provided for default in filing of return of allotment.**
- ◆ Companies can simultaneously take up more than one issue of securities.
- ◆ Rules are yet to be amended to give effect to the aforesaid amendment, *i.e.*, non-filing with Registrar and SEBI.

- 53 **Issue of shares at discount** Company may issue shares at a discount to its creditors when its debt is converted into shares in pursuance of any statutory resolution plan or debt restructuring scheme in accordance with any guidelines or directions or regulations specified by the Reserve Bank of India under the Reserve Bank of India Act, 1934 or the Banking (Regulation) Act, 1949.
- 54 **Issue of shares at discount** Removal of the restriction to issue sweat equity shares before expiry of 1 year from the commencement of business.
- 62 **Mode of delivery of offer letter for right issue** Addition to the mode of delivery of offer letter under section 62(1)(a)(i) being any other mode having proof of delivery.
- 62 **Valuation under section 62(1)(c)** Report of registered valuer under section 62(1)(c) shall now be subject to compliance of Chapter III of the Act and any other conditions as may be prescribed.
- 73 **Acceptance of deposits**
- ◆ Changes in the provision of creating deposit repayment reserve account, *i.e.*, company accepting deposit is required to deposit, 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;
  - ◆ Removal of provision of deposit insurance;
  - ◆ The company, if defaulted in repayment of deposit or payment of interest thereon, will also be allowed to raise deposits, subject to the condition that it has

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- repaid all the money & 5 years have elapsed since the date of making good the default.
- 74 **Changes in repayment schedule of deposits**
- ◆ Deposits shall be repaid within 3 years instead of 1 year from the date of commencement of the Act or before the date provided for maturity of deposits, whichever is earlier.
  - ◆ Renewal of any such deposits shall be done in accordance with the provisions of Chapter V and the rules made thereunder.
- 77 **Registration of charges** The Central Government in consultation with the RBI may exempt charges to which section 77 shall not apply.
- 82 **Changes in reporting about payment or satisfaction of charge by the company** The company shall file Form CHG-4 within 30 days. In case of delay, the company can file Form CHG-4 within 300 days from the date of payment/satisfaction, with payment of additional fees, as against requirement of condonation of delay.
- 89 **Declaration in respect of beneficial interest** Definition of beneficial interest provided which is likely to include cases of pledge with voting rights, transfer of dividend rights, etc., within its ambit.
- 90 **Register of significant beneficial owners in a company**
- ◆ Requirement of a declaration to the company by a significant beneficial owner, *i.e.*, 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 percent 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.
- 92 **Annual Return**
- ◆ Removal of requirement to include the company's indebtedness in the Annual Return;
  - ◆ Removal of the requirement to indicate detailed particulars about foreign institutional investors;
  - ◆ 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;

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- ◆ Removal of requirement to annex extract of Annual Return to the Board's Report;
  - ◆ Requirement to upload Annual Return on the website of the company, link of which to be provided in the Board's Report;
  - ◆ Reference to Section 403 for time limits removed.
- 93 **Return of change in stake ("MGT-10")** Omission of the requirement of filing return in Form MGT-10 with the Registrar in case of change of stake of the promoters and top ten shareholders of the company.
- 94 **Place of keeping and inspection of registers, returns, etc.**
- ◆ Omission of the requirement of filing of a copy with the Registrar of the proposed special resolution in advance for keeping registers u/s. 88 and copies of the annual return u/s. 92 at a place in which more than 1/10th of members entered in the register of members reside other than at the registered office of the company.
  - ◆ For the purposes of confidentiality, certain documents as may be prescribed shall not be open for inspection or availing copy thereof.
- 96 **Place for convening AGM of unlisted company** Annual general meeting of an unlisted company may be held at any place in India subject to prior consent of all the members of the company in writing or by electronic mode.
- 100 **Place of convening EGM** Extra-ordinary general meeting ("EGM") of the company shall be held at any place in India provided, EGM of wholly owned subsidiary incorporated outside India may be held outside India.
- 101 **Minimum consent required for calling general meeting** General meetings may be called at shorter notice subject to below mentioned consents in writing or by electronic mode:
- ◆ **Annual General Meeting:** Consent of at least 95% of members entitled to vote at the meeting.
  - ◆ **Extra-ordinary General Meeting:**
    - (i) **Company having share capital:** Majority of members entitled to vote who represent not less than 95% of the paid-up share capital of the company.

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- (ii) **Company not having share capital:** Not less than 95% of the total voting power exercisable at the meeting.

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

- 110 **Mandatory requirement to pass resolution by postal ballot** In case of matters required to be mandatorily conducted through postal ballot, the same may be transacted at a general meeting by the company which is required to provide electronic voting facility under section 108.
- 123 **Payment of dividend**
- ◆ Amount representing unrealized gains, notional gains or revaluation of assets and any changes in carrying amount of an asset or of a liability on measurement of the asset or the liability at fair value shall be excluded while calculating profits for dividend payout;
  - ◆ Provision has been made for declaration of interim dividend for any financial year or at any time during the period from closure of financial year till holding of the annual general meeting.
- 129 **Consolidation of Accounts** Financials of associate company shall also be consolidated with the financials of the Company.
- 132 **Constitution of National Financial Reporting Authority.** The appeals against the order of NFRA shall be examined by NCLAT.
- 134 **Board's Report**
- ◆ Omission of the requirement of the CEO to be a director in order to sign the report.
  - ◆ Omission of the requirement of the extract of the annual return in Form MGT-9 to be included in the board's report, instead web address of the annual return shall be provided in this regard.
  - ◆ Salient points of the CSR Policy, Remuneration Policy may be included in the Board's report and link where these policies are posted on website shall be provided.

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- Changes in the policies should be specifically highlighted in the salient points.
- ◆ Reference on board report with respect to information required to be disclosed therein is already disclosed in financial statements shall be sufficient.
  - ◆ The Central Government may prescribe an abridged Board's report, for the purpose of compliance with this section by a One Person Company or small company.
- 135 **Corporate Social Responsibility**
- ◆ For determining applicability or requirement to constitute CSR Committee, net worth, turnover or net profit of immediately preceding financial year shall be considered.
  - ◆ If company is not required to appoint Independent Director then the CSR Committee shall be constituted of 2 or more directors.
- 136 **Copies of audited financial statements**
- ◆ Copies of financial statements including consolidated financials, auditor's report and every other documents under this section can be sent in less than 21 days before the date of the annual general meeting provided consent as mentioned below is received:
    - (i) **Company having share capital:** Majority entitled to vote and who represent not less than 95% of such part of the paid-up share capital of the company as gives a right to vote at the meeting.
    - (ii) **Company not having share capital:** not less than 95% of the total voting power exercisable at the meeting.
  - ◆ Only listed companies are required to place separate audited financials of their subsidiary(ies) on its website.
  - ◆ Listed company having subsidiary outside India shall place financials of subsidiaries as follows:
    - (i) where such foreign subsidiary is statutorily required to prepare consolidated financial statement under any law of the country of its

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- incorporation, such consolidated financials shall be displayed.
- (ii) Where such foreign subsidiary is not required to get its financials 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.
- ◆ Copy of separate financials of the subsidiary(ies) shall be provided to the member of the company who asks for it.
  - ◆ Where the company has a foreign subsidiary, it can attach unaudited financial statements of such subsidiary, if getting results audited is not mandated under the law of foreign subsidiary, along with a declaration to this effect, together to be filed with ROC;
  - ◆ Where such financial statements of subsidiary are in language other than English, translated copy shall also be attached.
- 137 **Filing of financial statements with RoC**
- 139 **Ratification of appointment of statutory auditor** Requirement to ratify the appointment of auditor at every AGM is done away with.
- 143 **Right of auditor** Auditor of holding company has a right to access the records of associate companies as well.
- 149 **Companies to have Board of Directors**
- ◆ Person who has stayed in India for a minimum period of 182 days in previous financial year shall be considered as resident. Further, for newly incorporated companies, the requirement of 182 days shall apply proportionately at the end of financial year in which the company is incorporated.
  - ◆ Change in eligibility criteria for independent directors.
    - (a) Person withdrawing remuneration in the capacity of Independent director or having

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transaction not exceeding ten per cent. of his total income or such amount as may be prescribed, shall not be construed to have pecuniary relationship with company.

(b) none of whose relatives-

- (i) is holding any security of or interest in the company, its holding, subsidiary or associate company during the two immediately preceding financial years or during the current financial year. However, relative may hold security or interest in the company of face value not exceeding fifty lakh rupees or two per cent. of the paid-up capital of the company, its holding, subsidiary or associate company or such higher sum as may be prescribed;
- (ii) is indebted to the company, its holding, subsidiary or associate company or their promoters, or directors, in excess of such amount as may be prescribed during the two immediately preceding financial years or during the current financial year;
- (iii) has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, its holding, subsidiary or associate company or their promoters, or directors of such holding company, for such amount as may be prescribed during the two immediately preceding financial years or during the current financial year; or
- (iv) has any other pecuniary transaction or relationship with the company, or its subsidiary, or its holding or

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associate company amounting to two per cent. or more of its gross turnover or total income singly or in combination with the transactions referred to in sub-clause (i), (ii) or (iii);

- 152 **Requirement of DIN** Person to be appointed as a director, should have a DIN or such other number as prescribed under section 153.
- 153 **Identification number** Central Government may prescribe such number that shall be treated as DIN for the purpose of this Act, and in any case any individual holds or acquires such identification number, the requirement to apply for DIN shall not apply or shall apply in the prescribed manner.
- 160 **Requirement to deposit amount along with letter of candidature to be appointed as director** In case of company appointing Independent director or director recommended by NRC or board (in case the company does not have NRC), requirement to deposit amount shall not apply.
- 161 **Appointment of additional director, alternate director and nominee director**
- ◆ No person holding directorship in the company in any capacity can stand for alternate directorship in the same company.
  - ◆ Further, the change relates to extending the appointment of director in casual vacancy to private companies. Director appointed by the Board in case of casual vacancy shall subsequently be approved by the members in the general meeting.
- 164 **Disqualifications of director** New director appointed in the defaulted company shall not be held disqualified for 6 months from the date of his appointment.
- 165 **Maximum directorship** For reckoning the limit of directorships of twenty companies, the directorship in a dormant company shall not be included.
- 168 **Form DIR-11** Director is not necessarily required to file a copy of resignation with RoC.
- 167 **Vacation of office of director**
- ◆ The change deals with Section 167(1)(a) vacation of office of a director, if he incurs any of the disqualifications referred to under section 164. Director who has attracted disqualification under

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Section 164(2) shall vacate the office of director in all the companies where he is a director except in company which is in default.

- ◆ Further, office of director shall not be vacated for following period under section 167(1)(e) and (f):
  - (i) for thirty days from the date of conviction or order of disqualification;
  - (ii) where an appeal or petition is preferred within thirty days as aforesaid against the conviction resulting in sentence or order, until expiry of seven days from the date on which such appeal or petition is disposed of; or
  - (iii) where any further appeal or petition is preferred against order or sentence within seven days, until such further appeal or petition is disposed of.

173 **Participation in Board meeting through electronic mode**

Directors may attend the meeting by audio/video conferencing for all the items subject to presence of quorum in person for such matters for which electronic participation is restricted by the Central Government.

177 **Audit Committee**

- ◆ Related party transactions, other than those covered under section 188, if the audit committee does not approve of a transaction it shall make the recommendation to the Board.
- ◆ Flexibility is allowed to audit committees to ratify related party transactions entered into by director/officer of the company within 3 months from the date on which the transaction was entered into, subject to the amount not exceeding one crore rupees.
- ◆ In case such transaction is not approved it shall be voidable at the option of the audit committee, and if such transaction is with a related party to any director or is authorised by any director, the director shall indemnify the company against the loss.

The requirement of obtaining audit committee's approval for related party transactions, shall not apply to a transaction

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(other than a transaction referred to under section 188) between a holding company and its wholly owned subsidiary.

- 178 **Nomination and Remuneration Committee**
- ◆ NRC shall specify the manner for effective evaluation of performance of the Board, its committee and individual directors and review its implementation and compliance. Evaluation shall be carried out either by the Board, NRC or by independent external agency.
  - ◆ Salient features of NRC policy and changes therein, if any, shall be disclosed in the board's report along with the link to the website where policy is posted.
- 180 **Restrictions on Board Power**
- While calculating the threshold to borrow money without obtaining approval of shareholder's under section 180(1)(c) amount of security premium shall also be considered along with paid-up share capital and free reserves.
- 184 **Applicability of section 184**
- The change includes body corporate within the purview of section 184(5)(b) to align it with the provisions of section 184(2).
- 185 **Loan to directors**
- ◆ Giving of loan, providing guarantee or security is prohibited only where the same is given to any director of company, or of a company which is its holding company or any partner or relative of any such director; or any firm in which any such director or relative is a partner.
  - ◆ Loan may be provided, guarantee or security may be given in case of other entities where the director is interested by seeking sanction of shareholders by way of special resolution and the loans shall be utilized by the borrowing company for its principal business activities.
- 186 **Amendment to section 186**
- ◆ Term 'persons' for the purpose of section 186(2) excludes employees so that loans given as a part of the condition of service or pursuant to a scheme approved by all employees of the company are not covered in this Section.
  - ◆ Relaxation is provided from the requirement of passing special resolution in this section, where

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loan/guarantee/security is provided by a company to its wholly owned subsidiary or a joint venture company or acquisition by subscription or otherwise shares company by the holding of its wholly owned subsidiary provided the same shall be disclosed in financials in accordance with section 186(4).

◆ Provisions of section 186, except sub-section (1), shall not apply-

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

(b) to any investment-

(i) made by an investment company;

(ii) made in shares allotted in pursuance of clause (a) of sub-section (1) of section 62 or in shares allotted in pursuance of rights issues made by a body corporate;

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

188 **Related Party Transaction**

The requirement of related party to abstain from voting will not apply to a company in which ninety per cent or more members, in number, are relatives of promoters or are related parties.

196 **Appointment of person of and above 70 years of age**

Company may appoint or continue the appointment of a person as a managing director, whole time director or manager who has attained the age of seventy years in case no special resolution has been passed subject to approval of shareholders by ordinary resolution and the Central Government being

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- satisfied on an application that such appointment is beneficial to the company.
- 197 **Overall maximum managerial remuneration and managerial remuneration in case of absence or inadequacy of profits.**
- ◆ The changes replace the requirement of Central Government's approval under section 197 with approval by shareholders.
  - ◆ Approval of shareholders by special resolution shall be obtained for giving remuneration in excess of limits provided in second proviso to section 197(1).
  - ◆ Approval of banks/public financial institutions/non-convertible debenture holders/secured creditors is required to be obtained in case of default before obtaining the approval of members in the general meeting.
  - ◆ 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.
  - ◆ Further, other changes are clarificatory in nature, in light of the approval of the Central Government being done away with and disclosures required to be given by auditor in its report.
- 198 **Calculation of profits**
- ◆ For calculating net profit under this section the following shall not be deducted:
    - (i) profits, by way of premium on shares or debentures of the company, which are issued or sold by the company unless the company is an investment company as referred to in clause (a) of the *Explanation* to section 186.
    - (ii) any amount representing unrealised gains, notional gains or revaluation of assets
  - ◆ Further, any brought forward losses of the years prior to the commencement of the Act, 2013 shall be deducted while calculating net profit u/s. 198.
- 223 **Inspector's report**
- A copy of report submitted by inspector under Chapter XIV of the Act, 2013 may be availed by members and creditors of the

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- company or by any other person whose interest is likely to be affected.
- 247 **Valuation by registered valuer** Any person who has a direct or indirect interest or becomes so interested at any time during a period of three years prior to his appointment as valuer or three years after the valuation of assets was conducted by him shall not be appointed as valuer.
- 366 **Companies capable of being registered** Pursuant to section 366 of the Act, 2013 any partnership firm, LLP, cooperative society or any other business entity ("the Converting Company") may be converted into company limited by shares, guarantee or unlimited company under the Act, 2013. Previously the Converting Company were required to have minimum 7 members for conversion under section 366, however, the same has been substituted with 2 or more members as the private company can be incorporated with 2 or more members.
- 379 **Application of Act to foreign companies**
- ◆ It is clarified that Sections 380 to 386 (both inclusive) and sections 392 and 393 shall apply to all foreign companies.
  - ◆ Further, Central Government may exempt any class of foreign companies, specified in the Order, from any of the provisions the aforementioned sections.
  - ◆ A copy of every such order shall, as soon as may be after it is made, be laid before both the Houses of the Parliament.
- 384 **Applicability of section 135 to foreign companies** Provision of section 135 shall also apply to foreign companies, subject to such exceptions, modifications and adaptations as may be made therein by rules made under this Act, as they apply to a company incorporated in India.
- 391 **Application of sections 34 to 36 and Chapter XX** Provisions of Chapter XX shall apply *mutatis mutandis* for closure of the place of business of a foreign company in India as if it were a company incorporated in India in case such foreign company has raised monies through offer or issue of securities under this Chapter which have not been repaid or redeemed, subject to the provisions of section 376.
- 403 **Fee for filing, Etc.**
- ◆ Annual filing forms if filed beyond the period specified in those sections, it may be submitted, filed, registered or recorded, as the case may be, after expiry of the period so provided in those sections, on

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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. Higher additional fee will be imposed in case of default on two or more occasions.

- ◆ Forms, other than annual filing forms, if filed beyond the period specified in those sections, 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 fees as may be prescribed.
- ◆ It has been abundantly clarified that payment of additional fees will not condone the delay and that company and officers shall be liable for penalty or punishment for such failure or default.

## 406 **Nidhi Companies**

Central Government to declare a company as 'Nidhi' or 'Mutual Benefit Society'.

## 441 **Compounding of certain offences**

Tribunal should have the power to compound offences punishable with fine as well as offences punishable with imprisonment or fine or both.

## 446B **Lesser penalties for One Person Companies or Small companies**

New insertion with respect to an application of fines in case of non-compliance with certain provisions of the Act, 2013 specified therein by an OPC or small company.

### Clarificatory Amendments

<i>Section</i>	<i>Headings</i>	<i>Amendments</i>
2(28)	Cost Accountant	Cost accountant shall be as defined in clause (b) of sub-section (1) of Section 2 of the Cost and Works Accountants Act, 1959 and <b>who holds a valid certificate of practice under sub-section (1) of section 6 of that Act.</b>
2(49)	Interested Director	The definition of the term 'interested director' has been omitted, since the same is used in section 174(3) of the Act, 2013, explanation to which made reference to a director within the meaning of section 184(2).
47	Voting Rights	Second proviso to section 188(1) of the Act, 2013 restricts such member of the company to vote of any resolution placed before the members to which he is a related party under section 188. The change pertains to

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- incorporating the restriction under section 188 for the party to the contract to abstain from voting.
- 78 Application for registration of charge The change clarifies that in case the company fails to register a charge **within a period of 30 days** from the date of creation, the person in whose favour charge is created may apply to RoC for registration of the same.
- 117 Requirement to file MGT-14 The change removes the requirement to file resolution passed by shareholders under section 180(1) (a) and (c). However, the same being special resolutions, company is still required to file the same under section 117(3)(a) of the Act, 2013.
- 130 Re-opening of accounts on court's or Tribunal's orders
- ◆ In line with section 128(5), it is clarified that pursuant to section 130 of the Act, 2013, NCLT shall not order to re-open any books of account for financial year preceding 8 financial year unless any amendment has been made to section 128(5) whereby the company is required to maintain the same for such longer period.
  - ◆ Further, NCLT may give notice and take into consideration the representations, if any of any other person other than statutory bodies as prescribed under section 130.
- 141 Eligibility to be appointed as statutory auditor Change clarifies that a person who, directly or indirectly, renders any service referred to in section 144 to the company or its holding company or its subsidiary company shall not be appointed as statutory auditor. Further, the term "directly or indirectly" shall have the meaning assigned to it in the *Explanation* to section 144.
- 148 Cost Audit Term cost accountant in practice has been substituted by cost accountant as the same has been defined. Further, Institute of Cost and Works Accountants of India has been changed with Institute of Cost Accountants of India,
- 194 Forward dealing in securities of company by directors or KMP The change relates to omission of the provisions relating to prohibition on forward dealings in securities of the company by director or key manager personnel, as these are covered under SEBI Regulations.
- 195 Prohibition on insider trading of securities The change relates to omission of provisions relating to insider trading already covered under the SEBI Regulations.

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200	Company to fix the limit with regard to remuneration	In line with the changes made under section 197 of the Act, 2013 whereby requirement to obtain central government has been done away with, section 200 is not applicable on Central Government.
201	Forms of, and procedure in relation to, certain applications	In line with the amendments made under section 197 of the Act, 2013, term 'this Chapter' has been substituted with section 196, as the requirement to obtain Central Government's approval under section 197 has been removed.
236	Acquisition of minority shareholding	The change clarifies that the term transferor-company means a company whose shares are being transferred.
374	Obligations of companies registering under Chapter XXI	Change clarifies that upon conversion into company under Act, 2013, LLP registered under LLP Act, 2008 shall be deemed as dissolved.

## Amendments to penalties/fine

Section	To be imposed on	To be imposed for	Under Act, 2013	Amendment Act, 2017
42	Company, promoters and directors	Contravention of section 42	Fine upto an amount involved under private placement or INR 2 crore, whichever is higher.	Amount involved under private placement or INR 2 crore, whichever is lower.
76A	Company	Contravention of provisions or timelines section 73 or section 76 or rule thereunder	In addition of payment of amount of deposit, fine not less than INR 1 crore which may be extended upto INR 10 crore	In addition of payment of amount of deposit, fine not less than INR 1 crore or twice the amount of deposit accepted by the company, whichever is lower.
76A	Officer in default	Contravention of provisions or timelines section 73 or section 76 or rule thereunder	<ul style="list-style-type: none"><li>◆ Imprisonment upto 7 years</li><li>◆ Fine not less than INR 25 lakhs which may extend upto INR 2 crore</li><li>◆ Both</li></ul>	Imprisonment upto 7 years and fine which shall not be less than INR 25 Lakhs.

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117	Company	Failure to file resolution or agreements under section 117(1)	Fine not less than INR 5 Lakhs which may extend upto INR 25 Lakh	Fine of not less than INR 1 Lakhs which may extend upto INR 25 Lakh
117	Officer-in default- (including liquidator)	Failure to file resolution or agreements under section 117(1)	Fine not less than INR 1 Lakhs, which may extend upto INR 5 Lakhs.	Fine of not less than INR 50,000 but which may extend upto INR 5 Lakhs
140	Statutory Auditor	Not complying with section 140(2) while resigning.	Fine of INR 50,000 which may extend upto INR 5 Lakhs.	Fine of INR 50,000 or the remuneration of the auditor, whichever is less.
147	Auditor	Contravention of provisions of sections 139, 143, 144 and 145	Fine not less than INR 25,000 which may extend upto INR 5 Lakhs	Fine of not less than INR 25,000 but which may extend upto INR 5 Lakhs or 4 time the remuneration of auditor, whichever is less.
147	Auditor	Contravention is with the intention to deceive the company or its shareholders or creditors or tax authorities	Imprisonment which may extend to 1 year and fine which shall not be less than INR 1 Lakh but which may extend upto INR 25 Lakh.	Imprisonment which may extend to 1 year and fine which shall not be less than INR 50,000 but which may extend upto INR 25 Lakh or 8 times the remuneration of auditor, whichever is less.
147	Auditor	In case of criminal liability of an audit firm	New insertion	In respect of liability other than fine, the concerned partner or partners, who acted in a fraudulent manner or abetted or, as the case may be, colluded in any fraud shall only be liable.
184	Director	Contravention of 184(1) or (2)	<ul style="list-style-type: none"> <li>◆ Imprisonment upto 1 year</li> <li>◆ Fine of INR 5,000 which may extend upto INR 1 lakh</li> <li>◆ Both</li> </ul>	<ul style="list-style-type: none"> <li>◆ Imprisonment upto 1 year</li> <li>◆ Fine upto INR 1 lakh</li> <li>◆ both</li> </ul>

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| 447 | Any person guilty of such fraud | Punishment for fraud which 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 | <ul style="list-style-type: none"><li>◆ Imprisonment for a term which shall not be less than six months but which may extend to ten years</li><li>◆ 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.</li></ul> | <ul style="list-style-type: none"><li>◆ Imprisonment for a term which may extend to five years</li><li>◆ Fine which may extend to twenty lakh rupees</li><li>◆ or both.</li></ul>   |
| 447 | Any person guilty of such fraud | In other cases  | <ul style="list-style-type: none"><li>◆ Imprisonment for a term which shall not be less than six months but which may extend to ten years</li><li>◆ 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.</li></ul> | <ul style="list-style-type: none"><li>◆ Imprisonment for a term which shall not be less than six months but which may extend to ten years</li><li>◆ 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.</li></ul> |

Note: Reference to section 403 has been removed from sections 157, 121, 117, 89, 92, 121 and 137 in line with the amendment carried out under section 403.

## Amendments with respect to statutory bodies

<i>Section</i>	<i>Heading</i>	<i>Amendments</i>
216	Investigation of ownership of company	Inspector appointed by central government under section 216 shall also report about the person(s) who have or had beneficial interest in shares of a company or who are or have been beneficial owners or significant beneficial owner of a company.
409	Qualification of President and Members of NCLT	Changes are made in eligibility criteria for appointment of a person as member or President of NCLT.

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| 410  | Appeal against the order of NFRA                            | The change provides that appeal against the orders of National Financial Reporting Authority ("NFRA") shall also be heard by the NCLAT.  |
| 411  | Qualification of President and Members of NCLAT             | Changes are made in eligibility criteria for appointment of a person as member or Chairperson of NCLAT.  |
| 412  | Selection of members of the Tribunal and Appellate Tribunal | The Members of the Tribunal and the Technical Members of the Appellate Tribunal shall be appointed on the recommendation of a Selection Committee consisting of members as prescribed under section 412(2) |
| 435  | Establishment of special courts                             | Change in the constitution of special court.   |
| 438  | Application of Code to proceedings before Special Court.    | The change is clarificatory in nature, in light of the amendments made to section 435.   |
| 439  | Offences to be non-cognizable                               | The change provides for complaints to be filed by a person who is a member of a company without any share capital.   |
| 440  | Transitional provisions.                                    | The change is clarificatory in nature, in light of the amendments made to section 435.   |
| 446A | Factors for determining level of punishment                 | Factors which shall be considered by court or the Special Court, while deciding the fine or imprisonment under the Act has been laid down.   |

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## How Related Party Transactions are regulated in India?

[taxmann.com](http://taxmann.com) 59 (Article)

### Introduction

1. Related Party Transaction (RPT) simply means any transaction between two parties who are joined together through a special relationship. Some of the examples are:

- ◆ A director or his relative;
- ◆ A key managerial personnel or his relative;
- ◆ A firm, in which a director, manager or his relative is a partner;
- ◆ A private company in which a director or manager is a member or director;
- ◆ Anybody corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager;
- ◆ Any person on whose advice, directions or instructions a director or manager is accustomed to act:

Corporates generally transact amongst group entities or related parties for operational ease. However, it can easily be misused by the corporates as a tool to evade taxes. This is also evident from some of the recent corporate scams.

Government has been finding various means and ways to regulate these types of transactions. Thus, various legislations operational in India have made it mandatory to report the transactions with the concerned authority. The reporting regime prevalent in India aims to assess the genuineness of the transaction by comparing it with Arm's length transaction.

### 2. Two regulations which deal with RPTs in India

- ◆ The Income Tax Act, 1961; and
- ◆ The Companies Act, 2013.

These have been discussed in details below:-

#### 2.1 Income Tax Act, 1961

<i>Type of Reporting</i>	<i>Transactions to be reported</i>	<i>Purpose of reporting</i>	<i>Consequence</i>	<i>Due Date</i>
Tax Audit Report	Any expense (capital or revenue) in respect of	◆ Auditor to certify that	So much of the expenses	◆ September 30, 2017

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	<p>which payment has been made to a person referred to as "Related Party"</p>	<p>the expense is not reasonable and excessive. If otherwise, same needs to be mentioned in a note.</p> <ul style="list-style-type: none"> <li>◆ This helps Indian Revenue Authority in examining the genuineness of the transaction.</li> </ul>	<p>which are excessive and unreasonable will not be allowed as business expenditure and, hence, would be added to the taxable income of the taxpayer</p>	<ul style="list-style-type: none"> <li>◆ November 30,2017 (for corporates having international transaction)</li> </ul>
<p>Form 3CEB (Due Date- November 30)</p>	<ul style="list-style-type: none"> <li>◆ International transaction (a) transaction between two or more associated enterprises, either or both of whom are non-residents.</li> <li>◆ Specified Domestic transaction (exclusive list prescribed) if the aggregate value of all</li> </ul>	<ul style="list-style-type: none"> <li>◆ To ensure that the transaction with the related party is at arm's length</li> <li>◆ Any deviation needs to be reported</li> </ul>	<p>Taxable income of the taxpayer is adjusted if the value of transaction is not at arm's length price</p>	<ul style="list-style-type: none"> <li>◆ November 30,2017</li> </ul>

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	the specified domestic transactions exceeds the threshold limit of INR 5 Crore			
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## The Companies Act, 2013

**2.2** The corporates entering into specified transactions with the related party have to seek following approvals:

- (1) Approval of board of directors. director who has `a specified interest` in the contract or arrangement with such related party must not be present at the meeting during the discussions pertaining to the subject matter of the contract or arrangement. However, private companies are exempted from this obligation, upon disclosure of interest by directors.
- (2) Shareholders' approval is required in case the amount of transaction exceeds prescribed threshold limit. However, private companies are exempted from this obligation, upon disclosure of interest by directors.

However, the above-stated conditions shall not be applicable in case of transactions which a company enters, into in its ordinary course of business which are on arm`s length basis.

## Non-Compliance

**3.** In cases where a contract or an arrangement is entered into by a director or any other employee, without obtaining the consent of the board or approval in the general meeting then in such cases, the contract or arrangement shall be treated as voidable at the option of board of directors. In case of listed company, such a director or employee who contravene the provisions of the act shall be punishable with imprisonment for a term which may extend to one year or fine of not less than twenty-five thousand rupees which may extend to five lakh rupees or both and in case of any other company, such director or employee shall be punishable with fine of not less than twenty-five thousand rupees, but which may extend to five lakhs.

## Disclosures

**4.** There is no specific reporting requirement before any authority. However, the company needs to do certain disclosures as stated below: -

*Disclosures*

*Type*

*Consequence*

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- Board Meeting The agenda of the board meeting in which resolution is passed must consist of following:
- ◆ Name and nature of relationship with related party
  - ◆ The duration of the contract
  - ◆ Material terms of the contract or arrangement
  - ◆ If any advance has been paid or received for the contract or arrangement
  - ◆ Manner of determining pricing and commercial terms
- Disclosures by interested directors
- ◆ Every director having any direct or indirect interest in the contract or arrangement must disclose that interest and concern. Such director is also not allowed to participate in such meeting, except in case of private companies.
  - ◆ In case of listed company, such a director or employee who contravenes the provisions of the Act shall be punishable with imprisonment for a term which may extend to one year or fine of not less than twenty-five thousand rupees which may extend to five lakh rupees or both
  - ◆ In case of any other company, such director or employee shall be punishable with fine of not less than twenty-five thousand rupees but which may extend to five lakhs.
- Shareholders' Meeting
- ◆ In case, the amount of transaction exceeds the limits prescribed, the approval of shareholders will also be required.
  - ◆ In case of listed company, such a director or employee who contravenes the provisions of the Act shall be punishable with imprisonment for a term which may extend to one year or with fine of not less than twenty-five thousand rupees which may extend to five lakh rupees or both
  - ◆ In case of any other company, such director or employee shall be punishable with fine of not less than twenty-five thousand rupees but which may extend to five lakhs.
- Explanatory Statement annexed with the Notice calling for General meeting, will also include the prescribed details of the transactions proposed, such as basis of transactions, material terms,

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amount, and relationship with the related party, etc.

Director's report

- ◆ Every related party transaction shall be disclosed in the board's report along with justification of entering into such transaction
- ◆ Punishable with a fine which shall not be of less than fifty thousand rupees but which may extend to twenty-five lakh rupees; and
- ◆ every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be of less than fifty thousand rupees but which may extend to five lakh rupees, or with both.

Register

- ◆ Every related party transactions must be disclosed in the register maintained by the company
- ◆ Every director who fails to comply with the provisions of this section and the rules made thereunder shall be liable to a penalty of twenty-five thousand rupees.

Annual Filing

- ◆ Submission of company's Annual report which includes audited financial statement and Director's report with the Registrar of Companies within 30 days from the date of Annual general Meeting
- ◆ The company shall be punishable with fine of one thousand rupees for every day during which the failure continues but which shall not be more than ten lakh rupees;
- ◆ Following person shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be of less than one lakh rupees but which may extend to five lakh rupees, or with both:
  - (1) the Managing Director and the Chief Financial Officer of the company
  - (2) In the absence of above two, any other director who is charged by the Board with the responsibility of complying

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with the provisions of this section, and

- (3) in the absence of the above, all the directors of the company.

## Concluding Remarks

5. Though it is very critical to have RPT from commercial standpoint, yet it is important to have the same regulated. But having said this, it cannot be denied that a related-party transaction can play a beneficial role by saving transaction costs and improving the operating efficiency of a company. In fact, there may be several transactions that are unavoidable because they make commercial sense for the company; if companies are prohibited from entering into such transactions, it might work against the principle of maximising the shareholders value.

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## Income Tax Updates

### 1. Government sends tax notices to cryptocurrency investors as trading hits \$3.5 billion

The government has sent tax notices to tens of thousands of people dealing in cryptocurrency after a nationwide survey showed more than \$3.5 billion worth of transactions have been conducted over a 17-month period, the income tax department said. Tech-savvy young investors, real estate players and jewellers are among those invested in bitcoin and other virtual currencies, tax officials told Reuters after gathering data from nine exchanges in Mumbai, Delhi, Bengaluru and Pune. Governments around the world are grappling with how to regulate cryptocurrency trading, and policymakers are expected to discuss the matter at a G20 summit in Argentina in March.

### 2. Unexplained deposits in focus, taxmen ordered to go all out in the next three months

The income-tax department will in all likelihood go into overdrive in the next three months with the Central Board of Direct Taxes — the apex body — alerting all senior tax officials that their performance is being "monitored at the highest level." It will also give a renewed push towards imposing and recovering tax on Rs 3 lakh crore deposit, which is suspected to be the quantum of unexplained cash parked with banks post demonetisation. "There will be searches, surveys, information verification, and follow-ups.

## GST Updates

### 3. GST Council Meet: What happened in terms of invoice filing and rate cuts?

Concerned over a trend of falling revenue, the Goods and Services Tax (GST) Council on Thursday resolved to bring in a clutch of anti-evasion measures but refrained from resuming the suspended system of three comprehensive returns, in order not to add to the compliance burden the taxpayers are vexed about. It also reduced the tax rates on as many as 29 goods, including old and used cars, SUVs and other vehicles, drinking water in 20-litre bottles, LPG supplied to households by private distributors, bio-diesel, bio-fuel buses, a clutch of pesticides and diamonds & precious stones.

### 4. GST: Compliance falls for invoice returns

Compliance level for GST invoice-level filings continues to be low despite several extensions and, in all probability, are just over 30% right now. In the case of summary returns, however, compliance levels have been higher at around 65-70%. Detailed invoice-level filings are important because it is only after these details are available that GST authorities can check the levels of tax evasion. While the break-even GST collection is likely to be in the range of Rs 95,000-1,00,000 crore per month, in April-November collections have averaged Rs 87,000 — after Rs 92,000 crore for July, collections fell to Rs 81,000 crore for November.

### 5. How GST has taken the suspense out of Budget

The Goods and Services Tax (GST), which was imposed on July 1 last year, radically changed many things in Indian economy. One change that has gone unnoticed is its impact on the Budget. The GST has shorn the Budget of its suspense and mystery by taking away half of its work, the indirect taxes. Now GST Council decides tax rates

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# HAND PICKED ARTICLES & UPDATES

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for goods and services. In fact, Finance Minister Arun Jaitley had dropped indirect tax proposals in his previous Budget in anticipation of GST coming in force after a few months.



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