

Bill No. 73 of 2016

THE COMPANIES (AMENDMENT) BILL, 2016

A

BILL

further to amend the Companies Act, 2013.

BE it enacted by Parliament in the Sixty-seventh Year of the Republic of India as follows:—

1. (1) This Act may be called the Companies (Amendment) Act, 2016.

Short title and commencement.

5 (2) 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 and any reference in any provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

18 of 2013.

2. In section 2 of the Companies Act, 2013 (hereinafter referred to as the principal Act),—

Amendment of section 2.

10 (i) in clause (6), for the *Explanation*, the following *Explanation* shall be substituted, namely:—

Explanation.—For the purpose of this clause—

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(a) the expression "significant influence" means control of at least twenty per cent. of total voting power, or control of or participation in business decisions under an agreement;

(b) the expression "joint venture" means a joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement;';

(ii) for clause (28), the following clause shall be substituted, namely:—

'(28) "Cost Accountant" means a cost accountant as defined in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959 and who holds a valid certificate of practice under sub-section (1) of section 6 of that Act;'

(iii) in clause (30), the following proviso shall be inserted, namely:—

"Provided that—

(a) the instruments referred to in Chapter III-D of the Reserve Bank of India Act, 1934; and

(b) such other instrument, as may be prescribed by the Central Government in consultation with Reserve Bank of India, issued by a company,

shall not be treated as debenture;";

(iv) in clause (41), in the first proviso, after the word "subsidiary", the words "or associate company" shall be inserted;

(v) in clause (46), the following *Explanation* shall be inserted, namely:—

Explanation.—For the purposes of this clause, the expression "company" includes any body corporate;';

(vi) clause (49) shall be omitted;

(vii) in clause (51),—

(a) in sub-clause (iv), the word "and" shall be omitted;

(b) for sub-clause (v), the following sub-clauses shall be substituted, namely:—

"(v) such other officer, not more than one level below the directors who is in whole-time employment, designated as key managerial personnel by the Board; and

(vi) such other officer as may be prescribed;";

(viii) in clause (57), 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;

(ix) in clause (71), in sub-clause (a), after the word "company;", the word "and" shall be inserted;

(x) in clause (76), for sub-clause (viii), the 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 a company;";

(xi) in clause (85),—

(a) in sub-clause (i), for the words "five crore rupees", the words "ten crore rupees" shall be substituted;

(b) in sub-clause (ii),—

(A) for the words "as per its last profit and loss account", the words "as per profit and loss account for the immediately preceding financial year" shall be substituted;

(B) for the words "twenty crore rupees", the words "one hundred crore rupees" shall be substituted;

(xii) in clause (87),—

(a) in sub-clause (ii), for the words "total share capital", the words "total voting power" shall be substituted;

(b) the proviso shall be omitted;

(c) in the *Explanation*, item (d) shall be omitted;

(xiii) for clause (91), the following clause shall be substituted, namely:—

'(91) "turnover" means the gross amount of revenue recognised in the profit and loss account from the sale, supply, or distribution of goods or on account of services rendered, or both, by a company during a financial year;'

3. After section 3 of the principal Act, the following section shall be inserted, namely:—

Insertion of new section 3A.

"3A. If at any time the number of members of a company is reduced, in the case of a public company, below seven, in the case of a private company, below two, and the company carries on business for more than six months while the number of members is so reduced, every person who is a member of the company during the time that it so carries on business after those six months and is cognisant of the fact that it is carrying on business with less than seven members or two members, as the case may be, shall be severally liable for the payment of the whole debts of the company contracted during that time, and may be severally sued therefor."

Members severally liable certain cases.

4. In section 4 of the principal Act,—

Amendment of section 4.

(i) in sub-section (1), for clause (c), the following clause shall be substituted, namely:—

"(c) 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;"

(ii) in sub-section (5), in clause (i), for the words "sixty days from the date of the application", the words "twenty days from the date of approval or such other period as may be prescribed" shall be substituted;

(iii) after sub-section (6), the following sub-sections shall be inserted, namely:—

"(6A) A company may adopt the model memorandum applicable to such a company.

(6B) In case of any company, which is registered after the commencement of the Companies (Amendment) Act, 2016, in so far as the registered memorandum of such company does not exclude or modify the contents in the model memorandum applicable to such company, those contents shall, so far as applicable, be the contents of the Memorandum of that company in the same manner and to the extent as if that was contents of the duly registered memorandum of the company."

5. In section 7 of the principal Act, in sub-section (1), in item (c), for the words "an affidavit", the words "a declaration" shall be substituted.

Amendment of section 7.

Amendment of section 12.	<p>6. In section 12 of the principal Act,—</p> <p>(i) in sub-section (1), for the words "on and from the fifteenth day of its incorporation", the words "within thirty days of its incorporation" shall be substituted;</p> <p>(ii) in sub-section (4), for the words "within fifteen days", the words "within thirty days" shall be substituted.</p>	5
Amendment of section 21.	<p>7. In section 21 of the principal Act, for the words "an officer of the company", the words "an officer or employee of the company" shall be substituted.</p>	
Amendment of section 26.	<p>8. In section 26 of the principal Act, in sub-section (1),—</p> <p>(i) after the words "signed and shall", the following shall be inserted, namely:—</p> <p style="padding-left: 40px;">"state such information and set out such reports on financial information as may be specified by the Securities and Exchange Board in consultation with the Central Government:</p> <p style="padding-left: 40px;">Provided that until the Securities and Exchange Board specifies the information and reports on financial information under this sub-section, the regulations made by the Securities and Exchange Board under the Securities and Exchange Board of India Act, 1992, in respect of such financial information or reports on financial information shall apply.";</p> <p>(ii) the clauses (a) and (b) shall be omitted.</p>	10 15 15 of 1992.
Amendment of section 35.	<p>9. In section 35 of the principal Act, in sub-section (2), after clause (b), the following clause shall be inserted, namely:—</p> <p style="padding-left: 40px;">"(c) that, as regards 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 ; and 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 and that 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."</p>	20 25 30
Substitution of section 42.	<p>10. For section 42 of the principal Act, the following section shall be substituted, namely:—</p>	
Issue of shares on private placement basis.	<p style="padding-left: 40px;">'42. (1) A company may, subject to the provisions of this section, make a private placement of securities.</p> <p style="padding-left: 40px;">(2) A private placement shall be made only to a select group of persons who have been identified by the Board (herein referred to as "identified persons"), whose number shall not exceed fifty or such higher number as may be prescribed [excluding the qualified institutional buyers and employees of the company being offered securities under a scheme of employees stock option in terms of provisions of clause (b) of sub-section (1) of section 62], in a financial year subject to such conditions as may be prescribed.</p> <p style="padding-left: 40px;">(3) A company making private placement shall issue private placement offer and application in such form and manner as may be prescribed to identified persons, whose names and addresses are recorded by the company in such manner as may be prescribed:</p> <p style="padding-left: 40px;">Provided that the private placement offer and application shall not carry any right of renunciation.</p> <p style="padding-left: 40px;"><i>Explanation I.</i>—"private placement" means any offer or invitation to subscribe or issue of securities to a select group of persons by a company (other than by way of public offer) through private placement offer-cum-application, which satisfies the conditions specified in this section.</p>	35 40 45 50

Explanation II.—"qualified institutional buyer" means the qualified institutional buyer as defined in the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009, as amended from time to time, made under the Securities and Exchange Board of India Act, 1992.

15 of 1992.

5 *Explanation III.*—If a company, listed or unlisted, makes an offer to allot or invites subscription, or allots, or enters into an agreement to allot, securities to more than the prescribed number of persons, whether the payment for the securities has been received or not or whether the company intends to list its securities or not on any recognised stock exchange in or outside India, the same shall be deemed to be an offer
10 to the public and shall accordingly be governed by the provisions of Part I of this Chapter.

(4) Every identified person willing to subscribe to the private placement issue shall apply in the private placement and application issued to such person alongwith subscription money paid either by cheque or demand draft or other banking channel and not by cash:
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Provided that a company shall not utilise monies raised through private placement unless allotment is made and the return of allotment is filed with the Registrar in accordance with sub-section (8).

(5) No fresh offer or invitation under this section shall be made unless the allotments with respect to any offer or invitation made earlier have been completed or that offer or invitation has been withdrawn or abandoned by the company:
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Provided that, subject to the maximum number of identified persons under sub-section (2), a company may, at any time, make more than one issue of securities to such class of identified persons as may be prescribed.

(6) A company making an offer or invitation under this section shall allot its securities within sixty days from the date of receipt of the application money for such securities and if the company is not able to allot the securities within that period, it shall repay the application money to the subscribers within fifteen days from the expiry of sixty days and if the company fails to repay the application money within the aforesaid period, it shall be liable to repay that money with interest at the rate of twelve per cent. per annum from the expiry of the sixtieth day:
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Provided that monies received on application under this section shall be kept in a separate bank account in a scheduled bank and shall not be utilised for any purpose other than—

35 (a) for adjustment against allotment of securities; or

(b) for the repayment of monies where the company is unable to allot securities.

(7) No company issuing securities under this section shall release any public advertisements or utilise any media, marketing or distribution channels or agents to inform the public at large about such an issue.
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(8) A company making any allotment of securities under this section, shall file with the Registrar a return of allotment within fifteen days from the date of the allotment in such manner as may be prescribed, including a complete list of all allottees, with their full names, addresses, number of securities allotted and such other relevant information as may be prescribed.
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(9) If a company defaults in filing the return of allotment within the period prescribed under sub-section (8), the company, its promoters and directors shall be liable to a penalty for each default of one thousand rupees for each day during which such default continues but not exceeding twenty-five lakh rupees.

(10) Subject to sub-section (11), if a company makes an offer or accepts monies in contravention of this section, the company, its promoters and directors shall be
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liable for a penalty which may extend to the amount raised through the private placement or two crore rupees, whichever is lower, and the company shall also refund all monies with interest as specified in sub-section (6) to subscribers within a period of thirty days of the order imposing the penalty.

(11) Notwithstanding anything contained in sub-section (9) and sub-section (10), any private placement issue not made in compliance of the provisions of the sub-section (2) shall be deemed to be a public offer and all the provisions of this Act and the Securities Contracts (Regulation) Act, 1956 and Securities and Exchange Board of India Act, 1992 shall be applicable. 5
42 of 1956.
15 of 1992.

Amendment of section 47. 11. In section 47, in sub-section (1), for the words, figures and brackets "provisions of section 43 and sub-section (2) of section 50", the words, figures and brackets "provisions of section 43, sub-section (2) of section 50 and sub-section (1) of section 188" shall be substituted. 10

Amendment of section 53. 12. In section 53 of the principal Act,—
(i) in sub-section (2), for the words "discounted price", the word "discount" shall be substituted; 15

(ii) after sub-section (2), the following sub-section shall be inserted, namely:—

"(2A) Notwithstanding anything contained in sub-sections (1) and (2), a 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." 20
2 of 1934
10 of 1949.

Amendment of section 54. 13. In section 54, in sub-section (1), clause (c) shall be omitted.

Amendment of section 62. 14. In section 62 of the principal Act,— 25

(i) in sub-section (1), in clause (c), for the words "of a registered valuer subject to such conditions as may be prescribed", the words and figures "of a registered valuer, subject to the compliance with the applicable provisions of Chapter III and any other conditions as may be prescribed" shall be substituted;

(ii) for sub-section (2), the following sub-section shall be substituted, namely:— 30

"(2) The notice referred to in sub-clause (i) of clause (a) of sub-section (1) shall be dispatched through registered post or speed post or through electronic mode or courier or any other mode having proof of delivery to all the existing shareholders at least three days before the opening of the issue.".

Amendment of section 73. 15. In section 73 of the principal Act, in sub-section (2),— 35

(i) for clause (c), the following clause shall be substituted, namely:—

"(c) depositing, on or before the 30th day of April each year, such sum which shall not be less than twenty per cent. of the amount of its deposits maturing during the following financial year and kept in a scheduled bank in a separate bank account to be called deposit repayment reserve account;" 40

(ii) clause (d) shall be omitted;

(iii) in clause (e), for the words "such deposits;", the following shall be substituted, namely:—

"such deposits and where a default had occurred, the company made good the default and a period of five years had lapsed since the date of making good the default;" 45

Amendment of section 74. 16. In section 74, in sub-section (1), for clause (b), the following clause shall be substituted, namely:—

"(b) repay within three years from such commencement or on or before expiry of the period for which the deposits were accepted, whichever is earlier:

Provided that renewal of any such deposits shall be done in accordance with the provisions of Chapter V and the rules made thereunder."

5 **17.** In section 76A of the principal Act, in clause (a), for the words "one crore rupees", the words "one crore rupees or twice the amount of deposit accepted by the company, whichever is lower" shall be substituted. Amendment of section 76A.

18. In section 77 of the principal Act, in sub-section (I), after the third proviso, the following proviso shall be inserted, namely:— Amendment of section 77.

10 "Provided also that this section shall not apply to such charges as may be prescribed in consultation with the Reserve Bank of India."

19. In section 78 of the principal Act, for the words "register the charge within the period specified in section 77", the words "register the charge within the period of thirty days referred to in sub-section (I) of section 77" shall be substituted. Amendment of section 78.

15 **20.** In section 82 of the principal Act, in sub-section (I),— Amendment of section 82.

(i) the words "and the provisions of sub-section (I) of section 77 shall, as far as may be, apply to an intimation given under this section" shall be omitted;

(ii) the following proviso shall be inserted, namely:—

20 "Provided that the Registrar may, on an application by the company or the charge holder, allow such intimation of payment or satisfaction to be made within a period of three hundred days of such payment or satisfaction on payment of such additional fees as may be prescribed."

21. In section 89 of the principal Act, after sub-section (9), the following sub-section shall be inserted, namely:— Amendment of section 89.

25 "(10) For the purposes of this section and section 90, beneficial interest in a share includes, directly or indirectly, through any contract, arrangement or otherwise, the right or entitlement of a person alone or together with any other person to—

(i) exercise or cause to be exercised any or all of the rights attached to such share; or

30 (ii) receive or participate in any dividend or other distribution in respect of such share."

22. For section 90 of the principal Act, the following section shall be substituted, namely:— Substitution of section 90.

35 '90. (1) Every individual, who acting alone or together, or through one or more persons or trust, including a trust and persons resident outside India, holds beneficial interests, of not less than twenty-five per cent. or such other percentage as may be prescribed, in shares of a company or the right to exercise, or the actual exercising of significant influence or control as defined in clause (27) of section 2, over the company (herein referred to as "significant beneficial owner"), shall make a declaration to the company, specifying the nature of his interest and other particulars, in such manner and within such period of acquisition of the beneficial interest or rights and any change thereof, as may be prescribed: Register of significant beneficial owners in a company.

 Provided that the Central Government may prescribe a class or classes of persons who shall not be required to make declaration under this sub-section.

45 (2) Every company shall maintain a register of the interest declared by individuals under sub-section (1) and changes therein which shall include the name of individual, his date of birth, address, details of ownership in the company and such other details as may be prescribed.

(3) The register maintained under sub-section (2) shall be open to inspection by any member of the company on payment of such fees as may be prescribed.

(4) Every company shall file a return of significant beneficial owners of the company and changes therein with the Registrar containing names, addresses and other details as may be prescribed within such time, in such form and manner as may be prescribed. 5

(5) A company shall give notice, in the prescribed manner, to any person (whether or not a member of the company) whom the company knows or has reasonable cause to believe—

(a) to be a significant beneficial owner of the company; 10

(b) to be having knowledge of the identity of a significant beneficial owner or another person likely to have such knowledge; or

(c) to have been a significant beneficial owner of the company at any time during the three years immediately preceding the date on which the notice is issued, 15

and who is not registered as a significant beneficial owner with the company as required under this section.

(6) The information required by the notice under sub-section (5) shall be given by the concerned person within a period not exceeding thirty days of the date of the notice. 20

(7) The company shall,—

(a) where that person fails to give the company the information required by the notice within the time specified therein; or

(b) where the information given is not satisfactory,

apply to the Tribunal within a period of fifteen days of the expiry of the period specified in the notice, for an order directing that the shares in question be subject to restrictions with regard to transfer of interest, suspension of all rights attached to the shares and such other matters as may be prescribed. 25

(8) On any application made under sub-section (7), the Tribunal may, after giving an opportunity of being heard to the parties concerned, make such order restricting the rights attached with the shares within a period of sixty days of receipt of application or such other period as may be prescribed. 30

(9) The company or the person aggrieved by the order of the Tribunal may make an application to the Tribunal for relaxation or lifting of the restrictions placed under sub-section (8). 35

(10) If any person fails to make a declaration as required under sub-section (1), he shall be punishable with fine which shall not be less than one lakh rupees but which may extend to ten lakh rupees and where the failure is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the failure continues. 40

(11) If a company, required to maintain register under sub-section (2) and file the information under sub-section (4), fails to do so or denies inspection as provided therein, the company and every officer of the company who is in default shall be punishable with fine which shall not be less than ten lakh rupees but which may extend to fifty lakh rupees and where the failure is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the failure continues. 45

(12) If any person wilfully furnishes any false or incorrect information or suppresses any material information of which he is aware in the declaration made under this section, he shall be liable to action under section 447. 50

23. In section 92 of the principal Act,—
- (i) in sub-section (1),—
- (a) clause (c) shall be omitted;
- (b) in clause (j), the words "indicating their names, addresses, countries of incorporation, registration and percentage of shareholding held by them" shall be omitted;
- (c) after the proviso, the following proviso shall be inserted, namely:—
- "Provided further that the Central Government may prescribe abridged form of annual return for One Person Company and small company.";
- (ii) for sub-section (3), the following sub-section shall be substituted, namely:—
- "(3) Every company shall place a copy of the annual return on the website of the company, if any, and the web-link of such annual return shall be disclosed in the Board's report."
24. Section 93 of the principal Act shall be omitted.
25. In section 94 of the principal Act,—
- (i) in sub-section (1), in the first proviso, the words "and the Registrar has been given a copy of the proposed special resolution in advance" shall be omitted;
- (ii) in sub-section (3), the following proviso shall be inserted, namely:—
- "Provided that particulars of the register or index or return as may be prescribed shall not be available for inspection under sub-section (2) or for taking extracts or copies under this sub-section."
26. In section 96 of the principal Act, in sub-section (2), in the proviso, for the words "Provided that", the following shall be substituted, namely:—
- "Provided that annual general meeting of an unlisted company may be held at any place in India if consent is given in writing or by electronic mode by all the members in advance:
- Provided further that".
27. In section 100 of the principal Act, in sub-section (1), the following proviso shall be inserted, namely:—
- "Provided that an extraordinary general meeting of the company, other than of the wholly owned subsidiary of a company incorporated outside India, shall be held at a place within India."
28. In section 101 of the principal Act, in sub-section (1), for the proviso, the following proviso shall be substituted namely:—
- "Provided that a general meeting may be called after giving shorter notice than that specified in this sub-section if consent, in writing or by electronic mode, is accorded thereto—
- (i) in the case of an annual general meeting, by not less than ninety-five per cent. of the members entitled to vote thereat; and
- (ii) in the case of any other general meeting, by members of the company—
- (a) holding, if the company has a share capital, not less than ninety-five per cent. of such part of the paid-up share capital of the company as gives a right to vote at the meeting; or
- (b) having, if the company has no share capital, not less than ninety-five per cent. of the total voting power exercisable at that meeting:

Amendment of section 92.

Omission of section 93.

Amendment of section 94.

Amendment of section 96.

Amendment of section 100.

Amendment of section 101.

Provided further that where 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, those members 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."

Amendment of section 110. **29.** In section 110 of the principal Act, in sub-section (1), the following proviso shall be inserted, namely:— 5

"Provided that any item of business required to be transacted by means of postal ballot under clause (a), may be transacted at a general meeting by a company which is required to provide the facility to members to vote by electronic means under section 108, in the manner provided in that section." 10

Amendment of section 117. **30.** In section 117 of the principal Act,—

(i) in sub-section (2),—

(a) for the words "not be less than five lakh rupees", the words "not be less than one lakh rupees" shall be substituted;

(b) for the words "one lakh rupees", the words "fifty thousand rupees" shall be substituted; 15

(ii) in sub-section (3),—

(a) clause (e) shall be omitted;

(b) in clause (g), in the proviso, the word "and" shall be omitted and the following proviso shall be inserted, namely:— 20

"Provided further that nothing contained in this clause shall apply to a banking company in respect of a resolution passed to grant loans, or give guarantee or provide security in respect of loans under clause (f) of sub-section (3) of section 179 in the ordinary course of its business; and." 25

Amendment of section 123. **31.** In section 123 of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely:—

"(3) 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: 30

Provided that 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." 35

Amendment of section 129. **32.** In section 129 of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely:— 40

"(3) Where a company has one or more subsidiaries or associate companies, it shall, in addition to financial statements provided under sub-section (2), prepare a consolidated financial statement of the company and of all the subsidiaries and associate companies in the same form and manner as that of its own and in accordance with applicable accounting standards, which shall also be laid before the annual general meeting of the company along with the laying of its financial statement under sub-section (2): 45

Provided that the company shall also attach along with its financial statement, a separate statement containing the salient features of the financial statement of its subsidiary or subsidiaries in such form as may be prescribed: 50

Provided further that the Central Government may provide for the consolidation of accounts of companies in such manner as may be prescribed."

33. In section 130 of the principal Act,—

Amendment of
section 130.

(i) in sub-section (1), in the proviso,—

(a) after the words "regulatory body or authorities concerned", the words "or any other person concerned" shall be inserted;

5 (b) after the words "the body or authority concerned", the words "or the other person concerned" shall be inserted;

(ii) after sub-section (2), the following sub-section shall be inserted, namely:—

10 "(3) No order shall be made under sub-section (1) in respect of re-opening of books of account relating to a period earlier than eight financial years immediately preceding the current financial year:

Provided that where a direction has been issued by the Central Government under the proviso to sub-section (5) of section 128 for keeping of books of account for a period longer than eight years, the books of account may be ordered to be re-opened within such longer period."

15 34. In section 132 of the principal Act, in sub-section (4), in clause (c), in sub-clause (A), in item (II), for the words "ten lakh rupees", the words "five lakh rupees" shall be substituted.

Amendment of
section 132.

35. In section 134 of the principal Act,—

Amendment of
section 134.

(a) for sub-section (1), the following sub-section shall be substituted, namely:—

20 "(1) The financial statement, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board by the chairperson of the company where he is authorised by the Board or by two directors out of which one shall be managing director, if any, and the Chief Executive Officer, the Chief Financial Officer and the company secretary of the company, wherever they are appointed, or in the case of One Person Company, only by one director, for submission to the auditor for his report thereon.";

25 (b) in sub-section (3),—

(i) for clause (a), the following clause shall be substituted, namely:—

30 "(a) the web address, if any, where annual return referred to in sub-section (3) of section 92 has been placed;"

(ii) in clause (p), for the words "annual evaluation has been made by the Board of its own performance and that of its committees and individual directors", the words "annual evaluation of the performance of the Board, its Committees and of individual directors has been made" shall be substituted;

35 (iii) after clause (q), the following provisos shall be inserted, namely:—

"Provided that where disclosures referred to in this sub-section have been included in the financial statements, such disclosures shall be referred to instead of being repeated in the Board's report:

40 Provided further that where the policy referred to in clause (e) or clause (o) is made available on company's website, if any, it shall be sufficient compliance of the requirements under such clauses if the salient features of the policy and any change therein are specified in brief in the Board's report and the web-address is indicated therein at which the complete policy is available.";

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(c) after sub-section (3), the following sub-section shall be inserted, namely:—

"(3A) 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."

Amendment of
section 135.

36. In section 135 of the principal Act,—

(i) in sub-section (1),—

(a) for the words "any financial year", the words "the immediately preceding financial year" shall be substituted;

(b) the following proviso shall be inserted, namely:—

"Provided that where a company is not required to appoint an independent director under sub-section (4) of section 149, it shall have in its Corporate Social Responsibility Committee two or more directors.";

(ii) in sub-section (3), in clause (a), for the words and figures "as specified in Schedule VII", the words and figures "in areas or subject, specified in Schedule VII" shall be substituted;

(iii) in sub-section (5), for the *Explanation*, the following *Explanation* shall be substituted, namely:—

Explanation.—For the purposes of this section "net profit" shall not include such sums as may be prescribed, and shall be calculated in accordance with the provisions of section 198.1.

Amendment
of section 136.

37. In section 136 of the principal Act,—

(i) in sub-section (1),—

(a) the words and figures "Without prejudice to the provisions of section 101," shall be omitted;

(b) in the first proviso, for the words "Provided that", the following shall be substituted, namely:—

"Provided that if the copies of the documents are sent less than twenty-one days before the date of the meeting, they shall, notwithstanding that fact, be deemed to have been duly sent if it is so agreed by ninety-five per cent. of the members entitled to vote at the meeting:

Provided further that";

(c) in the second proviso, for the words "Provided further", the words, "Provided also" be substituted;

(d) for the fourth proviso, the following provisos shall be substituted, namely:—

'Provided also that every listed company having a subsidiary or subsidiaries shall place separate audited accounts in respect of each of subsidiary on its website, if any:

Provided also that a listed company which has a subsidiary incorporated outside India (herein referred to as "foreign subsidiary")—

(a) where such foreign subsidiary is statutorily required to prepare consolidated financial statement under any law of the country of its incorporation, the requirement of this proviso shall be met if consolidated financial statement of such foreign subsidiary is placed on the website of the listed company;

(b) where such foreign subsidiary is not required to get its financial statement audited under any law of the country of its incorporation and which does not get such financial statement audited, the holding Indian listed company may place such 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.";

(ii) in sub-section (2), the following proviso shall be inserted, namely:—

"Provided that every company having a subsidiary or subsidiaries shall provide a copy of separate audited or unaudited financial statements, as the case may be, as prepared in respect of each of its subsidiary to any member of the company who asks for it."

38. In section 137 of the principal Act, in sub-section (1), after the fourth proviso, the following proviso shall be inserted, namely:— Amendment of section 137.

'Provided also that in the case of a subsidiary which has been incorporated outside India (herein referred to as "foreign subsidiary"), which is not required to get its financial statement audited under any law of the country of its incorporation and which does not get such financial statement audited, the requirements of the fourth proviso shall be met if the holding Indian listed company files such unaudited financial statement along with a declaration to this effect and where such financial statement is in a language other than English, along with a translated copy of the financial statement in English.'

39. In section 139 of the principal Act, in sub-section (1), the first proviso shall be omitted. Amendment of section 139.

40. In section 140 of the principal Act, in sub-section (3), for the words "fifty thousand rupees", the words "fifty thousand rupees or the remuneration of the auditor, whichever is less," shall be substituted. Amendment of section 140.

41. In section 141 of the principal Act, in sub-section (3),—

(i) in clause (d), the following *Explanation* shall be inserted, namely:—

'*Explanation.*—For the purposes of this clause, the term "relative" means the spouse of a person; and includes a parent, sibling or child of such person or of the spouse, financially dependent on such person, or who consults such person in taking decisions in relation to his investments;'

(ii) for clause (i), the following clause shall be substituted, namely:—

'(i) 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.

Explanation.—For the purposes of this clause, the term "directly or indirectly" shall have the meaning assigned to it in the *Explanation* to section 144.'

42. In section 143 of the principal Act, —

(i) in sub-section (1), in the proviso, for the words "its subsidiaries", at both the places, the words "its subsidiaries and associate companies" shall be substituted;

(ii) in sub-section (3), in clause (i), for the words "internal financial controls system", the words "internal financial controls with reference to financial statements" shall be substituted;

(iii) in sub-section (14), in clause (a), for the words "cost accountant in practice", the words "cost accountant" shall be substituted.

Amendment of section 143.

43. In section 147 of the principal Act,—

(i) in sub-section (2),—

(a) after the words "five lakh rupees", the words "or four times the remuneration of the auditor, whichever is less" shall be inserted;

(b) in the proviso, for the words "and with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees", the words "and with fine which shall not be less than fifty thousand rupees but which may extend to twenty-five lakh rupees or eight times the remuneration of the auditor, whichever is less" shall be substituted;

Amendment of section 147.

(ii) in sub-section (3), in clause (ii), for the words "or to any other persons", the words "or to members or creditors of the company" shall be substituted;

(iii) in sub-section (5), the following proviso shall be inserted, namely:—

"Provided that in case of criminal liability of an audit firm, 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."

Amendment of section 148.

44. In section 148 of the principal Act,—

(i) in sub-section (3),—

(a) for the words "Cost Accountant in practice", the words "cost accountant" shall be substituted;

(b) in the *Explanation*, for the words "Institute of Cost and Works Accountants of India", the words "Institute of Cost Accountants of India" shall be substituted;

(ii) in sub-section (5), in the proviso, for the words "cost accountant in practice", the words "cost accountant" shall be substituted.

Amendment of section 149.

45. In section 149 of the principal Act,—

(i) for sub-section (3), the following sub-section shall be substituted, namely:—

"(3) Every company shall have at least one director who stays in India for a total period of not less than one hundred and eighty-two days during the financial year:

Provided that in case of a newly incorporated company the requirement under this sub-section shall apply proportionately at the end of the financial year in which it is incorporated.";

(ii) in sub-section (6),—

(a) in clause (c), for the words "pecuniary relationship", the words "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," shall be substituted;

(b) for clause (d), the following clause shall be substituted, namely:—

"(d) 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:

Provided that the 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 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);"

(c) in clause (e), in sub-clause (i), the following proviso shall be inserted, namely:—

"Provided that in case of a relative who is an employee, the restriction under this clause shall not apply for his employment during preceding three financial years."

46. In section 152 of the principal Act,—

Amendment of section 152.

(a) in sub-section (3), after the word and figures "section 154", the words and figures "or any other number as may be prescribed under section 153" shall be inserted;

(b) in sub-section (4), after the word "Number", the words and figures "or such other number as may be prescribed under section 153" shall be inserted.

47. In section 153 of the principal Act, the following proviso shall be inserted, namely:—

Amendment of section 153.

"Provided that the Central Government may prescribe any identification number which shall be treated as Director Identification Number for the purposes of this Act and in case any individual holds or acquires such identification number, the requirement of this section shall not apply or apply in such manner as may be prescribed."

48. In section 160 of the principal Act, in sub-section (1), the following proviso shall be inserted, namely:—

Amendment of section 160.

"Provided that requirements of deposit of amount shall not apply in case of appointment of an independent director or a director recommended by the Nomination and Remuneration Committee, if any, constituted under sub-section (1) of section 178."

49. In section 161 of the principal Act,—

Amendment of section 161.

(i) in sub-section (2), after the words "alternate directorship for any other director in the company", the words "or holding directorship in the same company" shall be inserted;

(ii) in sub-section (4),—

(a) the words "In the case of a public company," shall be omitted;

(b) after the words "meeting of the Board", the words "which shall be subsequently approved by members in the immediate next general meeting" shall be inserted.

50. In section 164 of the principal Act,—

Amendment of section 164.

(i) in sub-section (2), the following proviso shall be inserted, namely:—

"Provided that where a person is appointed as a director of a company which is in default of clause (a) or clause (b), he shall not incur the disqualification for a period of six months from the date of his appointment.";

(ii) in sub-section (3), for the proviso, the following proviso shall be substituted, namely:—

"Provided that the disqualifications referred to in clauses (d), (e) and (g) of sub-section (1) shall continue to apply even if the appeal or petition has been filed against the order of conviction or disqualification."

- Amendment of section 165. **51.** In section 165 of the principal Act, in sub-section (1), the *Explanation* shall be renumbered as *Explanation I* and after *Explanation I* as so numbered, the following *Explanation* shall be inserted, namely:—
"Explanation II.—For reckoning the limit of directorships of twenty companies, the directorship in a dormant company shall not be included." 5
- Amendment of section 167. **52.** In section 167 of the principal Act, in sub-section (1),—
 (i) in clause (a), the following proviso shall be inserted, namely:—
"Provided that where he incurs disqualification under sub-section (2) of section 164, the office of the director shall become vacant in all the companies, other than the company which is in default under that sub-section."; 10
 (ii) in clause (f), for the proviso the following proviso shall be substituted, namely,—
"Provided that the office shall not be vacated by the director in case of orders referred to in clauses (e) and (f)—
 (i) for thirty days from the date of conviction or order of disqualification; 15
 (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 20
 (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." 25
- Amendment of section 168. **53.** In section 168 of the principal Act, in sub-section (1), in the proviso, for the words, "director shall also forward", the words, "director may also forward" shall be substituted. 25
- Amendment of section 173. **54.** In section 173 of the principal Act, in sub-section (2), after the first proviso, the following proviso shall be inserted, namely:—
"Provided further that where there is quorum in a meeting through physical presence of directors, any other director may participate through video conferencing or other audio visual means in such meeting on any matter specified under the first proviso." 30
- Amendment of section 177. **55.** In section 177 of the principal Act,—
 (i) in sub-section (1), for the words "every listed company", the words "every listed public company" shall be substituted;
 (ii) in sub-section (4), in clause (iv), after the proviso, the following provisos shall be inserted, namely:— 35
"Provided further that in case of transaction, other than transactions referred to in section 188, and where Audit Committee does not approve the transaction, it shall make its recommendations to the Board:
Provided also that in case any transaction involving any amount not exceeding one crore rupees is entered into by a director or officer of the company without obtaining the approval of the Audit Committee and it is not ratified by the Audit Committee within three months from the date of the transaction, such transaction shall be voidable at the option of the Audit Committee and if the transaction is with the related party to any director or is authorised by any other director, the director concerned shall indemnify the company against any loss incurred by it: 40
Provided also that the provisions of this clause shall not apply to a transaction, other than a transaction referred to in section 188, between a holding company and its wholly owned subsidiary company." 45 50

56. In section 178 of the principal Act,—

Amendment of
section 178.

(i) in sub-section (1), for the words "every listed company", the words "every listed public company" shall be substituted;

5 (ii) in sub-section (2), for the words "shall carry out evaluation of every director's performance", the words "shall specify the manner for effective evaluation of performance of Board, its committees and individual directors to be carried out either by the Board, by the Nomination and Remuneration Committee or by an independent external agency and review its implementation and compliance" shall be substituted;

10 (iii) in sub-section (4), in clause (c), for the proviso, the following proviso shall be substituted, namely:—

"Provided that such policy shall be placed on the website of the company, if any, and the salient features of the policy and changes therein, if any, along with the web address of the policy, if any, shall be disclosed in the Board's report.";

15 (iv) in sub-section (8), in the proviso, for the words "non-consideration of resolution of any grievance", the words inability to resolve or consider any grievance" shall be substituted.

57. In section 180 of the principal Act, in sub-section (1), in item (c), for the words "paid-up share capital and free reserves", the words "paid-up share capital, free reserves and securities premium" shall be substituted.

Amendment of
section 180.

58. In section 184 of the principal Act,—

Amendment of
section 184.

(i) in sub-section (4), the words "shall not be less than fifty thousand rupees but which" shall be omitted;

25 (ii) in sub-section (5), for clause (b), the following clause shall be substituted, namely:—

30 "(b) shall apply to any contract or arrangement entered into or to be entered into between two companies or between one or more companies and one or more bodies corporate where any of the directors of the one company or body corporate or two or more of them together holds or hold not more than two per cent. of the paid-up share capital in the other company or the body corporate."

59. For section 185 of the principal Act, the following section shall be substituted, namely:—

Substitution of
section 185.

35 '185. (1) No company shall, directly or indirectly, advance any loan, including any loan represented by a book debt to, or give any guarantee or provide any security in connection with any loan taken by,—

Loans to
directors,etc.

(a) any director of company, or of a company which is its holding company or any partner or relative of any such director; or

(b) any firm in which any such director or relative is a partner.

40 (2) A company may advance any loan including any loan represented by a book debt, or give any guarantee or provide any security in connection with any loan taken by any person in whom any of the director of the company is interested, subject to the condition that—

(a) a special resolution is passed by the company in general meeting:

45 Provided that the explanatory statement to the notice for the relevant general meeting shall disclose the full particulars of the loans given, or guarantee given or security provided and the purpose for which the loan or guarantee or security is proposed to be utilised by the recipient of the loan or guarantee or security and any other relevant fact; and

50 (b) the loans are utilised by the borrowing company for its principal business activities.

Explanation.—For the purposes of this sub-section, the expression "any person in whom any of the director of the company is interested" means—

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

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

(c) any body corporate, the Board of directors, managing director or manager, whereof is accustomed to act in accordance with the directions or instructions of the Board, or of any director or directors, of the lending company.

(3) Nothing contained in sub-sections (1) and (2) shall apply to—

(a) the giving of any loan to a managing or whole-time director—

(i) as a part of the conditions of service extended by the company to all its employees; or

(ii) pursuant to any scheme approved by the members by a special resolution; or

(b) a company which in the ordinary course of its business provides loans or gives guarantees or securities for the due repayment of any loan and in respect of such loans an interest is charged at a rate not less than the rate of prevailing yield of one year, three year, five year or ten year Government security closest to the tenor of the loan; or

(c) any loan made by a holding company to its wholly owned subsidiary company or any guarantee given or security provided by a holding company in respect of any loan made to its wholly owned subsidiary company; or

(d) any guarantee given or security provided by a holding company in respect of loan made by any bank or financial institution to its subsidiary company:

Provided that the loans made under clauses (c) and (d) are utilised by the subsidiary company for its principal business activities.

(4) If any loan is advanced or a guarantee or security is given or provided or utilised in contravention of the provisions of this section, the company shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees, and the director or the other person to whom any loan is advanced or guarantee or security is given or provided in connection with any loan taken by him or the other person, shall be punishable with imprisonment which may extend to six months or with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees, or with both.'

Amendment of section 186.

60. In section 186 of the principal Act,—

(i) sub- section (1) shall be omitted;

(ii) in sub-section (2), the following *Explanation* shall be inserted, namely:—

'*Explanation.*—For the purposes of this sub-section, the word "person" does not include any individual who is in the employment of the company.';

(iii) for sub-section (3), the following sub-section shall be substituted, namely:—

'(3) Where the aggregate of the loans and investment so far made, the amount for which guarantee or security so far provided to or in all other bodies corporate along with the investment, loan, guarantee or security proposed to be made or given by the Board, exceed the limits specified under sub-section (2), no investment or loan shall be made or guarantee shall be given or security shall be provided unless previously authorised by a special resolution passed in a general meeting:

Provided that where a loan or guarantee is given or where a security has been provided by a company to its wholly owned subsidiary company or a joint venture company, or acquisition is made by a holding company, by way of subscription, purchase or otherwise of, the securities of its wholly owned subsidiary company, the requirement of this sub-section shall not apply:

Provided further that the company shall disclose the details of such loans or guarantee or security or acquisition in the financial statement as provided under sub-section (4).

(iv) for sub-section (11), the following sub-section shall be substituted, namely:—

"(11) Nothing contained in this section shall 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.";

(v) in the *Explanation*, in clause (a), after the words "other securities" the following shall be inserted, namely:—

"and a company will be deemed to be principally engaged in the business of acquisition of shares, debentures or other securities, if its assets in the form of investment in shares, debentures or other securities constitute not less than fifty per cent. of its total assets, or if its income derived from investment business constitutes not less than fifty per cent. as a proportion of its gross income.".

61. In section 188 of the principal Act,—

(i) in sub-section (1), after second proviso, the following proviso shall be inserted, namely:—

"Provided also that nothing contained in the second proviso shall apply to a company in which ninety per cent. or more members, in number, are relatives of promoters or are related parties:";

(ii) in sub-section (3), for the words "shall be voidable at the option of the Board", the words "shall be voidable at the option of the Board or, as the case may be, of the shareholders" shall be substituted.

62. Section 194 of the principal Act shall be omitted.

63. Section 195 of the principal Act shall be omitted.

64. In section 196, in sub-section (4), for the words "specified in that Schedule", the words "specified in Part I of that Schedule" shall be substituted.

65. In section 197 of the principal Act,—

(a) in sub-section (1),—

(i) in the first proviso, the words "with the approval of the Central Government," shall be omitted;

Amendment of section 188.

Omission of section 194.

Omission of section 195.

Amendment of section 196.

Amendment of section 197.

(ii) in the second proviso, after the words "general meeting," the words "by a special resolution," shall be inserted;

(iii) after the second proviso, the following proviso shall be inserted, namely:—

"Provided also that, where any term loan of any bank or public financial institution is subsisting or the company has defaulted in payment of dues to non-convertible debenture holders or any other secured creditor, the prior approval of the bank or public financial institution concerned or the non-convertible debenture holders or other secured creditor, as the case may be, shall be obtained by the company before obtaining the approval in the general meeting.";

(b) in sub-section (3), the words "and if it is not able to comply with such provisions, with the previous approval of the Central Government" shall be omitted;

(c) for sub-section (9), the following sub-section shall be substituted, namely:—

"(9) If any director draws or receives, directly or indirectly, by way of remuneration any such sums in excess of the limit prescribed by this section or without approval required under this section, he shall refund such sums to the company, within two years of such lesser period as may be allowed by the company, and until such sum is refunded, hold it in trust for the company.";

(d) in sub-section (10),—

(i) for the words "permitted by the Central Government", the words "approved by the company by special resolution within two years from the date the sum becomes refundable" shall be substituted;

(ii) the following proviso shall be inserted, namely:—

"Provided that where any term loan of any bank or public financial institution is subsisting or the company has defaulted in payment of dues to non-convertible debenture holders or any other secured creditor, the prior approval of the bank or public financial institution concerned or the non-convertible debenture holders or other secured creditor, as the case may be, shall be obtained by the company before obtaining approval of such waiver.";

(e) in sub-section (11), the words "and if such conditions are not being complied, the approval of the Central Government had been obtained" shall be omitted;

(f) after sub-section (15), the following sub-sections shall be inserted, namely:—

"(16) The auditor of the company shall, in his report under section 143, make a statement as to whether the remuneration paid by the company to its directors is in accordance with the provisions of this section, whether remuneration paid to any director is in excess of the limit laid down under this section and give such other details as may be prescribed.

(17) On and from the commencement of the Companies (Amendment) Act, 2016, any application made to the Central Government under the provisions of this section [as it stood before such commencement], which is pending with that Government shall abate, and the company shall, within one year of such commencement, obtain the approval in accordance with the provisions of this section, as so amended.".

Amendment of section 198.

66. In section 198 of the principal Act,—

(i) in sub-section (3), in clause (a), after the words "sold by the company", the words "unless the company is an investment company as referred to in the *Explanation* to section 186" shall be inserted;

(ii) in sub-section (4), in clause (l), the words "which begins at or after the commencement of this Act" shall be omitted.

67. In section 200 of the principal Act, the words "the Central Government or" appearing at both the places shall be omitted. Amendment of section 200.
68. In section 201 of the principal Act,— Amendment of section 201.
- (a) in sub-section (1), for the words "this Chapter", the word and figures "section 196" shall be substituted;
- (b) in sub-section (2), in clause (a), for the words "any of the sections aforesaid", the word and figures "section 196" shall be substituted.
69. In section 216 of the principal Act, in sub-section (1),— Amendment of section 216.
- (i) in clause (b), for the word "company", the words "company; or" shall be substituted;
- (ii) after clause (b), the following clause shall be inserted, namely:—
- "(c) 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."
70. In section 223 of the principal Act, in sub-section (3), after the words "may be obtained", the words "by members, creditors or any other person whose interest is likely to be affected" shall be inserted. Amendment of section 223.
71. In section 236 of the principal Act, in sub-sections (4), (5) and (6), for the words, "transferor company", wherever they occur, the words "company whose shares are being transferred" shall be substituted. Amendment of section 236.
72. In section 247 of the principal Act, in sub-section (2), in clause (d), for the words "during or after the valuation of assets", the words "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 be substituted. Amendment of section 247.
73. In section 366 of the principal Act, in sub-section (2),— Amendment of section 366.
- (i) for the words "seven or more members", the words "two or more members" shall be substituted;
- (ii) in the proviso, after clause (vi), the following clause shall be inserted, namely:—
- "(vii) a company with less than seven members shall register as a private company."
74. Section 379 of the principal Act shall be renumbered as sub-section (2) thereof and before sub-section (2) as so renumbered, the following sub-section shall be inserted, namely:— Amendment of section 379.
- "(1) Sections 380 to 386 (both inclusive) and sections 392 and 393 shall apply to all foreign companies:
- Provided that the Central Government may, by Order published in the Official Gazette, exempt any class of foreign companies, specified in the Order, from any of the provisions of sections 380 to 386 and sections 392 and 393 and a copy of every such order shall, as soon as may be after it is made, be laid before both Houses of Parliament."
75. In section 384 of the principal Act, in sub-section (2), after the word and figures "section 92", the words and figures "and section 135" shall be inserted. Amendment of section 384.
76. In section 403 of the principal Act,— Amendment of section 403.
- (i) in sub-section (1), for the first and second provisos, the following provisos shall be substituted, namely:—
- "Provided that where any document, fact or information required to be submitted, filed, registered or recorded, as the case may be, under section 89, 92, 117, 121, 137 or 157 is not submitted, filed, registered or recorded, as the case may be, within the period provided in those sections, it 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:

Provided further that where the document, fact or information, is not submitted, filed, registered or recorded, as the case may be,—

(a) in case of document, fact or information referred to in section 89, 92, 117, 121, 137 or 157, within the period of two hundred and seventy days as provided in the first proviso; or

(b) in any other case within the period in the relevant section, it may, without prejudice to any other legal action or liability under this Act, be submitted, filed, registered or recorded, as the case may be, on payment of such higher additional fee or additional fee, as may be prescribed:

Provided also that where there is default on two or more occasions in submitting, filing, registering or recording of the document, fact or information under section 89, 92, 117, 121, 137 or 157, the provisions of the first and second provisos shall not apply, until the document, fact or information is submitted, filed, registered or recorded, as the case may be, with additional fee, without prejudice to any legal action or liability under this Act.";

(ii) in sub-section (2), for the words "first proviso to that sub-section", the words "relevant section" shall be substituted.

Substitution of section 406.

77. For section 406 of the principal Act, the following section shall be substituted, namely:—

Provision relating to *Nidhis* and its application, etc.

'406. (1) In this section, "*Nidhi*" or "Mutual Benefit Society" means a company which the Central Government may, by notification in the Official Gazette, declare to be a *Nidhi* or Mutual Benefit Society, as the case may be.

(2) The Central Government may, by notification in the Official Gazette, direct that any of the provisions of this Act specified in the notification—

(a) shall not apply to any *Nidhi* or Mutual Benefit Society; or

(b) shall apply to any *Nidhi* or Mutual Benefit Society with such exceptions, modifications and adaptations as may be specified in the notification.

(3) A copy of every notification proposed to be issued under sub-section (2), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days, and if, both Houses agree in disapproving the issue of notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses.

(4) In reckoning any such period of thirty days as is referred to in sub-section (3), no account shall be taken of any period during which the House referred to in sub-section (3) is prorogued or adjourned for more than four consecutive days.

(5) The copies of every notification issued under this section shall, as soon as may be after it has been issued, be laid before each House of Parliament.'

Amendment of section 409.

78. In section 409 of the principal Act, in sub-section (3),—

(i) in clause (a), for the words "out of which at least three years shall be in the pay scale of Joint Secretary to the Government of India or equivalent or above in that service", the words "and has been holding the rank of Secretary or Additional Secretary to the Government of India" shall be substituted;

(ii) for clause (e) the following clause shall be substituted namely:—

"(e) is a person of proven ability, integrity and standing having special knowledge and professional experience of not less than fifteen years in industrial finance, industrial management, industrial reconstruction, investment and accountancy."

79. In section 411 of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely:— Amendment of section 411.
- "(3) A technical member shall be a person of proven ability, integrity and standing having special knowledge and professional experience of not less than twenty-five years in industrial finance, industrial management, industrial reconstruction, investment and accountancy."
80. In section 412 of the principal Act, for sub-section (2), the following sub-sections shall be substituted, namely:— Amendment of section 412.
- "(2) 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—
- (a) Chief Justice of India or his nominee - Chairperson;
- (b) a senior Judge of the Supreme Court or Chief Justice of High Court - Member;
- (c) Secretary in the Ministry of Corporate Affairs - Member; and
- (d) Secretary in the Ministry of Law and Justice - Member.
- (2A) Where in a meeting of the Selection Committee, there is equality of votes on any matter, the Chairperson shall have a casting vote."
81. For section 435 of the principal Act, the following shall be substituted, Amendment of section 435.
- "435.(1) The Central Government may, for the purpose of providing speedy trial of offences under this Act, by notification, establish or designate as many Special Courts as may be necessary. Establishment of Special Courts.
- (2) A Special Court shall consist of—
- (a) a single judge holding office as Session Judge or Additional Session Judge, in case of offences punishable under this Act with imprisonment of two years or more; and
- (b) a Metropolitan Magistrate or a Judicial Magistrate of the First Class, in the case of other offences,
- who shall be appointed by the Central Government with the concurrence of the Chief Justice of the High Court within whose jurisdiction the judge to be appointed is working."
82. In section 438 of the principal Act, for the words "deemed to be a Court of Session", the words "deemed to be a Court of Session or the court of Metropolitan Magistrate or a Judicial Magistrate of the First Class, as the case may be," shall be substituted. Amendment of section 438.
83. In section 439 of the principal Act, in sub-section (2), after the words "a shareholder", the words "or a member" shall be inserted. Amendment of section 439.
84. In section 440 of the principal Act, for the words "Court of Session", at both the places, the words "Court of Session or the court of Metropolitan Magistrate or a Judicial Magistrate of the First Class, as the case may be" shall be substituted. Amendment of section 440.
85. In section 441 of the principal Act, in sub-section (1), for the words "with fine only", the words "not being an offence punishable with imprisonment only, or punishable with imprisonment and also with fine" shall be substituted. Amendment of section 441.
86. After section 446 of the principal Act, the following sections shall be inserted, Insertion of new section 446A.
- "446A. The court or the Special Court, while deciding the amount of fine or imprisonment under this Act, shall have due regard to the following factors, namely:—
- (a) size of the company; Factors for determining level of punishment.

- (b) nature of business carried on by the company;
- (c) injury to public interest;
- (d) nature of the default; and
- (e) repetition of the default.

Lesser penalties for One Person Companies or small companies.

446B. Notwithstanding anything contained in this Act, if a One Person Company or a small company fails to comply with the provisions of sub-section (5) of section 92, clause (c) of sub-section (2) of section 117, sub-section (3) of section 137, such company and officer in default of such company shall be punishable with fine or imprisonment or fine and imprisonment, as the case may be, which shall not be more than one-half of the fine or imprisonment or fine and imprisonment, as the case may be, of the minimum or maximum fine or imprisonment or fine and imprisonment, as the case may be, specified in such sections." 5 10

Amendment of section 447.

87. In section 447 of the principal Act,—

(i) after the words "guilty of fraud", the words "involving an amount of at least ten lakh rupees or one percent. of the turnover of the company, whichever is lower" shall be inserted; 15

(ii) after the proviso, the following proviso shall be inserted, namely:—

"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." 20

STATEMENT OF OBJECTS AND REASONS

The Companies Act, 2013 (the Act) was enacted to consolidate and amend the Laws relating to companies. Out of 470 sections of the Act, 284 sections have been brought into force so far. The process for establishment of the National Company Law Tribunal and National Company Law Appellate Tribunal is at its final stage. After the constitution of these Tribunals, most of the remaining 186 sections of the Act shall also be brought into force.

2. The Act introduced significant changes related to disclosures to stakeholders, accountability of directors, auditors and key managerial personnel, investor protection and corporate governance. However, Government received number of representations from industry Chambers, Professional Institutes, legal experts and Ministries/Departments regarding difficulties faced in compliance of certain provisions. Amendments of the Act were carried out through the Companies (Amendment) Act, 2015 to address the immediate difficulties arising out of the initial experience of the working of the Act, and to facilitate "ease of doing business". During the consideration of the Companies (Amendment) Bill, 2015 in the Rajya Sabha, views were expressed that more amendments would be required. A Companies Law Committee (the Committee) was, therefore, constituted consisting of representatives from the industry, professional institutes of chartered accountants, cost accountants and company secretaries, and a former High Court Judge under the chairmanship of Secretary, Ministry of Corporate Affairs, to examine the need for further amendments.

3. The Committee had invited suggestions from all stakeholders and thereafter held broad based consultations on the suggestions received. The Committee submitted its report to the Government on the 1st February, 2016 which was put in public domain for comments. Based on the report and comments received from the stakeholders and Ministries/Departments, it has been decided to amend the Companies Act, 2013.

4. The proposed changes are broadly aimed at addressing difficulties in implementation owing to stringency of compliance requirements; facilitating ease of doing business in order to promote growth with employment; harmonisation with accounting standards, the Securities and Exchange Board of India Act, 1992 and the regulations made thereunder, and the Reserve Bank of India Act, 1934 and the regulations made thereunder; rectifying omissions and inconsistencies in the Act, and carrying out amendments in the provisions relating to qualifications and selection of members of the National Company Law Tribunal and the National Company Law Appellate Tribunal in accordance with the directions of the Supreme Court.

5. The Companies (Amendment) Bill, 2016, *inter alia*, proposes the following, namely:—

(a) simplification of the private placement process by doing away with separate offer letter, by making filing of details or records of applicants to be part of return of allotment only, and reducing number of filings to Registrar;

(b) allow unrestricted object clause in the Memorandum of Association dispensing with detailed listing of objects, self-declarations to replace affidavits from subscribers to memorandum and first directors;

(c) provisions relating to forward dealing and insider trading to be omitted from the Act;

(d) requirement of approval of the Central Government for Managerial remuneration above prescribed limits to be replaced by approval through special resolution by shareholders;

(e) a company may give loans to entities in which directors are interested after passing special resolution and adhering to disclosure requirement;

(f) remove restrictions on layers of subsidiaries and investment companies;

(g) allow for exempting class of foreign companies from registering and compliance regime under the Act;

(h) align prescription for companies to have Audit Committee and Nomination and Remuneration Committee with that of Independent Directors;

(i) test of materiality to be introduced for pecuniary interest for testing independence of Independent Directors;

(j) disclosures in the prospectus required under the Companies Act and the Securities and Exchange Board of India Act, 1992 and the regulations made thereunder to be aligned by omitting prescriptions in the Companies Act and allowing these prescriptions to be made by the Securities and Exchange Board of India in consultation with the Central Government;

(k) provide for maintenance of register of significant beneficial owners by a company, and filing of returns in this regard to the Registrar;

(l) removal of requirement for annual ratification of appointment or continuance of auditor;

(m) amend provisions relating to Corporate Social Responsibility to bring greater clarity.

6. The notes on clauses explain, in detail, the provisions of the Bill.

7. The Bill seeks to achieve the above objectives.

NEW DELHI;

ARUNJAITLEY

The 15th March, 2016.

Notes on Clauses

Clause 1 of the Bill provides for the short title and commencement. It also seeks to empower Central Government to appoint date of commencement of the proposed legislation and different dates for different provision of the proposed legislation.

Clause 2 of the Bill seeks to amend section 2 of the Companies Act, 2013 (hereinafter referred to as 'the Act') for modifying the definitions of associate company, cost accountant, debentures, financial year, holding company, key managerial personnel, net worth, related party, small company, subsidiary company and turnover, and omit the definition of interested director.

Clause 3 of the Bill seeks to introduce new section 3A to provide for liability of members when the business is carried on for more than six months with members fewer than seven in case of public companies and fewer than two in case of private companies.

Clause 4 of the Bill seeks to amend sub-section (1) of section 4 of the Act to allow companies an unrestricted object clause, to engage in any lawful act or activity for the time being in force. It also proposes to amend sub-section (5) to modify the period of validity of a name reserved. The clause also seeks to insert new sub-sections (6A) and (6B) w.r.t. model memorandum.

Clause 5 of the Bill seeks to amend sub-section (1) of section 7 of the Act to replace requirement of affidavit from first subscribers and directors with declarations from them with reference to incorporation of company.

Clause 6 of the Bill seeks to amend sub-section (1) of section 12 of the Act to provide for a company to have its registered office within thirty day from the date of incorporation. Further it also seeks to enhance the time limit provided under sub-section (4) of section 12 for registering change in registered office to thirty days.

Clause 7 of the Bill seeks to amend section 21 of the Act to allow authorisations on the signature of any employee of the company duly authorised by the Board, with respect to authentication of documents, proceedings and contracts, in addition to key managerial personnel and officers already provided in the section.

Clause 8 of the Bill seeks to amend sub-section (1) of section 26 of the Act to provide that contents of the prospectus with respect to information and reports on financial information shall be specified by SEBI in consultation with Central Government. The clause also provides for applicability of existing requirements on such matters specified by SEBI.

Clause 9 of the Bill seeks to amend section 35 of the Act to hold experts liable for statements made by them and provide a defence to the directors who relied upon such statements.

Clause 10 of the Bill seeks to substitute section 42 of the Act. The proposed provisions seek to simplify the requirements with reference to private placements such as doing away with separate offer letter, reduced number of filings, etc. This clause also seeks to modify penalty provisions for contravention of this section. It also seeks to provide for restrictions on utilisation of moneys raised through private placement unless allotment is made and return of allotment is filed with the registry.

Clause 11 of the Bill seeks to amend sub-section (1) of section 47 of the Act and seeks to provide that provisions of section 47 shall also be subject to sub-section (1) of section 188 of the Act.

Clause 12 of the Bill seeks to amend section 53 of the Act to replace the words “discounted price” with the word “discount” and also to allow companies to issue shares at discount to its creditors when debt is converted into shares in pursuance of any statutory

resolution plan or debt restructuring scheme in accordance with guidelines or directions or regulations specified by Reserve Bank of India under the Banking Regulation Act, 1949, Reserve Bank of India Act 1934. Further issue of shares would continue to require approval of shareholders through a special resolution.

Clause 13 of the Bill seeks to amend section 54 of the Act to remove the restriction under clause (c) of sub-section (1) which requires company to make issue only after one year has elapsed from the date of commencement of its business.

Clause 14 of the Bill seeks to amend section 62 of the Act to provide wider modes of delivery with respect to despatch of notice of offer for rights issue and to provide for applicability of provisions of Chapter III in case of issue of securities under section 62(1)(c).

Clause 15 of the Bill seeks to amend section 73 of the Act to omit requirement relating to deposit insurance and provide that deposit repayment reserve shall not be less than twenty percent. of the amount of deposits maturing during the following financial year. This clause also seeks to provide for acceptance of deposits by companies, if the default is made good and five years have lapsed since then.

Clause 16 of the Bill seeks to amend section 74 of the Act to provide that deposits accepted under Companies Act, 1956 shall be repaid within 3 years from the commencement of the original section 74 of the Companies Act, 2013 or on or before expiry of the period for which deposits were accepted whichever is earlier.

Clause 17 of the Bill seeks to amend section 76A of the Act to provide that minimum fine for failure in repayment of deposits and interest thereon shall be rupees one crore or twice the amount of deposit accepted, whichever is lower.

Clause 18 of the Bill seeks to amend sub-section (1) of section 77 of the Act to provide that such section shall not apply to certain charges, as may be prescribed by Central Government in consultant with the Reserve Bank of India.

Clause 19 of the Bill seeks to amend section 78 of the Act to provide clarity that the person in whose favour the charge has been created can file the charge on the expiry of thirty days from creation of charge where a company fails to file so.

Clause 20 of the Bill seeks to amend sub-section (1) of section 82 of the Act to provide the timelines for filing of satisfaction of charge on the lines of timelines provided for registration of charge under section 77.

Clause 21 of the Bill seeks to amend section 89 of the Act to include the definition of "beneficial interest in a share".

Clause 22 of the Bill seeks to replace section 90 of the Act to provide that a declaration is to be given to the company by every individual acting alone or together or through one or more person including a trust and persons resident outside India, who holds beneficial interest of not less than twenty-five per cent or other prescribed percentage in shares of a company or the right to exercise or the actual exercising of significant influence or control under clause (27) of section 2 of the Act (to be called as significant beneficial owner). Further the significant beneficial owner shall while making the declaration specify the nature of interest and other particulars in prescribed manner and time to the company. It also seeks to empower the Central Government to specify class or classes or persons who shall not be required to make the said declaration. Further company shall maintain and keep available for inspection, by any member of the company, a register of significant beneficial owners. Further company shall file a return of significant beneficial owners of the company and changes therein with the Registrar. This clause also provides that company may give notice to any person whom the company knows or believes to be a significant beneficial owner of the company or who has knowledge of the identity of a significant beneficial owner or another person likely to have such knowledge or who has been a significant beneficial owner of the company at any time during the immediately preceding three years. Further, if the person fails to give information required by the notice, the company shall apply to the Tribunal within a period of fifteen days for an order. The Tribunal may make an order restricting the rights

attached with the shares in question. If any person fails to make a declaration, he shall be punishable with fine. Similarly, where a company fails to maintain the register or file the return, the company and every officer of the company in default shall be punishable with fine.

Clause 23 of the Bill seeks to amend section 92 of the Act to omit the requirement of sub-section (3) with respect to extract of annual return forming as part of Board's report and provide disclosure of web address/web-link of the annual return in Board's report. It also seeks to omit requirement of clause (c) of sub-section (1) regarding disclosure of indebtedness, and modify clause (j) of that sub-section regarding disclosure of names, addresses, countries of incorporation, registration and percentage of shareholding of Foreign Institutional Investors. Further it also seeks to insert a new proviso in sub-section (1) to provide that Central Government may provide abridged form of Annual Return for one person companies and small companies.

Clause 24 of the Bill seeks to omit section 93 relating to return to be filed with respect to change in promoters' and top 10 shareholders' stake.

Clause 25 of the Bill seeks to amend section 94 of the Act to restrict inspection of certain personal information, which would be prescribed through Rules, in the register of members. It also seeks to do away with filing of special resolution in advance with Registrar of Companies for keeping of the registers and returns at a place other than the registered office of the company.

Clause 26 of the Bill seeks to amend section 96 of the Act to enable unlisted companies to convene Annual General Meeting at any place in India with the approval of all shareholders obtained in advance.

Clause 27 of the Bill seeks to amend section 100 of the Act to allow the wholly owned subsidiary of company incorporated outside India to hold its extra ordinary general meeting outside India.

Clause 28 of the Bill seeks to amend section 101 of the Act to provide that general meeting may be held at a shorter notice if in case of an Annual General Meeting consent is given by not less than ninety-five percent. of the members entitled to vote and in case of other general meetings consent is given by members holding not less than 95% of paid-up share capital.

Clause 29 of the Bill seeks to amend section 110 of the Act to provide that the company may transact an item, which is mandatorily required to be transacted through postal ballot, at a general meeting also where the facility of electronic voting is provided by the company.

Clause 30 of the Bill seeks to amend section 117 of the Act to reduce the minimum that can be imposed for non-compliance with the provisions of the section. It also seeks to provide exemption to banking companies from filing resolutions with respect to grant of loans, giving of guarantee or providing of security in respect of loans in the ordinary course of its business. The clause also seeks to omit clause (e) of sub-section (3) of the section as the requirement under the clause is already covered in clause (a).

Clause 31 of the Bill seeks to amend section 123 of the Act to provide clarity, to allow declaration of interim dividend for a financial year from the profits of the said year or from brought forward surplus in the profit and loss account. It also provides clarity that interim dividend can be declared during the period from closure of financial year till date of Annual General Meeting and in such case in addition to profits referred above, the profit generated upto quarter prior to declaration of dividend may be used.

Clause 32 of the Bill seeks to amend sub-section (3) of section 129 of the Act to provide that a company having subsidiary (ies) shall prepare Consolidated Financial Statements in the same form and manner as that of its own in accordance with applicable accounting standards. It also seeks to retain two earlier provisos.

Clause 33 of the Bill seeks to amend section 130 of the Act to provide that in addition to authorities already specified, any other person concerned shall be given notice before

passing an order for re-opening of accounts. It also seeks to provide that order for re-opening of accounts can be made upto eight years unless there is a specific direction under section 128(5) from the Central Government for longer period.

Clause 34 of the Bill seeks to amend section 132 of the Act to reduce the minimum fine under sub-section (4) in respect of professional or other misconduct from rupees ten lakhs to rupees five lakhs.

Clause 35 of the Bill seeks to amend section 134 of the Act to provide that the Chief executive officer shall sign financial statements irrespective of whether he is a director or not. It seeks to modify the disclosure requirements with respect to annual return and policies in respect of remuneration and CSR. It also seeks to empower Central Government to prescribe abridged Board's report for small company and one person company.

Clause 36 of the Bill seeks to amend section 135 of the Act to allow composition of CSR committee with two or more directors in case the company is not required to appoint independent director under section 149. Further it also seeks to empower the Central Government to prescribe sums which shall not be included for calculating 'net profit' of a company under section 135. It also seeks to modify sub-section (3) of the section to refer to subjects in Schedule VII within which CSR activities could be taken up by an eligible company.

Clause 37 of the Bill seeks to amend sub-section (1) of section 136 to provide that copies of audited financial statements and other documents can be sent at shorter notice if ninety five percent of members entitled to vote at the meeting agree for the same. It also seeks to rationalise the requirements with respect to financial statements of foreign subsidiaries of a listed company subject to conditions.

Clause 38 of the Bill seeks to amend section 137 of the Act to enable filing of unaudited financial statements of foreign subsidiaries which is not required to get its accounts audited.

Clause 39 of the Bill seeks to amend section 139 of the Act to do away with the requirements of annual ratification by members with respect to appointment of auditors.

Clause 40 of the Bill seeks to amend section 140 of the Act to reduce the penalty with respect to failure to file resignation by auditor to fifty thousand rupees or the remuneration of auditors whichever is less.

Clause 41 of the Bill seeks to amend clause (d) of sub-section (3) of section 141 of the Act to insert an explanation to clarify the meaning of relative with reference to eligibility for appointment of auditors. It also seeks to amend clause (i) of sub-section (3) for harmonisation with section 144 in respect of providing of certain non-audit services.

Clause 42 of the Bill seeks to amend sub-section (1) of section 143 of the Act to cover associate companies along with subsidiary companies with respect to right of auditors to have access to accounts and records. It also seeks to provide that auditors shall report on internal financial control systems with reference to financial statements. It also seeks to amend sub-section (14) to replace cost accountant in practice with cost accountant.

Clause 43 of the Bill seeks to amend section 147 of the Act to revise quantum of fine. It also restricts the liability of auditor for damages to the shareholders or creditors of the company instead of any other person. It also seeks that in case of criminal liability of any audit firm the concerned partners only shall be liable.

Clause 44 of the Bill seeks to amend section 148 of the Act to substitute the words 'cost accountant in practice' with the words 'cost accountant' and also to substitute the words 'Institute of Cost and Works Accountants of India' with the words 'Institute of Cost Accountants of India'.

Clause 45 of the Bill seeks to amend section 149 of the Act to provide for easier requirements with respect to appointment of resident director. It also seeks to specify limits with respect to pecuniary relationship of a director with respect to eligibility of a director to be appointed as an independent director. It also seeks to specify the scope of restriction on pecuniary relationship entered into by a relative.

Clause 46 seeks to amend sub-section (3) and (4) of section 152 of the Act to provide that in addition to Director Identification Number, a director may hold any other identification number prescribed by Central Government under section 153.

Clause 47 of the Bill seeks to amend section 153 of the Act to empower Central Government to recognise any other identification number to be treated as director identification number.

Clause 48 of the Bill seeks to amend section 160 of the Act to provide that the requirement of deposit of rupees one lakh with respect to nomination of directors shall not be applicable in case of appointment of independent directors or directors nominated by nomination and remuneration committee.

Clause 49 of the Bill seeks to amend section 161 of the Act to restrict a person from being appointed as an alternate director if he is holding directorship in the same company. It also seeks to enable the filling up of causal vacancy of the director by the board in case of private company as well. It also seeks to provide for approval in the next annual general meeting held.

Clause 50 of the Bill seeks to amend section 164 of the Act to provide that the disqualification for appointment of director, with respect to non-filing of financial statements or annual return or failure to repay the deposit by a company in which he is to be appointed, shall not apply for a period of six months from the date of his appointment. It proposes to modify proviso to sub-section (3) regarding certain disqualifications to continue to apply even if appeal or petition is filed.

Clause 51 of the Bill seeks to amend section 165 of the Act to exclude directorship in dormant companies from the limit of directorships of twenty companies.

Clause 52 of the Bill seeks to amend section 167 of the Act to provide 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.

Clause 53 of the Bill seeks to amend section 168 of the Act to provide that the requirement for forwarding of copy of resignation by director to the Registrar shall be optional.

Clause 54 of the Bill seeks to amend section 173 of the Act by inserting a proviso to allow participation of directors on certain items at Board meetings through video conferencing or other audio visual means if there is quorum through physical presence of directors.

Clause 55 of the Bill seeks to amend section 177 of the Act to substitute words listed companies with words public companies. This clause also seeks to insert a proviso to provide for ratification by audit committee of transactions involving amount not exceeding one crore rupees within 3 months of transaction, consequences of non-ratification, exemption from approval of audit committee to related party transactions between holding company and its wholly owned subsidiary, other than those covered under Section 188, etc.

Clause 56 of the Bill seeks to amend section 178 of the Act to substitute the words listed companies with the words listed public companies. It also seeks to provide that committee will specify methodology for effective evaluation of performance of Board and committees and individual directors either by the Board, nomination and remuneration committee or an independent external agency and for its review. This clause also seeks to provide that company shall place the remuneration policy on its website and will disclose salient features of such policy with web address in the Board's report, etc.

Clause 57 of the Bill seeks to amend section 180 of the Act to include securities premium along with paid-up share capital and free reserves for calculation of upper limits on borrowing powers of the Board.

Clause 58 of the Bill seeks to amend section 184 of the Act to omit the cap of minimum penalty with respect to failure by directors to disclose interest. It also seeks to include body corporates under the ambit of sub-section (5) in certain cases.

Clause 59 of the Bill seeks to amend section 185 of the Act to limit the prohibition on loans, advances, etc., to directors of the company or its holding company or any partner of such director or any firm in which such director or relative is a partner. It also allows a company to give loan or guarantee or provide security to any person in whom any of the director is interested subject to passing of special resolution by the company and utilisation of loans by the borrowing company for its principal business activities.

Clause 60 of the Bill seeks to amend section 186 of the Act by deleting the restrictions on layers of investment companies. It also seeks to provide for aggregation of loan and investments so far made and guarantees so far provided, for the purpose of calculating the limits of loans and investments. It also provides to exclude employees from the word "person" used in sub-section (2). Further it also seeks to provide that requirement of passing a special resolution at general meeting shall not be necessary where a loan or guarantee is given or where a security has been provided by a company to its wholly owned subsidiary company or a joint venture company, or acquisition is made by a holding company of the securities of its wholly owned subsidiary company. Further it also seeks to clarify when the company will be deemed to be principally engaged in the business of acquisition of shares, debentures or other securities.

Clause 61 of the Bill seeks to amend section 188 of the Act to provide that second proviso to section 188 (1) shall not apply to a company in which ninety per cent. or more members in numbers are relatives of promoters or related parties. It also seeks to provide that non-ratification of transaction shall be voidable at the option of the Board or shareholders, as the case may be.

Clause 62 of the Bill seeks to omit section 194 of the Act relating to prohibition on forward dealings in securities of company by director or key managerial personnel.

Clause 63 of the Bill seeks to omit section 195 of the Act which provides for prohibition on insider trading of securities.

Clause 64 of the Bill seeks to amend section 196 of the Act to provide that approval of Central Government shall be required on matters in Part I of Schedule V.

Clause 65 of the Bill seeks to amend section 197 of the Act to do away with requirement of obtaining approval of Central Government and to require special resolution for payment of managerial remuneration in excess of prescribed limits. It also seeks to provide that prior approval of bank or public financial institution or non-convertible debenture holder or secured creditor shall be obtained where any term loan is subsisting, before approval of shareholders. It also requires auditor of the company in his report under section 143 to make a statement as to whether the remuneration paid by the company is accordance with the provisions of section 197.

Clause 66 of the Bill seeks to amend section 198 of the Act to provide that requirement of not giving credit for profits on sale of shares or debentures for calculation of profit shall not apply to investment companies.

Clause 67 of the Bill seeks to amend section 200 of the Act to omit the words "Central Government".

Clause 68 of the Bill seeks to amend section 201 of the Act as a consequential change to amendment made section 196.

Clause 69 of the Bill seeks to amend section 216 of the Act to provide that Central Government may appoint inspectors for determining true persons who have or had beneficial interest in shares of a company or who are or have been beneficial owners or significant beneficial owner of the company.

Clause 70 of the Bill seeks to amend section 223 of the Act to provide that copy of inspectors report shall be made available only to members, creditors or any other person whose interest is likely to be affected.

Clause 71 of the Bill seeks to amend section 236 of the Act to substitute the words 'transferor company' with the words 'company whose shares are being transferred' for providing clarity.

Clause 72 of the Bill seeks to amend section 247 of the Act to provide that registered valuer shall not undertake valuation of any asset in which he has direct or indirect interest three years before appointment as valuer or three years after valuation of assets.

Clause 73 of the Bill seeks to amend section 366 of the Act to allow conversions into companies from partnership firms, etc. with two or more members provided that in case of less than seven members the conversion would be into a private company.

Clause 74 of the Bill seeks to amend section 379 of the Act to bring clarity with respect to applicability of provisions of the Act to foreign companies.

Clause 75 of the Bill seeks to amend section 384 of the Act to bring clarity on applicability of section 135 to foreign companies.

Clause 76 of the Bill seeks to amend section 403 of Act to bring more clarity with respect to late filings of documents under sections 89, 92, 117, 121, 137 and 157 and defaults in filings, consequences, etc.

Clause 77 of the Bill seeks to substitute section 406 of the Act regarding a declaration of mutual benefit societies and with *Nidhi* companies.

Clause 78 of the Bill seeks to amend section 409 of the Act to provide for eligibility for technical members with Supreme Court directions with respect to constitution of National Company Law Tribunal.

Clause 79 of the Bill seeks to amend section 411 of the Act to provide for eligibility for technical members with Supreme Court directives with respect to qualifications of Technical Member of National Company Law Appellate Tribunal.

Clause 80 of the Bill seeks to amend section 412 of the Act to align with Supreme Court directions with respect to constitution of Selection Committee.

Clause 81 of the Bill seeks to amend section 435 of the Act to include appointment of Metropolitan Magistrate or a Judicial Magistrate of the First Class by Central Government in Special Court in case of offences punishable under the Act with imprisonment of not more than two years.

Clause 82 of the Bill seeks to amend section 438 of the Act as a consequence of amendments to section 435.

Clause 83 of the Bill seeks to amend section 439 of the Act to include member along with shareholders in respect of complaint with respect to taking cognizance of offences under the Act by the Court.

Clause 84 of the Bill seeks to amend section 440 of the Act to provide that till the time a Special Court is established, the trial of offences shall be continued with Court of Session or Court of Metropolitan Magistrate or a Judicial Magistrate of the First Class.

Clause 85 of the Bill seeks to amend section 441 of the Act to enable Tribunal to compound offences punishable with fine only or with fine or imprisonment or both.

Clause 86 of the Bill seeks to insert two new sections with respect to factors for determining the level of punishment and for lesser penalties for one person companies and small companies.

Clause 87 of the Bill seeks to amend section 447 of the Act to bring thresholds with respect to compounding provisions relating to fraud without imprisonment.

FINANCIAL MEMORANDUM

The provisions of the Companies (Amendment) Bill, 2016 will not involve any expenditure of recurring or non-recurring nature, on its enactment.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (iii) of clause 2 of the Bill confers power upon the Central Government to prescribe under clause (30) of section 2 of the Companies Act, 2013 (the Act) any other kind of instrument in consultation with Reserve Bank of India, which shall not be treated as debenture under the Act.

Sub-clause (vii) of clause 2 of the Bill proposes to empower Central Government to prescribe any other officer as "key managerial personnel" under clause (51) of section 2 of the Act.

Sub-clause (ii) of clause 4 proposes to empower Central Government to prescribe the period for reserving the name of the Company by Registrar under clause (i) sub-section (5) of section 4 of the Act.

Clause 10, *inter alia* proposes to empower Central Government to prescribe under section 42 of the Act—

(1) higher number for making private placement by companies and the conditions subject to which private placement can be made under sub-section (2) of section 42 of the Act.

(2) under sub-section (3) of section 42 of the Act—

(a) form and manner for issuing private placement offer and application form to identified persons; and

(b) the manner in which the names and addresses of identified persons shall be recorded by company.

(3) class of identified persons for making more than one issue of securities by way of private placement under proviso to sub-section (5) of section 42 of the Act.

(4) under sub-section (8)—

(a) the manner in which a return of allotment for private placement shall be filed with Registrar; and

(b) other relevant information of allottees to be filed with the return of allotment.

Sub-clause (i) of clause 14 proposes to empower Central Government to prescribe the conditions for compliances under clause (c) of sub-section (1) of section 62.

Clause 18 proposes to empower Central Government to prescribe in consultation with Reserve Bank of India the charges to which provisions of section 77 of the Act shall not apply.

Sub-clause (ii) of clause 20 proposes to empower Central Government to prescribe additional fee for allowing filing of intimation of payment or satisfaction of charge under the proviso to sub-section (1) of section 82 of the Act.

Clause 22, *inter alia*, proposes to empower Central Government to prescribe under section 90 of the Act—

(a) other percentage of beneficial interest in shares in sub-section (1),

(b) period within which and manner in which declaration regarding beneficial interest in shares shall be given in sub-section (1),

(c) class or classes of persons which shall not be required to make declaration under proviso to sub-section (1),

(d) other details which may be included in the register of interest declared by individual in sub-section (2),

(e) fees on payment of which the member may inspect the register under sub-section (3),

(f) other details of significant beneficial owners of the company which may be included in the return of significant beneficial owners to be filed with the Registrar and also to prescribe form and manner of such filing in sub-section (4),

(g) manner in which the company may give notice in sub-section (7),

(h) matters, on which Tribunal may make order w.r.t restrictions on shares in question under sub-section (5) of section 90 of the Act,

(i) period, other than the sixty days period as already provided in the sub-section (8) of section 90, for making orders by the Tribunal.

Sub-clause (1) of clause 23 proposes to empower Central Government to prescribe under sub-section (1) of section 92 of the Act, an abridged form of annual return for one person company and small company.

Clause 25 empowers Central Government to prescribe particulars about register, index or return which shall not be available for inspection under section 94 of the Act.

Clause 32 proposes to substitute sub-section (3) of section 129. The provisos thereto propose to empower Central Government to prescribe—

(a) form for attaching separate statement containing the salient features of the financial statement of its subsidiary or subsidiaries by a holding company;

(b) manner of consolidation of accounts of companies.

Clause 35 proposes to insert new sub-section (3A) in section 134 to empower Central Government to prescribe abridged Board's report for small company or one person company.

Clause 36, *inter alia*, proposes to empower Central Government to prescribe sums, which shall not be included in the net profit of a company under section 135 of the Act.

Clause 45, *inter alia*, proposes to empower Central Government to prescribe,—

(i) threshold amount for treating pecuniary relationship for the purpose of determining independence of a director under sub-section (6) of section 149.

(ii) higher amount of securities or interest for holding by relatives, which shall not be construed as pecuniary relationship of Independent Directors in sub-section (6) of section 149.

(iii) the amount to specify indebtedness of relative of Independent Directors for determining eligibility of an Independent Director as provided in sub-section (6) of section 149.

(iv) amount up to which guarantee may be given or security may be provided by relative of Independent Director in connection with the indebtedness of any third person in sub-section (6) of section 149.

Clause 47 proposes to empower Central Government to prescribe under section 153 other identification number which shall be treated as Director Identification Number for the purpose of this Act and to prescribe the manner in which requirement of section 153 shall apply.

Clause 65 proposes to empower Central Government to prescribe under sub-section (16) of section 197 other details to be given by auditors while making his report under section 143 about remuneration paid to Directors.

Clause 76 proposes to empower Central Government to prescribe additional fees or higher additional fees on payment of which certain documents [referred to in sub-clause (i) of clause 76] may be filed after expiry of period specified.

ANNEXURE

EXTRACTS FROM THE COMPANIES ACT, 2013

(18 OF 2013)

* * * * *

2. In this Act, unless the context otherwise requires,— Definitions.

* * * * *

(6) "associate company", in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.

Explanation.—For the purposes of this clause, "significant influence" means control of at least twenty per cent. of total share capital, or of business decisions under an agreement;

* * * * *

23 of 1959.

(28) "cost accountant" means a cost accountant as defined in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959;

* * * * *

(49) "interested director" means a director who is in any way, whether by himself or through any of his relatives or firm, body corporate or other association of individuals in which he or any of his relatives is a partner, director or a member, interested in a contract or arrangement, or proposed contract or arrangement, entered into or to be entered into by or on behalf of a company;

* * * * *

(51) "key managerial personnel", in relation to a company, means—

* * * * *

(iv) the Chief Financial Officer; and

(v) such other officer as may be prescribed;

* * * * *

(76) "related party", with reference to a company, means—

* * * * *

(viii) any company which is—

(A) a holding, subsidiary or an associate company of such company; or

(B) a subsidiary of a holding company to which it is also a subsidiary;

* * * * *

(85) "small company" means a company, other than a public company,—

* * * * *

(ii) turnover of which as per its last profit and loss account does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than twenty crore rupees:

Provided that nothing in this clause shall apply to—

- (A) a holding company or a subsidiary company;
- (B) a company registered under section 8; or
- (C) a company or body corporate governed by any special Act;

* * * * *

(87) "subsidiary company" or "subsidiary", in relation to any other company (that is to say the holding company), means a company in which the holding company—

* * * * *

(ii) exercises or controls more than one-half of the total share capital either at its own or together with one or more of its subsidiary companies:

Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

Explanation.—For the purposes of this clause,—

(a) a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company;

* * * * *

(91) "turnover" means the aggregate value of the realisation of amount made from the sale, supply or distribution of goods or on account of services rendered, or both, by the company during a financial year;

* * * * *

Memorandum. 4. (1) The memorandum of a company shall state—

* * * * *

(c) the objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof;

* * * * *

(5) (i) Upon receipt of an application under sub-section (4), the Registrar may, on the basis of information and documents furnished along with the application, reserve the name for a period of sixty days from the date of the application.

* * * * *

Incorporation of company. 7. (1) There shall be filed with the Registrar within whose jurisdiction the registered office of a company is proposed to be situated, the following documents and information for registration, namely:—

* * * * *

(c) an affidavit from each of the subscribers to the memorandum and from persons named as the first directors, if any, in the articles that he is not convicted of any offence in connection with the promotion, formation or management of any company, or that he has not been found guilty of any fraud or misfeasance or of any breach of duty to any company under this Act or any previous company law during the preceding five years and that all the documents filed with the Registrar for registration of the company contain information that is correct and complete and true to the best of his knowledge and belief;

* * * * *

12. (I) A company shall, on and from the fifteenth day of its incorporation and at all times thereafter, have a registered office capable of receiving and acknowledging all communications and notices as may be addressed to it.

Registered office of company.

* * * * *

(4) Notice of every change of the situation of the registered office, verified in the manner prescribed, after the date of incorporation of the company, shall be given to the Registrar within fifteen days of the change, who shall record the same.

* * * * *

21. Save as otherwise provided in this Act,—

(a) a document or proceeding requiring authentication by a company; or

(b) contracts made by or on behalf of a company, may be signed by any key managerial personnel or an officer of the company duly authorised by the Board in this behalf.

Authenticat-
tion of
documents,
proceedings
and contracts.

* * * * *

26. (I) Every prospectus issued by or on behalf of a public company either with reference to its formation or subsequently, or by or on behalf of any person who is or has been engaged or interested in the formation of a public company, shall be dated and signed and shall—

Matters to be
stated in
prospectus.

(a) state the following information, namely:—

(i) names and addresses of the registered office of the company, company secretary, Chief Financial Officer, auditors, legal advisers, bankers, trustees, if any, underwriters and such other persons as may be prescribed;

(ii) dates of the opening and closing of the issue, and declaration about the issue of allotment letters and refunds within the prescribed time;

(iii) a statement by the Board of Directors about the separate bank account where all monies received out of the issue are to be transferred and disclosure of details of all monies including utilised and unutilised monies out of the previous issue in the prescribed manner;

(iv) details about underwriting of the issue;

(v) consent of the directors, auditors, bankers to the issue, expert's opinion, if any, and of such other persons, as may be prescribed;

(vi) the authority for the issue and the details of the resolution passed therefor;

(vii) procedure and time schedule for allotment and issue of securities;

(viii) capital structure of the company in the prescribed manner;

(ix) main objects of public offer, terms of the present issue and such other particulars as may be prescribed;

(x) main objects and present business of the company and its location, schedule of implementation of the project;

(xi) particulars relating to—

(A) management perception of risk factors specific to the project;

(B) gestation period of the project;

(C) extent of progress made in the project;

(D) deadlines for completion of the project; and

(E) any litigation or legal action pending or taken by a Government Department or a statutory body during the last five years immediately preceding the year of the issue of prospectus against the promoter of the company;

(xii) minimum subscription, amount payable by way of premium, issue of shares otherwise than on cash;

(xiii) details of directors including their appointments and remuneration, and such particulars of the nature and extent of their interests in the company as may be prescribed; and

(xiv) disclosures in such manner as may be prescribed about sources of promoter's contribution;

(b) set out the following reports for the purposes of the financial information, namely:—

(i) reports by the auditors of the company with respect to its profits and losses and assets and liabilities and such other matters as may be prescribed;

(ii) reports relating to profits and losses for each of the five financial years immediately preceding the financial year of the issue of prospectus including such reports of its subsidiaries and in such manner as may be prescribed:

Provided that in case of a company with respect to which a period of five years has not elapsed from the date of incorporation, the prospectus shall set out in such manner as may be prescribed, the reports relating to profits and losses for each of the financial years immediately preceding the financial year of the issue of prospectus including such reports of its subsidiaries;

(iii) reports made in the prescribed manner by the auditors upon the profits and losses of the business of the company for each of the five financial years immediately preceding issue and assets and liabilities of its business on the last date to which the accounts of the business were made up, being a date not more than one hundred and eighty days before the issue of the prospectus:

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

(iv) reports about the business or transaction to which the proceeds of the securities are to be applied directly or indirectly;

* * * * *

PART II.—*Private placement*

Offer or invitation for subscription of securities on private placement.

42. (1) Without prejudice to the provisions of section 26, a company may, subject to the provisions of this section, make private placement through issue of a private placement offer letter.

(2) Subject to sub-section (1), the offer of securities or invitation to subscribe securities, shall be made to such number of persons not exceeding fifty or such higher number as may be prescribed, [excluding qualified institutional buyers and employees of the company being offered securities under a scheme of employees stock option as per provisions of clause (b)

of sub-section (1) of section 62], in a financial year and on such conditions (including the form and manner of private placement) as may be prescribed.

Explanation I.—If a company, listed or unlisted, makes an offer to allot or invites subscription, or allots, or enters into an agreement to allot, securities to more than the prescribed number of persons, whether the payment for the securities has been received or not or whether the company intends to list its securities or not on any recognised stock exchange in or outside India, the same shall be deemed to be an offer to the public and shall accordingly be governed by the provisions of Part I of this Chapter.

Explanation II.—For the purposes of this section, the expression—

(i) "qualified institutional buyer" means the qualified institutional buyer as defined in the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 as amended from time to time.

(ii) "private placement" means any offer of securities or invitation to subscribe securities to a select group of persons by a company (other than by way of public offer) through issue of a private placement offer letter and which satisfies the conditions specified in this section.

(3) No fresh offer or invitation under this section shall be made unless the allotments with respect to any offer or invitation made earlier have been completed or that offer or invitation has been withdrawn or abandoned by the company.

(4) Any offer or invitation not in compliance with the provisions of this section shall be treated as a public offer and all provisions of this Act, and the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992 shall be required to be complied with.

42 of 1956.
15 of 1992.

(5) All monies payable towards subscription of securities under this section shall be paid through cheque or demand draft or other banking channels but not by cash.

(6) A company making an offer or invitation under this section shall allot its securities within sixty days from the date of receipt of the application money for such securities and if the company is not able to allot the securities within that period, it shall repay the application money to the subscribers within fifteen days from the date of completion of sixty days and if the company fails to repay the application money within the aforesaid period, it shall be liable to repay that money with interest at the rate of twelve per cent. per annum from the expiry of the sixtieth day:

Provided that monies received on application under this section shall be kept in a separate bank account in a scheduled bank and shall not be utilised for any purpose other than—

(a) for adjustment against allotment of securities; or

(b) for the repayment of monies where the company is unable to allot securities.

(7) All offers covered under this section shall be made only to such persons whose names are recorded by the company prior to the invitation to subscribe, and that such persons shall receive the offer by name, and that a complete record of such offers shall be kept by the company in such manner as may be prescribed and complete information about such offer shall be filed with the Registrar within a period of thirty days of circulation of relevant private placement offer letter.

(8) No company offering securities under this section shall release any public advertisements or utilise any media, marketing or distribution channels or agents to inform the public at large about such an offer.

(9) Whenever a company makes any allotment of securities under this section, it shall file with the Registrar a return of allotment in such manner as may be prescribed, including

the complete list of all security-holders, with their full names, addresses, number of securities allotted and such other relevant information as may be prescribed.

(10) 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 involved in the offer or invitation or two crore rupees, whichever is higher, and the company shall also refund all monies to subscribers within a period of thirty days of the order imposing the penalty.

* * * * *

Voting rights.

47. (1) Subject to the provisions of section 43 and sub-section (2) of section 50,—

(a) every member of a company limited by shares and holding equity share capital therein, shall have a right to vote on every resolution placed before the company; and

(b) his voting right on a poll shall be in proportion to his share in the paid-up equity share capital of the company.

* * * * *

Prohibition on issue of shares at discount.

53. (1)

(2) Any share issued by a company at a discounted price shall be void.

* * * * *

Issue of sweat equity shares.

54. (1) Notwithstanding anything contained in section 53, a company may issue sweat equity shares of a class of shares already issued, if the following conditions are fulfilled, namely:—

* * * * *

(c) not less than one year has, at the date of such issue, elapsed since the date on which the company had commenced business; and

* * * * *

Further issue of share capital.

62. (1) Where at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares shall be offered—

* * * * *

(c) to any persons, if it is authorised by a special resolution, whether or not those persons include the persons referred to in clause (a) or clause (b), either for cash or for a consideration other than cash, if the price of such shares is determined by the valuation report of a registered valuer subject to such conditions as may be prescribed.

(2) The notice referred to in sub-clause (i) of clause (a) of sub-section (1) shall be despatched through registered post or speed post or through electronic mode to all the existing shareholders at least three days before the opening of the issue.

* * * * *

CHAPTER V

ACCEPTANCE OF DEPOSITS BY COMPANIES

Prohibition on acceptance of deposits from public.

73. (1)

(2) A company may, subject to the passing of a resolution in general meeting and subject to such rules as may be prescribed in consultation with the Reserve Bank of India, accept deposits from its members on such terms and conditions, including the provision of security, if any, or for the repayment of such deposits with interest, as may be agreed upon between the company and its members, subject to the fulfilment of the following conditions, namely:—

(a) * * * * *

(c) depositing such sum which shall not be less than fifteen per cent. of the amount of its deposits maturing during a financial year and the financial year next following, and kept in a scheduled bank in a separate bank account to be called as deposit repayment reserve account;

(d) providing such deposit insurance in such manner and to such extent as may be prescribed;

(e) certifying that the company has not committed any default in the repayment of deposits accepted either before or after the commencement of this Act or payment of interest on such deposits; and

* * * * *

74. (1) Where in respect of any deposit accepted by a company before the commencement of this Act, the amount of such deposit or part thereof or any interest due thereon remains unpaid on such commencement or becomes due at any time thereafter, the company shall—

Repayment of deposits, etc., accepted before commencement of this Act.

* * * * *

(b) repay within one year from such commencement or from the date on which such payments are due, whichever is earlier.

* * * * *

76A. Where a company accepts or invites or allows or causes any other person to accept or invite on its behalf any deposit in contravention of the manner or the conditions prescribed under section 73 or section 76 or rules made thereunder or if a company fails to repay the deposit or part thereof or any interest due thereon within the time specified under section 73 or section 76 or rules made thereunder or such further time as may be allowed by the Tribunal under section 73,—

Punishment for contravention of section 73 of section 76.

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

* * * * *

78. Where a company fails to register the charge within the period specified in section 77, without prejudice to its liability in respect of any offence under this Chapter, the person in whose favour the charge is created may apply to the Registrar for registration of the charge along with the instrument created for the charge, within such time and in such form and manner as may be prescribed and the Registrar may, on such application, within a period of fourteen days after giving notice to the company, unless the company itself registers the charge or shows sufficient cause why such charge should not be registered, allow such registration on payment of such fees, as may be prescribed:

Application for registration of charge.

Provided that where registration is effected on application of the person in whose favour the charge is created, that person shall be entitled to recover from the company the Acceptance of deposits from public by certain companies. Duty to register charges, etc. amount of any fees or additional fees paid by him to the Registrar for the purpose of registration of charge.

* * * * *

82. (1) A company shall give intimation to the Registrar in the prescribed form, of the payment or satisfaction in full of any charge registered under this Chapter within a period of thirty days from the date of such payment or satisfaction and the provisions of sub-section (1) of section 77 shall, as far as may be, apply to an intimation given under this section.

Company to report satisfaction of charge.

* * * * *

Investigation of beneficial ownership of shares in certain cases.

90. Where it appears to the Central Government that there are reasons so to do, it may appoint one or more competent persons to investigate and report as to beneficial ownership with regard to any share or class of shares and the provisions of section 216 shall, as far as may be, apply to such investigation as if it were an investigation ordered under that section.

* * * * *

Annual return.

92. (1) Every company shall prepare a return (hereinafter referred to as the annual return) in the prescribed form containing the particulars as they stood on the close of the financial year regarding—

* * * * *

(c) its indebtedness;

* * * * *

(j) details, as may be prescribed, in respect of shares held by or on behalf of the Foreign Institutional Investors indicating their names, addresses, countries of incorporation, registration and percentage of shareholding held by them; and

* * * * *

(2) The annual return, filed by a listed company or, by a company having such paid-up capital and turnover as may be prescribed, shall be certified by a company secretary in practice in the prescribed form, stating that the annual return discloses the facts correctly and adequately and that the company has complied with all the provisions of this Act.

(3) An extract of the annual return in such form as may be prescribed shall form part of the Board's report.

* * * * *

Return to be filed with Registrar in case promoters' stake changes.

93. Every listed company shall file a return in the prescribed form with the Registrar with respect to change in the number of shares held by promoters and top ten shareholders of such company, within fifteen days of such change.

Place of keeping and inspection of registers, returns, etc.

94. (1) The registers required to be kept and maintained by a company under section 88 and copies of the annual return filed under section 92 shall be kept at the registered office of the company:

Provided that such registers or copies of return may also be kept at any other place in India in which more than one-tenth of the total number of members entered in the register of members reside, if approved by a special resolution passed at a general meeting of the company and the Registrar has been given a copy of the proposed special resolution in advance:

Provided further that the period for which the registers, returns and records are required to be kept shall be such as may be prescribed.

* * * * *

Annual general meeting.

96. (1) * * * * *

(2) Every annual general meeting shall be called during business hours, that is, between 9 a.m. and 6 p.m. on any day that is not a National Holiday and shall be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situate:

Provided that the Central Government may exempt any company from the provisions of this sub-section subject to such conditions as it may impose.

Explanation.—For the purposes of this sub-section, "National Holiday" means and includes a day declared as National Holiday by the Central Government.

* * * * *

101. (1) A general meeting of a company may be called by giving not less than clear twenty-one days' notice either in writing or through electronic mode in such manner as may be prescribed: Notice of meeting.

Provided that a general meeting may be called after giving a shorter notice if consent is given in writing or by electronic mode by not less than ninety-five per cent. of the members entitled to vote at such meeting.

* * * * *

117. (1) Resolutions and agreements to be filed.

(2) If a company fails to file the resolution or the agreement under sub-section (1) before the expiry of the period specified under section 403 with additional fee, the company shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default, including liquidator of the company, if any, shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

(3) The provisions of this section shall apply to—

* * * * *

(e) resolutions passed by a company according consent to the exercise by its Board of Directors of any of the powers under clause (a) and clause (c) of sub-section (1) of section 180;

* * * * *

CHAPTER VIII

DECLARATION AND PAYMENT OF DIVIDEND

123. (1) Declaration of dividend.

(3) The Board of Directors of a company may declare interim dividend during any financial year out of the surplus in the profit and loss account and out of profits of the financial year in which such interim dividend is sought to be declared:

Provided that 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 the immediately preceding three financial years.

* * * * *

129. (1) Financial statement.

(3) Where a company has one or more subsidiaries, it shall, in addition to financial statements provided under sub-section (2), prepare a consolidated financial statement of the company and of all the subsidiaries in the same form and manner as that of its own which shall also be laid before the annual general meeting of the company along with the laying of its financial statement under sub-section (2):

Provided that the company shall also attach along with its financial statement, a separate statement containing the salient features of the financial statement of its subsidiary or subsidiaries in such form as may be prescribed:

Provided further that the Central Government may provide for the consolidation of accounts of companies in such manner as may be prescribed.

Explanation.—For the purposes of this sub-section, the word "subsidiary" shall include associate company and joint venture.

* * * * *

Re-opening of accounts on court's or Tribunal's orders.

130. (1) A company shall not re-open its books of account and not recast its financial statements, unless an application in this regard is made by the Central Government, the Income-tax authorities, the Securities and Exchange Board, any other statutory regulatory body or authority or any person concerned and an order is made by a court of competent jurisdiction or the Tribunal to the effect that—

(i) the relevant earlier accounts were prepared in a fraudulent manner; or

(ii) the affairs of the company were mismanaged during the relevant period, casting a doubt on the reliability of financial statements:

Provided that the court or the Tribunal, as the case may be, shall give notice to the Central Government, the Income-tax authorities, the Securities and Exchange Board or any other statutory regulatory body or authority concerned and shall take into consideration the representations, if any, made by that Government or the authorities, Securities and Exchange Board or the body or authority concerned before passing any order under this section.

* * * * *

Constitution of National Financial Reporting Authority.

132. (1) * * * * *

(4) Notwithstanding anything contained in any other law for the time being in force, the National Financial Reporting Authority shall—

* * * * *

(c) where professional or other misconduct is proved, have the power to make order for—

(A) imposing penalty of—

(I) not less than one lakh rupees, but which may extend to five times of the fees received, in case of individuals; and

(II) not less than ten lakh rupees, but which may extend to ten times of the fees received, in case of firms;

(B) debaring the member or the firm from engaging himself or itself from practice as member of the Institute of Chartered Accountant of India referred to in clause (e) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 for a minimum period of six months or for such higher period not exceeding ten years as may be decided by the National Financial Reporting Authority.

38 of 1949.

Explanation.—For the purposes of his sub-section, the expression "professional or other misconduct" shall have the same meaning assigned to it under section 22 of the Chartered Accountants Act, 1949.

38 of 1949.

* * * * *

Financial statement, Board's report, etc.

134. (1) The financial statement, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board at least by the chairperson of the company where he is authorised by the Board or by two directors out of which one shall be managing director and the Chief Executive Officer, if he is a director in the company, the Chief Financial Officer and the company secretary of the company, wherever they are appointed, or in the case of a One Person Company, only by one director, for submission to the auditor for his report thereon.

* * * * *

(3) There shall be attached to statements laid before a company in general meeting, a report by its Board of Directors, which shall include—

(a) the extract of the annual return as provided under sub-section (3) of section 92;

* * * * *

(p) in case of a listed company and every other public company having such paid-up share capital as may be prescribed, a statement indicating the manner in which formal annual evaluation has been made by the Board of its own performance and that of its committees and individual directors;

* * * * *

135. (1) Every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during any financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director.

Corporate Social Responsibility.

* * * * *

(3) The Corporate Social Responsibility Committee shall,—

(a) formulate and recommend to the Board, a Corporate Social Responsibility Policy which shall indicate the activities to be undertaken by the company as specified in Schedule VII;

* * * * *

(5) The Board of every company referred to in sub-section (1), shall ensure that the company spends, in every financial year, at least two per cent. of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy:

Provided that the company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for Corporate Social Responsibility activities:

Provided further that if the company fails to spend such amount, the Board shall, in its report made under clause (o) of sub-section (3) of section 134, specify the reasons for not spending the amount.

Explanation.—For the purposes of this section "average net profit" shall be calculated in accordance with the provisions of section 198.

136. (1) Without prejudice to the provisions of section 101, a copy of the financial statements, including consolidated financial statements, if any, auditor's report and every other document required by law to be annexed or attached to the financial statements, which are to be laid before a company in its general meeting, shall be sent to every member of the company, to every trustee for the debenture-holder of any debentures issued by the company, and to all persons other than such member or trustee, being the person so entitled, not less than twenty-one days before the date of the meeting:

Right of member to copies of audited financial statement.

Provided that in the case of a listed company, the provisions of this sub-section shall be deemed to be complied with, if the copies of the documents are made available for inspection at its registered office during working hours for a period of twenty-one days before the date of the meeting and a statement containing the salient features of such documents in the prescribed form or copies of the documents, as the company may deem fit, is sent to every member of the company and to every trustee for the holders of any debentures issued by the company not less than twenty-one days before the date of the meeting unless the shareholders ask for full financial statements:

Provided further that the Central Government may prescribe the manner of circulation of financial statements of companies having such net worth and turnover as may be prescribed:

* * * * *

Provided also that every company having a subsidiary or subsidiaries shall,—

(a) place separate audited accounts in respect of each of its subsidiary on its website, if any;

(b) provide a copy of separate audited financial statements in respect of each of its subsidiary, to any shareholder of the company who asks for it.

* * * * *

CHAPTER X

AUDIT AND AUDITORS

Appointment of auditors.

139. (1) Subject to the provisions of this Chapter, every company shall, at the first annual general meeting, appoint an individual or a firm as an auditor who shall hold office from the conclusion of that meeting till the conclusion of its sixth annual general meeting and thereafter till the conclusion of every sixth meeting and the manner and procedure of selection of auditors by the members of the company at such meeting shall be such as may be prescribed:

Provided that the company shall place the matter relating to such appointment for ratification by members at every annual general meeting:

* * * * *

(8) Any casual vacancy in the office of an auditor shall—

(i) in the case of a company other than a company whose accounts are subject to audit by an auditor appointed by the Comptroller and Auditor-General of India, be filled by the Board of Directors within thirty days, but if such casual vacancy is as a result of the resignation of an auditor, such appointment shall also be approved by the company at a general meeting convened within three months of the recommendation of the Board and he shall hold the office till the conclusion of the next annual general meeting;

* * * * *

Removal, resignation of auditor and giving of special notice.

140. (1) * * * * *

(3) If the auditor does not comply with sub-section (2), he or it shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.

* * * * *

Eligibility, qualifications and disqualifications of auditors.

141. (1) * * * * *

(3) The following persons shall not be eligible for appointment as an auditor of a company, namely:—

* * * * *

(d) a person who, or his relative or partner—

(i) is holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company:

Provided that the relative may hold security or interest in the company of face value not exceeding one thousand rupees or such sum as may be prescribed;

* * * * *

143. (1) Every auditor of a company shall have a right of access at all times to the books of account and vouchers of the company, whether kept at the registered office of the company or at any other place and shall be entitled to require from the officers of the company such information and explanation as he may consider necessary for the performance of his duties as auditor and amongst other matters inquire into the following matters, namely:—

Powers and duties of auditors and auditing standards.

(a) whether loans and advances made by the company on the basis of security have been properly secured and whether the terms on which they have been made are prejudicial to the interests of the company or its members;

(b) whether transactions of the company which are represented merely by book entries are prejudicial to the interests of the company;

(c) where the company not being an investment company or a banking company, whether so much of the assets of the company as consist of shares, debentures and other securities have been sold at a price less than that at which they were purchased by the company;

(d) whether loans and advances made by the company have been shown as deposits;

(e) whether personal expenses have been charged to revenue account;

(f) where it is stated in the books and documents of the company that any shares have been allotted for cash, whether cash has actually been received in respect of such allotment, and if no cash has actually been so received, whether the position as stated in the account books and the balance sheet is correct, regular and not misleading:

Provided that the auditor of a company which is a holding company shall also have the right of access to the records of all its subsidiaries in so far as it relates to the consolidation of its financial statements with that of its subsidiaries.

* * * * *

(3) The auditor's report shall also state—

* * * * *

(i) whether the company has adequate internal financial controls system in place and the operating effectiveness of such controls;

* * * * *

(14) The provisions of this section shall *mutatis mutandis* apply to—

(a) the cost accountant in practice conducting cost audit under section 148; or

(b) the company secretary in practice conducting secretarial audit under section 204.

* * * * *

147. (1) * * * * *

Punishment for contravention.

(2) If an auditor of a company contravenes any of the provisions of section 139, section 143, section 144 or section 145, the auditor shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees:

Provided that if an auditor has contravened such provisions knowingly or wilfully with the intention to deceive the company or its shareholders or creditors or tax authorities, he shall be punishable with imprisonment for a term which may extend to one year and with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees.

(3) Where an auditor has been convicted under sub-section (2), he shall be liable to—

* * * * *

(ii) pay for damages to the company, statutory bodies or authorities or to any other persons for loss arising out of incorrect or misleading statements of particulars made in his audit report.

* * * * *

Central Government to specify audit of items of cost in respect of certain companies.

148. (1) * * * *

(3) The audit under sub-section (2) shall be conducted by a Cost Accountant in practice who shall be appointed by the Board on such remuneration as may be determined by the members in such manner as may be prescribed:

* * * *

Explanation.—For the purposes of this sub-section, the expression "cost auditing standards" mean such standards as are issued by the Institute of Cost and Works Accountants of India, constituted under the Cost and Works Accountants Act, 1959, with the approval of the Central Government. 23 of 1959.

* * * *

(5) The qualifications, disqualifications, rights, duties and obligations applicable to auditors under this Chapter shall, so far as may be applicable, apply to a cost auditor appointed under this section and it shall be the duty of the company to give all assistance and facilities to the cost auditor appointed under this section for auditing the cost records of the company:

Provided that the report on the audit of cost records shall be submitted by the cost accountant in practice to the Board of Directors of the company.

* * * *

CHAPTER XI

APPOINTMENT AND QUALIFICATIONS OF DIRECTORS

Company to have Board of Directors.

149. (1) * * * *

(3) Every company shall have at least one director who has stayed in India for a total period of not less than one hundred and eighty-two days in the previous calendar year.

* * * *

(6) An independent director in relation to a company, means a director other than a managing director or a whole-time director or a nominee director,—

* * * *

(c) who has or had no pecuniary relationship with the company, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year;

(d) none of whose relatives has or had pecuniary relationship or transaction with the company, its holding, subsidiary or associate company, or their promoters, or directors, amounting to two per cent. or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year;

* * * *

Application for allotment of Director Identification Number.

153. Every individual intending to be appointed as director of a company shall make an application for allotment of Director Identification Number to the Central Government in such form and manner and along with such fees as may be prescribed.

* * * *

Appointment of additional director, alternate director and nominee director.

161. (1) * * * *

(4) In the case of a public company, if the office of any director appointed by the company in general meeting is vacated before his term of office expires in the normal course, the resulting casual vacancy may, in default of and subject to any regulations in the articles of the company, be filled by the Board of Directors at a meeting of the Board:

Provided that any person so appointed shall hold office only up to the date up to which the director in whose place he is appointed would have held office if it had not been vacated.

* * * *

164. (1) * * * * * Disqualifica-
 (3) A private company may by its articles provide for any disqualifications for appointment as a director in addition to those specified in sub-sections (1) and (2):
 tion for
 of director.

Provided that the disqualifications referred to in clauses (d), (e) and (g) of sub-section (1) shall not take effect—

(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 off; 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 off.

* * * * *

167. (1) The office of a director shall become vacant in case—
 * * * * * Vacaton of
 office of
 director.

(f) he is convicted by a court of any offence, whether involving moral turpitude or otherwise and sentenced in respect thereof to imprisonment for not less than six months:

Provided that the office shall be vacated by the director even if he has filed an appeal against the order of such court;

* * * * *

168. (1) A director may resign from his office by giving a notice in writing to the company and the Board shall on receipt of such notice take note of the same and the company shall intimate the Registrar in such manner, within such time and in such form as may be prescribed and shall also place the fact of such resignation in the report of directors laid in the immediately following general meeting by the company:
 Resignation of
 director.

Provided that a director shall also forward a copy of his resignation along with detailed reasons for the resignation to the Registrar within thirty days of resignation in such manner as may be prescribed.

* * * * *

177. (1) The Board of Directors of every listed company and such other class or classes of companies, as may be prescribed, shall constitute an Audit Committee.
 Audit
 Committee.

* * * * *

178. (1) The Board of Directors of every listed company and such other class or classes of companies, as may be prescribed shall constitute the Nomination and Remuneration Committee consisting of three or more non-executive directors out of which not less than one-half shall be independent directors:
 Nomination
 and Remu-
 neration
 Committee
 and Stakehold-
 ers Relation-
 ship Commit-
 tee.

Provided that the chairperson of the company (whether executive or non-executive) may be appointed as a member of the Nomination and Remuneration Committee but shall not chair such Committee.

(2) The Nomination and Remuneration Committee shall identify persons who are qualified to become directors and who may be appointed in senior management in accordance with the criteria laid down, recommend to the Board their appointment and removal and shall carry out evaluation of every director's performance.

* * * * *

(4) The Nomination and Remuneration Committee shall, while formulating the policy under sub-section (3) ensure that—

* * * * *

(c) remuneration to directors, key managerial personnel and senior management involves a balance between fixed and incentive pay reflecting short and long-term performance objectives appropriate to the working of the company and its goals:

Provided that such policy shall be disclosed in the Board's report.

* * * * *

Restrictions
on powers of
Board.

180. (1) The Board of Directors of a company shall exercise the following powers only with the consent of the company by a special resolution, namely:—

* * * * *

(c) to borrow money, where the money to be borrowed, together with the money already borrowed by the company will exceed aggregate of its paid-up share capital and free reserves, apart from temporary loans obtained from the company's bankers in the ordinary course of business:

Provided that the acceptance by a banking company, in the ordinary course of its business, of deposits of money from the public, repayable on demand or otherwise, and withdrawable by cheque, draft, order or otherwise, shall not be deemed to be a borrowing of monies by the banking company within the meaning of this clause.

* * * * *

Disclosure of
interest by
director.

184. (1) * * * * *

(4) If a director of the company contravenes the provisions of sub-section (1) or sub-section (2), such director shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to one lakh rupees, or with both.

(5) Nothing in this section—

* * * * *

(b) shall apply to any contract or arrangement entered into or to be entered into between two companies where any of the directors of the one company or two or more of them together holds or hold not more than two per cent. of the paid-up share capital in the other company.

Loan to
directors, etc.

185. (1) Save as otherwise provided in this Act, no company shall, directly or indirectly, advance any loan, including any loan represented by a book debt, to any of its directors or to any other person in whom the director is interested or give any guarantee or provide any security in connection with any loan taken by him or such other person:

Provided that nothing contained in this sub-section shall apply to—

(a) the giving of any loan to a managing or whole-time director—

(i) as a part of the conditions of service extended by the company to all its employees; or

(ii) pursuant to any scheme approved by the members by a special resolution; or

(b) a company which in the ordinary course of its business provides loans or gives guarantees or securities for the due repayment of any loan and in respect of such loans an interest is charged at a rate not less than the bank rate declared by the Reserve Bank of India.

Explanation.—For the purposes of this section, the expression "to any other person in whom director is interested" means—

(a) any director of the lending company, or of a company which is its holding company or any partner or relative of any such director;

(b) any firm in which any such director or relative is a partner;

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

(d) 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

(e) 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.

(2) If any loan is advanced or a guarantee or security is given or provided in contravention of the provisions of sub-section (1), the company shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees, and the director or the other person to whom any loan is advanced or guarantee or security is given or provided in connection with any loan taken by him or the other person, shall be punishable with imprisonment which may extend to six months or with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees, or with both.

186. (1) Without prejudice to the provisions contained in this Act, a company shall unless otherwise prescribed, make investment through not more than two layers of investment companies:

Loan and investment by company.

Provided that the provisions of this sub-section shall not affect,—

(i) a company from acquiring any other company incorporated in a country outside India if such other company has investment subsidiaries beyond two layers as per the laws of such country;

(ii) a subsidiary company from having any investment subsidiary for the purposes of meeting the requirements under any law or under any rule or regulation framed under any law for the time being in force.

* * * * *

(3) Where the giving of any loan or guarantee or providing any security or the acquisition under sub-section (2) exceeds the limits specified in that sub-section, prior approval by means of a special resolution passed at a general meeting shall be necessary.

* * * * *

(11) Nothing contained in this section, except sub-section (1), shall apply—

(a) to a loan made, guarantee given or security provided by a banking company or an insurance company or a housing finance company in the ordinary course of its business or a company engaged in the business of financing of companies or of providing infrastructural facilities;

(b) to any acquisition—

(i) made by a non-banking financial company registered under Chapter IIIB of the Reserve Bank of India Act, 1934 and whose principal business is acquisition of securities:

Provided that exemption to non-banking financial company shall be in respect of its investment and lending activities;

(ii) made by a company whose principal business is the acquisition of securities;

(iii) of shares allotted in pursuance of clause (a) of sub-section (1) of section 62.

* * * * *

188. (1) * * * * *

Related party transactions.

(3) Where any contract or arrangement is entered into by a director or any other employee, without obtaining the consent of the Board or approval by a special resolution in the general meeting under sub-section (1) and if it is not ratified by the Board or, as the case may be, by the shareholders at a meeting within three months from the date on which such contract or arrangement was entered into, such contract or arrangement shall be voidable at the option of the Board and if the contract or arrangement is with a related party to any director, or is authorised by any other director, the directors concerned shall indemnify the company against any loss incurred by it.

* * * * *

Prohibition on forward dealings in securities of company by director or key managerial personnel.

194. (1) No director of a company or any of its key managerial personnel shall buy in the company, or in its holding, subsidiary or associate company—

(a) a right to call for delivery or a right to make delivery at a specified price and within a specified time, of a specified number of relevant shares or a specified amount of relevant debentures; or

(b) a right, as he may elect, to call for delivery or to make delivery at a specified price and within a specified time, of a specified number of relevant shares or a specified amount of relevant debentures.

(2) If a director or any key managerial personnel of the company contravenes the provisions of sub-section (1), such director or key managerial personnel shall be punishable with imprisonment for a term which may extend to two years or with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees, or with both.

(3) Where a director or other key managerial personnel acquires any securities in contravention of sub-section (1), he shall, subject to the provisions contained in sub-section (2), be liable to surrender the same to the company and the company shall not register the securities so acquired in his name in the register, and if they are in dematerialised form, it shall inform the depository not to record such acquisition and such securities, in both the cases, shall continue to remain in the names of the transferors.

Explanation.—For the purposes of this section, "relevant shares" and "relevant debentures" mean shares and debentures of the company in which the concerned person is a whole-time director or other key managerial personnel or shares and debentures of its holding and subsidiary companies.

Prohibition on insider trading of securities.

195. (1) No person including any director or key managerial personnel of a company shall enter into insider trading:

Provided that nothing contained in this sub-section shall apply to any communication required in the ordinary course of business or profession or employment or under any law.

Explanation.—For the purposes of this section,—

(a) "insider trading" means—

(i) an act of subscribing, buying, selling, dealing or agreeing to subscribe, buy, sell or deal in any securities by any director or key managerial personnel or any other officer of a company either as principal or agent if such director or key managerial personnel or any other officer of the company is reasonably expected to have access to any non-public price sensitive information in respect of securities of company; or

(ii) an act of counselling about procuring or communicating directly or indirectly any non-public price-sensitive information to any person;

(b) "price-sensitive information" means any information which relates, directly or indirectly, to a company and which if published is likely to materially affect the price of securities of the company.

(2) If any person contravenes the provisions of this section, he shall be punishable with imprisonment for a term which may extend to five years or with fine which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher, or with both.

CHAPTER XIII

APPOINTMENT AND REMUNERATION OF MANAGERIAL PERSONNEL

196. (1) * * * * *

(4) Subject to the provisions of section 197 and Schedule V, a managing director, whole-time director or manager shall be appointed and the terms and conditions of such appointment and remuneration payable be approved by the Board of Directors at a meeting which shall be subject to approval by a resolution at the next general meeting of the company and by the Central Government in case such appointment is at variance to the conditions specified in that Schedule:

Appointment of managing director, whole-time director or manager.

Provided that a notice convening Board or general meeting for considering such appointment shall include the terms and conditions of such appointment, remuneration payable and such other matters including interest, of a director or directors in such appointments, if any:

Provided further that a return in the prescribed form shall be filed within sixty days of such appointment with the Registrar.

* * * * *

197. (1) The total managerial remuneration payable by a public company, to its directors, including managing director and whole-time director, and its manager in respect of any financial year shall not exceed eleven per cent. of the net profits of that company for that financial year computed in the manner laid down in section 198 except that the remuneration of the directors shall not be deducted from the gross profits:

Overall maximum managerial remuneration and managerial remuneration in case of absence or inadequacy of profits.

Provided that the company in general meeting may, with the approval of the Central Government, authorise the payment of remuneration exceeding eleven per cent. of the net profits of the company, subject to the provisions of Schedule V:

Provided further that, except with the approval of the company in general meeting,—

(i) the remuneration payable to any one managing director; or whole-time director or manager shall not exceed five per cent. of the net profits of the company and if there is more than one such director remuneration shall not exceed ten per cent. of the net profits to all such directors and manager taken together;

(ii) the remuneration payable to directors who are neither managing directors nor whole-time directors shall not exceed,—

(A) one per cent. of the net profits of the company, if there is a managing or whole-time director or manager;

(B) three per cent. of the net profits in any other case.

* * * * *

(3) Notwithstanding anything contained in sub-sections (1) and (2), but subject to the provisions of Schedule V, if, in any financial year, a company has no profits or its profits are inadequate, the company shall not pay to its directors, including any managing or whole-time director or manager, by way of remuneration any sum exclusive of any fees payable to directors under sub-section (5) hereunder except in accordance with the provisions of Schedule V and if it is not able to comply with such provisions, with the previous approval of the Central Government.

* * * * *

(9) If any director draws or receives, directly or indirectly, by way of remuneration any such sums in excess of the limit prescribed by this section or without the prior sanction of the Central Government, where it is required, he shall refund such sums to the company and until such sum is refunded, hold it in trust for the company.

(10) The company shall not waive the recovery of any sum refundable to it under sub-section (9) unless permitted by the Central Government.

(11) In cases where Schedule V is applicable on grounds of no profits or inadequate profits, any provision relating to the remuneration of any director which purports to increase or has the effect of increasing the amount thereof, whether the provision be contained in the company's memorandum or articles, or in an agreement entered into by it, or in any resolution passed by the company in general meeting or its Board, shall not have any effect unless such increase is in accordance with the conditions specified in that Schedule and if such conditions are not being complied, the approval of the Central Government had been obtained.

* * * * *

Calculation of Profits.

198. (1) * * * * *

(4) In making the computation aforesaid, the following sums shall be deducted, namely:—

* * * * *

(l) the excess of expenditure over income, which had arisen in computing the net profits in accordance with this section in any year which begins at or after the commencement of this Act, in so far as such excess has not been deducted in any subsequent year preceding the year in respect of which the net profits have to be ascertained;

* * * * *

Central Government or Company to fix limit with regard to remuneration

200. Notwithstanding anything contained in this Chapter, the Central Government or a company may, while according its approval under section 196, to any appointment or to any remuneration under section 197 in respect of cases where the company has inadequate or no profits, fix the remuneration within the limits specified in this Act, at such amount or percentage of profits of the company, as it may deem fit and while fixing the remuneration, the Central Government or the company shall have regard to—

- (a) the financial position of the company;
- (b) the remuneration or commission drawn by the individual concerned in any other capacity;
- (c) the remuneration or commission drawn by him from any other company;
- (d) professional qualifications and experience of the individual concerned;
- (e) such other matters as may be prescribed.

Forms of, and procedure in relation to certain applications.

201. (1) Every application made to the Central Government under this Chapter shall be in such form as may be prescribed.

(2) (a) Before any application is made by a company to the Central Government under any of the sections aforesaid, there shall be issued by or on behalf of the company a general notice to the members thereof, indicating the nature of the application proposed to be made.

(b) Such notice shall be published at least once in a newspaper in the principal language of the district in which the registered office of the company is situate and circulating in that district, and at least once in English in an English newspaper circulating in that district.

(c) The copies of the notices, together with a certificate by the company as to the due publication thereof, shall be attached to the application.

* * * * *

Investigation of ownership of company.

216. (1) Where it appears to the Central Government that there is a reason so to do, it may appoint one or more inspectors to investigate and report on matters relating to the company, and its membership for the purpose of determining the true persons—

- (a) who are or have been financially interested in the success or failure, whether real or apparent, of the company; or

(b) who are or have been able to control or to materially influence the policy of the company.

* * * * *

223. (1) * * * *

(3) A copy of the report made under sub-section (1) may be obtained by making an application in this regard to the Central Government.

Inspector's report.

* * * * *

236. (1) * * * *

(4) The majority shareholders shall deposit an amount equal to the value of shares to be acquired by them under sub-section (2) or sub-section (3), as the case may be, in a separate bank account to be operated by the transferor company for at least one year for payment to the minority shareholders and such amount shall be disbursed to the entitled shareholders within sixty days:

Purchase of minority shareholding.

Provided that such disbursement shall continue to be made to the entitled shareholders for a period of one year, who for any reason had not been made disbursement within the said period of sixty days or if the disbursement have been made within the aforesaid period of sixty days, fail to receive or claim payment arising out of such disbursement.

(5) In the event of a purchase under this section, the transferor company shall act as a transfer agent for receiving and paying the price to the minority shareholders and for taking delivery of the shares and delivering such shares to the majority, as the case may be.

(6) In the absence of a physical delivery of shares by the shareholders within the time specified by the company, the share certificates shall be deemed to be cancelled, and the transferor company shall be authorised to issue shares in lieu of the cancelled shares and complete the transfer in accordance with law and make payment of the price out of deposit made under sub-section (4) by the majority in advance to the minority by despatch of such payment.

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CHAPTER XVII

REGISTERED VALUERS

247. (1) * * * *

(2) The valuer appointed under sub-section (1) shall,—

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(d) not undertake valuation of any assets in which he has a direct or indirect interest or becomes so interested at any time during or after the valuation of assets.

Valuation by registered valuers.

* * * * *

CHAPTER XXI

PART I.—Companies Authorised to Register under this Act

366. (1) * * * *

(2) With the exceptions and subject to the provisions contained in this section, any company formed, whether before or after the commencement of this Act, in pursuance of any Act of Parliament other than this Act or of any other law for the time being in force or being otherwise duly constituted according to law, and consisting of seven or more members, may at any time register under this Act as an unlimited company, or as a company limited by shares, or as a company limited by guarantee, in such manner as may be prescribed and the registration shall not be invalid by reason only that it has taken place with a view to the company's being wound up:

Companies capable of being registered.

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CHAPTER XXII

COMPANIES INCORPORATED OUTSIDE INDIA

Application of Act to foreign companies.

379. Where not less than fifty per cent. of the paid-up share capital, whether equity or preference or partly equity and partly preference, of a foreign company is held by one or more citizens of India or by one or more companies or bodies corporate incorporated in India, or by one or more citizens of India and one or more companies or bodies corporate incorporated in India, whether singly or in the aggregate, such company shall comply with the provisions of this Chapter and such other provisions of this Act as may be prescribed with regard to the business carried on by it in India as if it were a company incorporated in India.

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Fee for filing, etc.

403. (1) Any document, required to be submitted, filed, registered or recorded, or any fact or information required or authorised to be registered under this Act, shall be submitted, filed, registered or recorded within the time specified in the relevant provision on payment of such fee as may be prescribed:

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Provided further that any such document, fact or information may, without prejudice to any other legal action or liability under the Act, be also submitted, filed, registered or recorded, after the first time specified in first proviso on payment of fee and additional fee specified under this section.

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CHAPTER XXVI

NIDHIS

Power to modify Act in its application to *Nidhis*.

406. (1) In this section, "Nidhi" means a company which has been incorporated as a *Nidhi* with the object of cultivating the habit of thrift and savings amongst its members, receiving deposits from, and lending to, its members only, for their mutual benefit, and which complies with such rules as are prescribed by the Central Government for regulation of such class of companies.

(2) Save as otherwise expressly provided, the Central Government may, by notification, direct that any of the provisions of this Act shall not apply, or shall apply with such exceptions, modifications and adaptations as may be specified in that notification, to any *Nidhi* or *Nidhis* of any class or description as may be specified in that notification.

(3) A copy of every notification proposed to be issued under sub-section (2), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses.

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Qualification of President and Members of Tribunal.

409. (1) * * * * *

(3) A person shall not be qualified for appointment as a Technical Member unless he—

(a) has, for at least fifteen years been a member of the Indian Corporate Law Service or Indian Legal Service out of which at least three years shall be in the pay scale of Joint Secretary to the Government of India or equivalent or above in that service; or

* * * * *

(e) is a person of proven ability, integrity and standing having special knowledge and experience, of not less than fifteen years, in law, industrial finance, industrial management or administration, industrial reconstruction, investment, accountancy, labour matters, or such other disciplines related to management, conduct of affairs, revival, rehabilitation and winding up of companies; or

* * * * *

411. (1) * * * * *

(3) A Technical Member shall be a person of proven ability, integrity and standing having special knowledge and experience, of not less than twenty-five years, in law, industrial finance, industrial management or administration, industrial reconstruction, investment, accountancy, labour matters, or such other disciplines related to management, conduct of affairs, revival, rehabilitation and winding up of companies.

Qualification of chairperson and Members of Appellate Tribunal.

412. (1) * * * * *

(2) 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—

Selection of Members of Tribunal and Appellate Tribunal.

(a) Chief Justice of India or his nominee—Chairperson;

(b) a senior Judge of the Supreme Court or a Chief Justice of High Court—Member;

(c) Secretary in the Ministry of Corporate Affairs—Member;

(d) Secretary in the Ministry of Law and Justice—Member; and

(e) Secretary in the Department of Financial Services in the Ministry of Finance—Member.

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CHAPTER XXVIII

SPECIAL COURTS

435. (1) The Central Government may, for the purpose of providing speedy trial of offences under this Act, by notification, establish or designate as many Special Courts as may be necessary.

Establishment of Special Courts.

(2) A Special Court shall consist of a single judge who shall be appointed by the Central Government with the concurrence of the Chief Justice of the High Court within whose jurisdiction the judge to be appointed is working.

(3) A person shall not be qualified for appointment as a judge of a Special Court unless he is, immediately before such appointment, holding office of a Sessions Judge or an Additional Sessions Judge.

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438. Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the person conducting a prosecution before a Special Court shall be deemed to be a Public Prosecutor.

Application of Code to proceedings before Special Court.

2 of 1974.

439. (1) * * * * *

(2) No court shall take cognizance of any offence under this Act which is alleged to have been committed by any company or any officer thereof, except on the complaint in writing of the Registrar, a shareholder of the company, or of a person authorised by the Central Government in that behalf:

Offences to be non-cognizable.

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Transitional provisions.

440. Any offence committed under this Act, which is triable by a Special Court shall, until a Special Court is established, be tried by a Court of Session exercising jurisdiction over the area, notwithstanding anything contained in the Code of Criminal Procedure, 1973: 2 of 1974.

Provided that nothing contained in this section shall affect the powers of the High Court under section 407 of the Code to transfer any case or class of cases taken cognizance by a Court of Session under this section.

Compounding of certain offences.

441. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence punishable under this Act (whether committed by a company or any officer thereof) with fine only, may, either before or after the institution of any prosecution, be compounded by— 2 of 1974.

(a) the Tribunal; or

* * * * *

(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973,— 2 of 1974.

(a) any offence which is punishable under this Act, with imprisonment or fine, or with imprisonment or fine or with both, shall be compoundable with the permission of the Special Court, in accordance with the procedure laid down in that Act for compounding of offences;

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CHAPTER XXIX

MISCELLANEOUS

Punishment for fraud.

447. Without prejudice to any liability including repayment of any debt under this Act or any other law for the time being in force, any person who is found to be guilty of fraud, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud:

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LOK SABHA

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BILL

further to amend the Companies Act, 2013.

*(Shri Arun Jaitley, Minister of Finance, Corporate Affairs and
Information & Broadcasting)*