

**Built to Learn**



**And to Unlearn**

# HIGHLIGHTS OF THE COMPANIES (AMENDMENT) BILL, 2016

BY CS DEEPTI DOLE

CORPORATE COUNSEL & COMPANY SECRETARY

SUNGARD AVAILABILITY SERVICES (I) PVT. LTD.

## STATEMENT OF OBJECTIVES/ GUIDING PRINCIPLES

- Addressing difficulties in implementation owing to stringent compliance requirements
- Facilitating ease of doing business in order to promote growth with employment
- Harmonization with accounting standards, the SEBI Act, 1992 and the regulations made thereunder, and the RBI Act, 1934 and the regulations made thereunder
- Rectifying omissions and inconsistencies in the Act
- Carrying out amendments in provisions relating to qualification and selection of members of NCLT and NCLAT in accordance with Supreme Court directions in Madras Bar Association Case

# COMPLETE OMISSION OF SECTIONS PROPOSED

Section No.	Provision
93	Return to be filed with the Registrar in case of promoter's stake changes and top 10 shareholders within 15 days of such i.e. MGT-10
94	Prohibition on forward dealings in securities of the company by director or key managerial personnel
195	Prohibition of Insider Trading

## COMPLETE SUBSTITUTION OF SECTIONS PROPOSED

Section No.	Provision
42	Offer or invitation for subscription of securities on private placement
90	Investigation of beneficial ownership of shares in certain cases
185	Loans to directors etc.
406	Provision relating to Nidhis and its application, etc.



# AMENDMENTS TO THE EXISTING PROVISIONS

HIGHLIGHTS OF THE PROPOSED AMENDMENTS

## DEFINITION OF ASSOCIATE CO. (SEC. 2(6))

*“Associate Co.” in relation to another co., means a co. in which that other co. has a significant influence, but which is not a subsidiary co. of the co. having such influence and includes JV Co.*

*Exp.: For purposes of this clause, “significant influence” means control of at least 20% of ~~total share capital~~ **(total voting power)**, or **control of or participation** in the business decisions under an agreement.*

***Exp: JV means a joint arrangement whereby the parties that have joint control of the arrangement have rights to net assets of arrangement***

## DEFINITION OF DEBENTURE (SEC. 2 (30))

*Debenture includes debenture stock, bonds or any other instrument of a co. evidencing a debt, whether constituting a charge on the assets of the co. or not*

*Provided that:*

*(a) Instruments referred to in Chapter III-D of RBI, 1934; and*

*(b) Such other instrument, as may be prescribed by the CG in consultation with RBI, issued by a co.,*

**shall not be treated as debenture**

## DEFINITION OF HOLDING CO. (SEC. 2(46))

*Holding co., in relation to one or more other cos., means a co. of which such cos. are subsidiary cos.*

*Explanation: For the purposes of this clause, expression 'company' includes any 'body corporate'.*



## DEFINITION OF NET WORTH (SEC. 2 (57))

*Aggregate value of paid-up share capital and all reserves created out of the profits & Securities Premium A/c & **Debit or Credit balance of P&L A/c,***

*After deducting aggregate value of accumulated losses, deferred expenditure & miscellaneous expenditure not written off, as per audited B/S, but does not include reserves created out of revaluation of assets, write-back of depreciation & amalgamation.*

## DEFINITION OF RELATED PARTY (SEC. 2 (76))

*Related Party with reference to a co., means:*

(viii) any ~~company~~ **(body corporate)** which is:

- A. Holding, subsidiary or Associate co. of such co.; or*
- B. Subsidiary of Holding Co. to which it is also subsidiary, or*
- C. An investing co. or the venturer of a co.*

## DEFINITION OF SUBSIDIARY (SEC. 2 (87))

*Subsidiary Co., in relation to any other co., means a co. in which holding co.:*

- (i) Controls composition of Board of Directors; or*
- (ii) Exercises or controls more than one-half of **total share capital (total voting power)** either at its own or together with one or more of its subsidiary cos.:*

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

## DEFINITION OF TURNOVER(SEC. 2 (91))

*Turnover means aggregate value of realisation of amount made from sale, supply, distribution of goods or on account of services rendered, or both, by co. during FY*

**Turnover means gross amount of revenue recognised in P&L A/c from sale, supply, or distribution of goods or on account of services rendered, or both, by a co. during FY**

## FORMATION OF A COMPANY- REDUCTION IN NO. OF MEMBERS (SEC. 3)

*3A. If at any time the No. of members of a company is reduced, in the case of a public co. below 7 in the case of a private company, below 2, and the company carries on business for more than 6 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 6 months and is cognizant of the fact that it is carrying on business with less than 7 members or 2 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."*

# PERIOD OF FILING INCORPORATION DOCUMENTS

Section	Extant clause	Proposed change	
7 (1)(c)	An <b>AFFIDAVIT</b> from each of the subscriber to the MOA & persons named as first directors in AOA	A <b>DECLARATION</b> from each of the subscriber of the MOA & persons named as first directors in AOA	
Section	Provision	Current Period	Proposed Period
12 (1)	A company shall have a registered office	<b>“on and from the 15<sup>th</sup> day of its incorporation”</b>	<b>“within 30 days of incorporation”</b>
12 (4)	Change of the situation of the registered office after the date of incorporation, intimation to be given to the Registrar	<b>“within 15 days”</b>	<b>“within 30 days”</b>

## PRIVATE PLACEMENT (SEC. 42)

- *Entire section 42 is to be replaced*
- *A private placement shall be made only to a select group of persons who have been identified by the Board – defined as “identified persons”*
- *Private placement offer and application shall not carry any right of renunciation*
- *A company shall not utilize monies raised through private placement unless allotment is made and the return of allotment is filed with the Registrar*
- *Enables the Co. to make more than one issue of securities at any time to the identified persons under this Section*

## ISSUE OF SHARES AT DISCOUNT 'PRICE' (SEC. 53)

Except as provided in Sec. 54 ('sweat equity shares'), a co. shall not issue shares at a discount .

Any share issued by a Co. at a discounted ~~ed~~ **price** shall be void.

***Co. may issue shares at 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 RBI Guidelines/ Directions/ under the RBI Act or the Banking (Regulation) Act.***



## ISSUE OF SWEAT EQUITY SHARES (SEC. 54)

*(1) Notwithstanding anything contained in section 53, a Co. may issue sweat equity shares of a class of shares already issued, if -*

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

## PLACE OF AGM & EGM SECTION 96 & 100

Type of General meeting	Type of Companies eligible	Place of holding the meeting
AGM (Sec. 96)	Unlisted Company	At any place in India if consent is given in writing or by electronic mode by all the members in advance
AGM (Sec. 96)	Listed Companies	Regd office or within city, town, or village of Regd office.
EGM (Sec. 100)	Wholly owned subsidiary of a company incorporated outside India	Anywhere in the world
EGM (Sec. 100)	Any company other than WOS of a Company incorporated outside India	In India

## NOTICE OF MEETING (SEC.101)

*A general meeting of a Co. may be called by giving not less than clear 21 days' notice either in writing or through electronic mode in such manner as may be prescribed:*

*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 95% of the members entitled to vote at such meeting.*

**Proviso clauses substituted as to reflect as follows:**

**Proviso is also proposed to be added to give a clarity on inclusion of members entitled to vote on specific resolutions in counting the above percentages.**

# NOTICE OF MEETING (SEC.101)

## AGM

- Consent of not less than 95% of **members** entitled to vote thereat

## EGM – Co with Share Capital

- Consent of not less than 95% of **such part of paid-up share capital of Co.** as gives a right to vote at the meeting

## EGM- Co without share capital

- Consent of not less than **95% of total voting power** exercisable at that meeting

## RE-OPENING OF ACCOUNTS ON COURT'S OR TRIBUNAL'S ORDER (SEC. 130)

***(3) No order shall be made under sub-section (1) respect of re-opening of books of accounts relating to a period earlier than 8 financial years immediately preceding the current financial year:***

***Provided that where a direction has been issued by CG under section 128 (5) for keeping of books of account for a longer than 8 years, the books of accounts may be ordered to be re-opened within such longer period.***

## SIGNING OF FINANCIAL STATEMENTS (SEC. 134)

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 of directors by:

- 1) Chairperson, where he is authorised by BoD or
- 2) 2 directors out of which one shall be MD, **if any**, and
- 3) **CEO** ,~~if he is a director in the company~~ and
- 4) CFO and
- 5) CS, wherever they are appointed.

In case of OPC, only by one director

## SIMPLIFICATION OF BOARD'S REPORT (SEC. 134)

- 1) **MGT-9 – Extract of Annual Return to be omitted and web address to be provided**
- 2) **If CSR policy, remuneration policy is made available on the company's website, then it shall be sufficient if the salient features of the policy and changes there are specified and web-address indicated at which the complete policy document is available.**
- 3) **CG may prescribe an abridged Board's report for One Person Company or small company**

# CORPORATE SOCIAL RESPONSIBILITY (SEC. 135)

Every co. having:

1. Net Worth of Rs. 500 crore or more, or
2. Turnover of Rs. 1,000 crore or more or
3. Net Profit of Rs. 5 crore or more

In the **Immediately preceding FY (~~during any FY~~)** shall constitute CSR Committee of Board consisting of 3 or more directors, out of which at least 1 director shall be an Independent Director (ID).

***Provided that where a co. is not required to appoint an ID u/s 149(4), it shall have in its CSR Committee of 2 or more directors.***



## CORPORATE SOCIAL RESPONSIBILITY (SEC. 135)

In sub-section 5 for the Explanation, the following shall be substituted, namely-

Explanation- For the purposes of this section ~~average~~ **“net profit” shall not include such sums as prescribed** and shall be calculated in accordance with the provisions of section 198.”

## FINANCIAL STATEMENTS OF SUBSIDIARIES (SEC. 136 & 137)

- Fourth proviso of Section 136 (1) to be substituted to require **every listed company** having a subsidiary or subsidiaries shall place separate audited accounts in respect of each of subsidiary on its website
- In case of a subsidiary incorporated outside India (**i.e. “foreign subsidiary”**) which is not required to get its financial statements audited under any law of the country of its incorporation, then it **may be unaudited and be placed on the website of listed company or as be filed with the Registrar in accordance with Section 137**

## AUDITOR RATIFICATION (SEC. 139(I))

Every co. shall, at the 1<sup>st</sup> AGM, appoint an individual / a firm as an auditor who shall hold office from conclusion of that meeting till conclusion of its 6<sup>th</sup> AGM & thereafter till conclusion of every 6<sup>th</sup> meeting and manner & procedure of selection of auditors by the members of co. at such meeting;

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

## DIFFERENT “RELATIVE” FOR AUDITORS (SEC. 141 (3))

**Following persons shall not be eligible for appointment as Auditor:**

A person who, or his relative or partner:

- (i) is holding any security of or interest in Co., Subsidiary, Holding Co., Associate co., Fellow Subsidiary;
- (ii) is indebted to Co., Subsidiary, Holding Co., Associate co., Fellow Subsidiary;
- (iii) Given guarantee or provided any security in connection with indebtedness of any third person to Co., Subsidiary, Holding Co., Associate co., Fellow Subsidiary.

***Explanation.— Term ‘relative’ means spouse of a person, and includes a parent, sibling or child of such person or of spouse, financially dependent on such person, or who consults such person in taking decisions in relation to his investments.***

## LIABILITY OF THE AUDITORS (SEC. 147)

- ***Right of claiming compensation “to any other persons” relying on erroneous financial statements is to be amended to limit the compensation right only to “members and creditors of the Company”.***
- ***Criminal liability of an Audit firm, for other than fine, is proposed to be restricted only to the concerned partner or partners who acted in fraudulent manner or abetted or colluded in any fraud.***

## RESIDENT DIRECTOR (SEC. 149 (3))

*Every company shall have at least one director who has **stayed** in India for a total period of not less than 182 days ~~in previous calendar year~~ **during the financial year:***

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

## INDEPENDENT DIRECTOR (ID) (SEC. 149 (6))

ID in relation to co., means director other than MD or WTD or Nominee director:

(C) Who has or had no **pecuniary relationship\*** with Co., its Holding, Subsidiary or Associate co., or their promoters, or directors, during 2 immediately preceding FYs or during current FY.

***\*Substituted with: pecuniary relationship, other than remuneration as such director or having transaction not exceeding 10% of his total income or prescribed amount.***

## ALLOTMENT OF DIN (SEC. 153)

Every individual intending to be appointed as director of a Co. shall make an application for allotment of DIN to the CG in such form and manner and alongwith such fees as may be prescribed

***Provided that the CG may prescribe any identification number which shall be treated as DIN 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.***



## ALTERNATE DIRECTOR (SEC. 161 (2))

Board of Directors may appoint a person, not being a person holding any alternate directorship for any other director in the **same** co., to act as an alternate director for a director during his absence for a period of not less than 3 months from India.

## RESIGNATION OF DIRECTOR (SEC. 168)

- Director may resign from his office by giving a notice in writing to the co. and the Board shall on receipt of such notice take note of the same and the co. shall intimate ROC and shall also place the fact of such resignation in Directors' Report;
- Director shall **may** also forward a copy of his resignation along with detailed reasons for the resignation to ROC within 30 days of resignation-  
DIR II- Optional

## MEETINGS OF THE BOARD (SEC. 173 (2))

Provided that

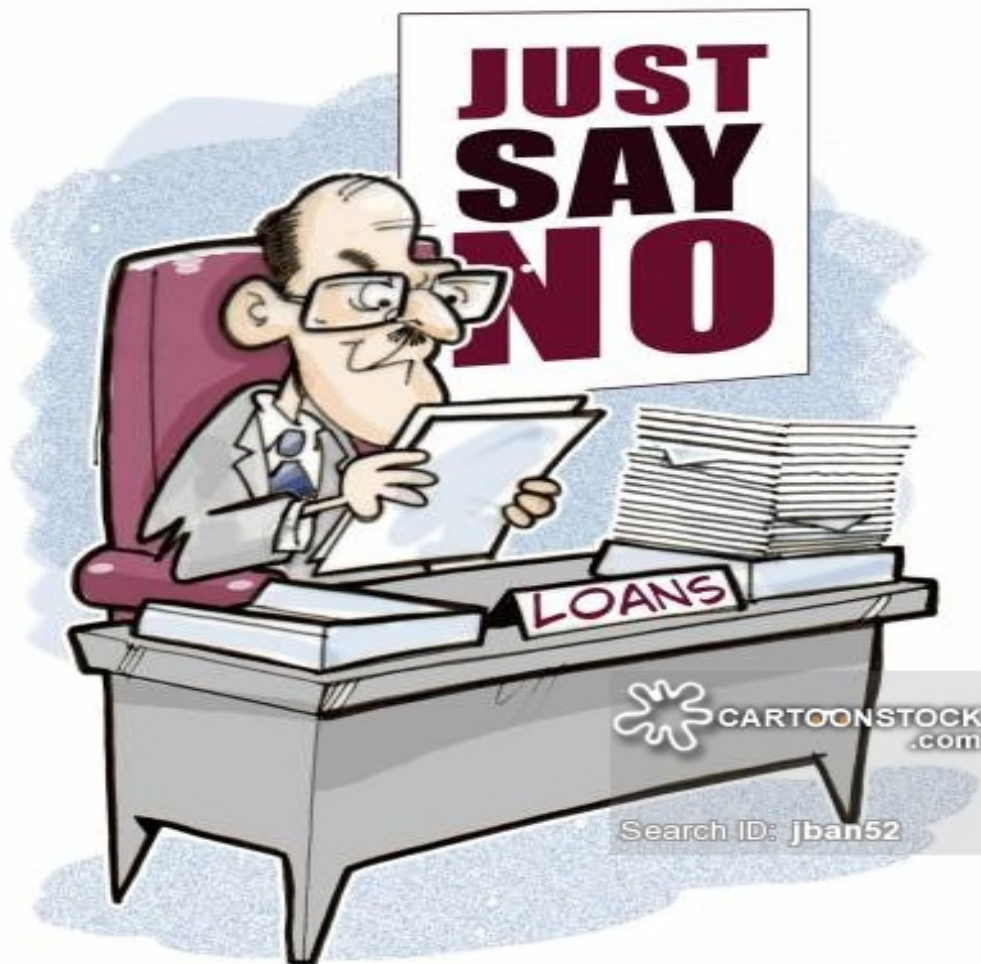
The matters pertaining to approval of the annual financial statements, Board's Report, prospectus, approval of amalgamation, merger, demerger, acquisition, takeover, the audit committee meetings for the approval of financial statements, not to be dealt with in any meeting held through video conferencing or other audio visual means

***“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.”***

## AUDIT COMMITTEE (SEC. 177), N & R COMMITTEE (SEC. 178)

- Shall be applicable only for Public Listed Company and such class of Companies as specified
- Section 178 (2) -In case of N & R committee (~~it shall carry out evaluation of every director's performance~~), it shall specify the manner for effective evaluation of performance of the Board, its committees and individual directors to be carried out by the Board, by N & R Committee or by an Independent external agency and review its implementation and compliance.

# LOANS TO DIRECTORS



# LOANS TO DIRECTORS (SEC. 185)

- **COMPLETE SUBSTITUTION OF SECTION**
- **PERMITS LOANS TO ANY PERSON IN WHOM ANY OF THE DIRECTOR IS INTERESTED- SUBJECT TO CONDITION**
  - A. PASSING OF SPECIAL RESOLUTION**
  - B. DISCLOSURES IN EXPLANATORY STATEMENT**
  - C. UTILIZATION OF LOAN BY THE BORROWING CO. FOR PRINCIPAL BUSINESS ACTIVITY**
- **ALIGNING OF INTEREST RATE WITH 186(7)-NO LOAN SHALL BE GIVEN AT A RATE LOWER THAN THE PREVAILING YIELD OF 1 YR, 3 YRS, 5 YRS OR 10 YRS GOVT. SECURITY CLOSEST TO THE TENOR OF THE LOAN**

## LOANS TO DIRECTORS (SEC. 185)

**THE EXPRESSION “ANY PERSON IN WHOM ANY OF THE DIRECTOR OF THE CO. IS INTERESTED” DEFINED-**

- (a) Any Pvt. Co. of which such director is a director or member**
- (b) Any body corporate at a general meeting of which not less than 25% 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, MD 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 Co.**

## RELATED PARTY TRANSACTIONS (SEC. 188 (1))

- *Provided that no member of the company shall vote on such special resolution, to approve any contract or arrangement which may be entered into by the company, if such member is a related party:*
- ***Provided also that nothing contained in the second proviso shall apply to a company in which 90% or more members, in number, are relatives of promoters or are related parties:***



## MANAGERIAL REMUNERATION (SEC. 197)

- 197 (1)- first proviso- Provided that the Co. in general meeting may, ~~with the approval of Central Government~~, authorize the payment of remuneration exceeding 11% of the net profits of the Co.; subject to the provisions of Schedule V.
- 197 (1)- second proviso- **Special resolution** for remuneration more than 10%, 5%, and 3% as per Section 197 (1), second Proviso.
- **197 (1)- third proviso- If any term loan of any bank /PFI is subsisting or the Co. has defaulted in payment of dues to NCD or any other secured creditor, prior approval shall be obtained from the same before obtaining the approval in the general meeting**
- **197 (3)-Dispensing the requirement of CG approval for payment in case of inadequate profit**

## MANAGERIAL REMUNERATION (SEC. 197)

- 197 (9)- Refund of excess sums received by the Director by of remuneration shall be refunded to the Company **within 2 years or lesser period as may be allowed by the Co.**
- 197 (10)- Waiver of such recovery of any excess sums received by the Director will require **special resolution within two years from the date the sum becomes refundable and no CG approval and consent of the bank/PFI or secured creditors as the case may be**
- **197 (16)- Auditor's report to contain a statement as to whether the remuneration paid by the Co. to its directors is in accordance with the provisions of this Section and if any excess of limit paid and such other details.**

**CHANGE IS COMING!**



*pcv '16*

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WITH YOU!  
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DOLEDEEPTI@GMAIL.COM

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