

# NOTEWORTHY CHANGES PROPOSED IN COMPANIES AMENDMENT BILL, 2016

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# Brief Background

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- ❖ Few Sections notified w.e.f. Sep. 2013 & remaining from April 2014,
- ❖ As of now: 283 of 470 Sections enforced,
- ❖ Unenforced provisions dependent on NCLT/NCLAT establishment,
- ❖ Enormous drafting errors, conflicting provisions – Act & Rules, ambiguity and uncertainty.
- ❖ 12 amendments vide Cos. (Amendment) Act, 2015

## May 2015: Arun Jaitley's statement in RS:

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*'Committee in which we have the representatives of the Company Secretary institute, the CA institute or some Chambers, plus somebody from the Department, a broad-based Committee, will be constituted to go into this whole question for the next few months as to where the shoe pinches'*

# Mandate for Cos. Law Committee:

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- Making recommendations on issues arising from implementation of Cos. Act, and
- Examining recommendations received from Bankruptcy Law Reforms Committee, High Level Committee on CSR, Law Commission of India and other agencies.

# Broad Statistics

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- ❖ 2,000 comments received through consultation process,
- ❖ 9 meetings of Cos. Law Committee,
- ❖ Formation of 6 groups & Chapter wise segregation – Representation from Industry, law firms, CS Firms,
- ❖ Report submitted on Feb. 1, 2016,
- ❖ Submission of 138-page Report in 234 days
- ❖ 100+ recommendations
- ❖ Suggestions were to be given by Feb. 15, 2016

# Today's Agenda:

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## Noteworthy changes proposed in Cos. Amendment Bill, 2016

# Definition Section. (Sec. 2)

# Associate Company

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“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 of business decisions under an agreement.

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



# Debentures

9

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*

# Holding Co.

10

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'.*

# Key Managerial Personnel

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KMP in relation to a co., means:

- (i) CEO or MD or Manager;
- (ii) CS;
- (iii) WTD;
- (iv) CFO; and
- (v) *Such other officer, not more than one level below directors who is in whole-time employment, designated as KMP by the Board;*
- (vi) such other officer as may be prescribed.

# Net Worth

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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.

# Related Party

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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,
  - C. *An investing co. or the venturer of a co.*

# Subsidiary Co.

14

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.*~~

# Turnover

15

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*

# Object Clause

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*That the co. 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.*



# Issue of Shares at Discount & Deposits

# Issue of Shares at discount 'price'

18

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

*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/ Regulations specified.*

# Repayment of Deposits that are accepted before commencement of Act

19

Where deposit are accepted by co. before commencement of Cos. Act, 2013, and the amount of such deposit / interest is due, then the co. shall repay within **3** (1) years from April 1, 2014 or before expiry of period for which deposits were accepted (whichever is earlier).

# Meetings

# AGM any place in India – Possible !!

21

Every AGM shall be called during business hours, that is, between 9 a.m. & 6 p.m. on any day that is not a National Holiday and shall be held either at the registered office of the co. or at some other place within city, town or village in which regd. office is situated:

***Provided that AGM of an unlisted co. may be held at any place in India if consent is given in writing or by electronic mode by all the members in advance***

# EGM – Any place in India – possible !!

22

Board may, whenever it deems fit, call an extraordinary general meeting of the company.

*Provided that an EGM of the co., other than of Wholly owned Subsidiary of a co. incorporated outside India, shall be held at a place within India.*

# Basic provisions of General Meeting

23

GM may be called by giving not less than clear 21 days' notice either in writing or through e-mode.

Provided that GM may be called after giving a shorter notice if consent is given in writing or by e-mode by not less than 95% of members entitled to vote at such meeting.

**GM = EGM / AGM**

# Proposed amendments in holding AGM / EGM

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- ❖ *AGM = not less than 95% of members entitled to vote thereat*
- ❖ *EGM (Co. with share cap.) = not less than 95% of such part of paid-up share cap. of co. as gives a right to vote at the meeting*
- ❖ *EGM (Co. without share capital) = not less than 95% of total voting power exercisable at that meeting*



# Financial Statements, CSR & Audit Committee

# Signing of Financial Statements

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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 and
- 4) **CFO** and
- 5) CS, wherever they are appointed.

In case of OPC, only by one director

# CSR

27

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 ***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 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.***

# Statutory Auditors

# 'Ratification' – proposed to be removed

29

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*~~

# Specific definition of 'Relative' for Auditors

30

**Foll. 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 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.***

# Directors

# Criteria for Resident Director

32

Every co. shall have at least 1 director who has stayed in India for a total period of not less than 182 days in the previous calendar year.

*Every co. shall have at least 1 director who stays in India for a total period of not less than 182 days during the FY.*

*For newly incorporated co., provisions shall apply proportionately at end of FY in which it is incorporated.*



# Independent Director ('ID')

33

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

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.

***'Pecuniary relationship', other than remuneration as such director or having transaction not exceeding 10% of his total income or prescribed amount***

***Other clauses of ID are also proposed to be amended.***

# Alternate Director

34

BoD may appoint a person, not being a person holding any alternate directorship for any other director in *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.

# Directorship

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Maximum directorships = 20 cos. (including, alternate directorship)

- ❑ Directorships in public cos. shall not exceed 10,
- ❑ Which includes appointment in private cos. that are either holding co. / subsidiary co. of a public co.

***Dormant Cos. directorships' to be excluded from 20.***

# Director's Resignation

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- 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

## Quorum vis-à-vis attendance through VC meeting

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Prescribed list of business not to be transacted through video conferencing

*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*

# Audit Committee

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Role of Audit Committee in RPTs:

1. Approval of RPTs,
2. ***Recommendations to the BoD***

***Introduction of Ratification provisions by Audit Committee.***

# Loans to Directors

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Overhauling of Sec. 185;

Permits 'Loans to Directors' – subject to conditions:

- i. Passing Special Resolution,
- ii. Disclosures in explanatory statement,
- iii. Utilization of loan by borrowing co. – Principal business activity

# Related Party Transactions

40

No member of the company shall vote on such special resolution, to approve any contract or arrangement which may be entered into by the co., if such member is a related party

*Above provision is not applicable to a co. in which 90% or more members, in number, are relatives of promoters or are related parties*



# Managerial Remuneration

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- Approval of CG is removed.
- Remuneration Limits are the same,
- Applicability to Private Company.

# Question & Answer Session

**Thank you CA Members!**  
**It was nice interacting with you!**

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