COMPANIES AMENDMENT BILL 2016

REFERENCER

Eastern India Regional Council

The Institute of Chartered Accountants of India

President, Vice-President, ICAI & Team EIRC 2016-17

CA M. Devaraja Reddy
President, ICAI

CA Nilesh Shivji Vikamsey
Vice-President, ICAI

CA Anirban Datta
Chairman, EIRC

CA Manish Goyal
Vice-Chairman, EIRC

CA Sonu Jain
Secretary, EIRC

CA Sunit Binani
Treasurer, EIRC

CA Nitesh Kumar More
Member, EIRC

CA Sanjib Sanghi
Member, EIRC

CA (Dr.) Debashis Mitra
Council Member, ICAI

CA Ranjeet Kumar Agarwal
Council Member, ICAI

CA Sushil Kumar Goyal
Council Member, ICAI

Eastern India Regional Council of The Institute of Chartered Accountants of India.

Published by **CA Anirban Datta, Chairman, EIRC**
On behalf of EIRC of The ICAI
ICAI Bhawan, 7, Anandilal Poddar Sarani (Russell Street),
Kolkata – 700071
Phone – 91-33-30211140/41
Toll Free Number –1800 - 3000 - 1019
Fax – 91-33-22272317
Email – eirc@icai.in
Website – www.eirc-icai.org

Price: Rs. 110/-
Printed by CDC Printers Pvt. Ltd.
April 2016

ABOUT THE ICAI

The Institute of Chartered Accountants of India is a statutory body established by an Act of Parliament viz., The Chartered Accountants Act, 1949 in the year 1949 for regulating the profession of Chartered Accountancy in the country. The Institute, which functions under the administrative control of Ministry of Corporate Affairs, Government of India, has five Regional Councils at Mumbai, Chennai, Kanpur, Kolkata and New Delhi. It presently has 153 Branches covering the length and breadth of the country, 22 Chapters outside India and an overseas office in Dubai.

Founded 66 years ago with just seventeen hundred members, the Institute has grown to cross mark of 2,46,000 members and 9,35,000 students as of now. A significant majority of our membership is in practice and a good deal of specialisation in traditional areas of direct/indirect taxes and in emergent specialism's inter-alia, in financial services, information technology, insurance sector, joint ventures, mutual funds, exchange risk management, risk and assurance service environment/energy/quality audits, investment counseling, corporate structuring and foreign collaborations. The other half was/is in employment, many occupying senior positions such as CMDs in Banks/Financial Institutions, CEOs in leading and reputed public/private sector companies etc.

One of the important elements of the developmental role of the Institute is to make contributions to Government authorities and Regulations viz., the Ministry of Corporate Affairs, Trade Policy Division of the Ministry of Commerce, CBDT, RBI, IRDA, C&AG, SEBI etc. to name a few, on relevant matters of importance to the economy and profession.

On International front, the Institute, a permanent member of International and Regional Accounting bodies, like International Federation of Accountants(IFAC), International Accounting Standards Board(IASB), Confederation of Asian and Pacific Accountants(CAPA) and South Asian Federation of Accountants(SAFA) has made its presence felt through its effective and sustained contribution Professional bodies like American Institute of Certified Public Accountants(AICPA) in U.S.A. The Institute of Chartered Accountants in England and Wales(ICAEW) in U.K. and a host of similar bodies in many other countries have signed MOUs with our Institute for professional collaboration in areas such as education, examination, training etc. and on issues confronting the accounting profession worldwide.

The Institute, being a statutory body, is administered by a Council which is the highest policy making body of the chartered accountancy profession. The Council is comprised of 40 members of whom 32 are elected from among its members spread all over the country. The remaining eight members are nominated by the Central Government representing such authorities as the Comptroller and Auditor General of India, Ministry of Finance, Ministry of Corporate Affairs and persons of eminence from the fields of law, banking, economic, business, finance, industry, management, public affairs etc.

ABOUT EIRC

In 1952, Eastern India Regional Council (EIRC of ICAI) was constituted with its jurisdiction on West Bengal, Orissa, Assam, Tripura, Sikkim, Arunachal Pradesh, Mehalaya, Nagaland, Manipur, Mizoram and the Union Territory of Andaman & Nicobar Islands. The founder Chairman was Mr. Molay Deb and the office of EIRC was located in the 2nd Floor of 7, Hastings Street(Now renamed as Kiron Shankar Roy Road)

On 10th December, 1975, the foundation stone of the present EIRC Building at 7, Russell Street (Now renamed as Anandilal Poddar Sarani) was led by the then Chief Justice, Calcutta High Court, Hon'ble Justice Shankar Prasad Mitra. On 14th April, 1977, the building was inaugurated by the then Hon'ble Governor of West Bengal, His Excellency Shri A.L. Dias.

On 17th January, 2014, the Second State of Art Building at 382/A, Prantik Pally, Rajdanga, Kasba, Kolkata-700107 has been inaugurated and the same is in operation to cater its dedicated service to its more than 23,005 Members and 83,690 Students.

EIRC has 11 Branches, 18 Study Circles, 5 Study Circles for Members in Industry, 5 CPE Chapters and 8 Study Groups.

EIRC has the privilege and pride in presenting 10 Presidents to ICAI and each one of them has enriched and empowered the profession through their visionary leadership and innovative dynamism.

The cherished dream of EIRC is to kindle the spark within the fraternity and to make the members world class professionals as well as good human beings – to contribute as an active partner in the nation building exercise.

Chairman's Message

Dear Professional Colleagues,

It gives me immense pleasure to present before you the Referencer on **Companies Amendment Bill 2016** by Eastern India Regional Council of The Institute of Chartered Accountants of India which will be released on **Workshop on Companies Amendment Bill 2016** to be held on **19th & 20th April 2016.**

EIRC thought of bringing out this publication with the intention to extend necessary support & guidance to the readers & which would be further clarified by the expert deliberations of the eminent speakers who have been invited in this seminar.

The bill seeks to simplify private placement process, remove restrictions on layers of subsidiaries and investment companies, amend CSR provisions to bring greater clarity and exempt certain class of foreign entities from the compliance regime under the Act and many other changes. Efforts have been made to give the proposed changes in this book in the most concise manner. I would be keen to seek your valuable feedback on the contents of the referencer.

I wish to place on record the contribution and all out support by all my colleagues in the Regional Council & Central Council in bringing out this Referencer. The efforts of CA Nitesh Kumar More, Chairman, Corporate & other Allied Laws & Corporate Governance Committee deserves special mention without whom this referencer would not have been a reality.

I wish this endeavour a stupendous success and I am sure that this referencer will immensely help all the readers.

Date : 19th April 2016
Place : Kolkata

CA Anirban Datta
Chairman, EIRC of ICAI

Chairman, Corporate & Other Allied Laws & Corporate Governance Committee's Message

Dear Professional Colleagues,

In recent times we have witnessed vast changes in the economic environment of our country resulting in new approaches to company management. The bill to further amend the Companies Act 2013 has been introduced. To keep our members updated about all the latest development we have brought out this **Companies Amendment Bill 2016 Referencer**.

The Companies Amendment Bill has proposed various changes in the Companies Act 2013. This book attempts to explain all the changes in the most concise form for the benefit of users at large. I am sure that the readers would be immensely benefited from this Referencer which will empower them to face all the changes well in advance.

I would like express my sincere gratitude to CA Anirban Datta, Chairman, EIRC for giving me the responsibility of being the Chairman of the Corporate & other Allied Laws & Corporate Governance Committee of EIRC. I am also thankful to our Central Council and other Regional Council Members for their support in bringing out this referencer. I acknowledge the efforts of all the professionals specially CA Mohit Bhuteria who have contributed for this referencer, without them this would not have been possible. I would be happy to receive suggestions from the readers of this book, you may mail the same at eircreferencer@gmail.com

I would just end by saying, ***"Everyday Life is a series of decisions, small changes, that add up to a Great Change."***

Date: 19th April 2016
Place: Kolkata

CA Nitesh Kumar More
Chairman, Corporate & other Allied Law &
Corporate Governance Committee, EIRC

Acknowledgement

We are thankful to all the tireless efforts in earnestly contributing for the Companies Amendment Bill 2016 Referencer. Without their kindest support this would not have been a success.

CA Mohit Bhuteria

Mr. Dheeraj Kumar Sharma

Ms. Dipanjali Nagpal

Mr. Vignesh Iyer

EIRC Officials

Dr. Alok Ray, Joint Secretary, DCO Head

Mr. Amit Paul, Assistant Secretary, EIRC

CA Jyoti Luharuka, Executive Officer, EIRC

Mr. Santanu Bose, DEO, EIRC

Index

The Companies Amendment Bill, 2016

INTRODUCTION

The Companies Act, 2013 (hereinafter referred to as 'the Act') introduced significant changes related to disclosures to stakeholders, accountability of directors, auditors and key managerial personnel, investor protection and corporate governance. The Government received number of representations from industry Chambers, Professional Institutes, legal experts and Ministries/Departments regarding difficulties faced in complying with 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 Company Law Committee (hereinafter referred to as '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.

The Committee submitted its report to the Government on the 1st February, 2016. The Companies (Amendment) Bill, 2016 (hereinafter referred to as 'the Bill') seeks to amend the Act based on the report and the comments received from stakeholders.

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;
- Harmonization 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.

The Bill, 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 a 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 resolutions by shareholders;

e. A company may give loans to companies/bodies corporate 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 SEBI 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 of annual ratification of appointment or continuance of auditor;

m. Reduction in times and penalties for auditors;

n. Doing away with filing of returns by listed companies for changes in promoter's stake;

o. Amend provisions relating to Corporate Social Responsibility to bring greater clarity.

Analysis of Companies Bill 2016 vis-a-vis Companies Act 2013

Sl. No	Section	Heading	Companies Act, 2013	Companies Bill, 2016	Remarks
1	2(6)	Associate 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. (Joint Venture not defined) "	"Explanation to section 2 (6) shall be substituted to (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."**	"Section 2 (6) of the Companies Act, 2013 defines the term "associate company", in relation to another company, to mean a company in which the other company has a significant influence, but is not a subsidiary company of the company having such influence, and also includes a joint venture company. The Explanation to Section 2(6) defines the phrase "significant influence" to mean control of at least twenty per cent of the total share capital, or of business decisions under an agreement. The term "total share capital" has been defined in Rule 2(1) (r) of the Companies (Specification of Definitions Details) Rules, 2014, to mean the aggregate of (a) paid-up equity share capital; and (b) convertible preference share capital. This definition and the definition in the Accounting Standards (and the Listing Regulations, which also refers to the Accounting Standards definition), which excludes joint ventures, etc. are not consistent and that the Accounting Standards defined joint ventures separately. Moreover, the treatment for consolidation, related party disclosures, etc. for associates and joint ventures made the usage of the term in the Act at odds with the usage in the Accounting Standards.The term "significant influence", in the Explanation to Section 2(6), refers to 'total share capital' which includes preference share capital.
					Replacing 'total share capital' with 'total voting power' would be consistent with accepted principles. Further, even though the Act makes references to the term "joint venture" as an inclusive part in the definition of the term "associate company", it has been defined separately.
2	2(28)	Cost Accountant	"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;	"Clause 2(28) shall be substituted to: "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 "**	"The term 'cost accountant' appearing in Section 2(28) of the Act covered both a cost accountant in employment, and a cost accountant in practice. Post amendment, the definition will be in line with the definition of Chartered Accountants as provided in section 2(17)."
3	2(30)	Debenture	"debenture" includes debenture stock, bonds or any other instrument of a company evidencing a debt, whether constituting a charge on the assets of the company or not;	"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;"**	"Section 2(30) defines the term "debenture" to include debenture stock, bonds "or any other instrument of a company evidencing a debt", whether constituting a charge on the assets of the company or not. The phrase "any other instrument of a company evidencing a debt" appearing in the definition makes it very broad and includes, by implication, instruments like commercial papers and other money market instruments, which were often used as an important short-term fund raising source by eligible companies; and were well regulated under RBI regulations. Through an amendment to Rule 18 of the Companies (Share Capital and Debenture) Rules, 2014 in March 2015, it has been clarified that the raising of monies through commercial papers would not be governed by the Rules pertaining to the issue of debentures. The definition of debentures have been narrowed down so as to remove practical difficulties of being covered by dual provisions of law. i.e. RBI Act, 1934 and Companies Act, 2013."

Sl. No	Section	Heading	Companies Act, 2013	Companies Bill, 2016	Remarks
4	2(41)	Financial Year	"financial year", in relation to any company or body corporate, means the period ending on the 31st day of March every year, and where it has been incorporated on or after the 1st day of January of a year, the period ending on the 31st day of March of the following year, in respect whereof financial statement of the company or body corporate is made up: Provided that an application can be made by a company or body corporate, which is a holding company or a subsidiary of a company incorporated outside India and is required to follow a different financial year for consolidation of its accounts outside India, the Tribunal may, if it is satisfied, allow any period as its financial year, whether or not that period is a year. "	In the first proviso, after the word "subsidiary", the words "or **associate company"** shall be inserted.	"Section 2 (41) of the Act provides that the financial year in relation to a company or a body corporate shall mean the period ending on the 31st of March every year. It gives the 'National Company Law Tribunal' (NCLT) the authority to allow a company or a body corporate, which is a subsidiary or a holding company of a company incorporated outside India, to follow a different financial year, if it is required to do so, for the consolidation of its accounts outside India. The financial statements of associates and joint ventures were also taken into consideration in the preparation of 'consolidated financial statements' (CFS). The proposed amendment seeks to allow a Company which is an associate of a Company incorporated outside India to have a different Financial Year for consolidation of its accounts outside India with approval of Tribunal. "
			Provided further that a company or body corporate, existing on the commencement of this Act, shall, within a period of two years from such commencement, align its financial year as per the provisions of this clause;		
5	2(46)	Holding Company	"holding company", in relation to one or more other companies, means a company of which such companies are subsidiary companies;	Explanation:- For the purposes of this clause, the expression "company" includes any body corporate.	"Section 2 (46) of the Act defines a "holding company" in relation to other companies, as a company of which such other companies are subsidiary companies. Section 2 (87) of the Act defines a "subsidiary company", and Explanation (c) to Section 2(87) clarifies that the expression "company" includes a 'body corporate'. An Explanation similar to Explanation (c) to Section 2(87) be included in Section 2(46), so that a company incorporated outside India could be considered to be the holding company of another company, for the purposes of the Act. This was a minor anomaly, but which could lead to uncertainties in ascertaining the status of a company, in case of a foreign holding company; and also in determining the applicability of the Act to such a company. The proposed amendment seeks to provide that a company incorporated outside India can also be considered to be a Holding Company for another Company for the purpose of this Act. This is in line with the definition of subsidiary Company u/s 2(87) of the Act."
6	2(49)	Interested Director	"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;	Section 2(49) shall be omitted	"Section 2 (49) of the Act defines an "interested director". Section 184 (2) provides nature of interests to be disclosed by directors, but does not use the phrase 'interested director'. The provision in essence, defined an interested director. Further, the only reference to the term 'interested director' in the Act was in Section 174 (3), and an Explanation to that provision clarified that the meaning of the term 'interested director' would be the same as for the purposes of Section 184 (2). The definition provided in Section 2(49), though much wider, has not been used in the Act and is redundant. The omission of definition is much welcome as this was adding to the confusion to interpretation of definition and at the same time, there was no reference in any of the provisions to said section."

Companies Amendment Bill 2016 Referencer

Sl. No	Section	Heading	Companies Act, 2013	Companies Bill, 2016	Remarks
7	2(51)	Key Managerial Personnel	""key managerial personnel", in relation to a company, means— (i) the Chief Executive Officer or the managing director or the manager; (ii) the company secretary; (iii) the whole-time director; (iv) the Chief Financial Officer; and (v) such other officer as may be prescribed;"	""key managerial personnel", in relation to a company, means— (i) the Chief Executive Officer or the managing director or the manager; (ii) the company secretary; (iii) the whole-time director; (iv) the Chief Financial Officer; and (word "and" Omited) **(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"	"The J.J. Irani Committee observed that "stakeholders / Board look towards certain key managerial personnel for formulation and execution of policies." It felt that such key managerial personnel must be recognised by the law, along with their liability, in appropriate aspects of the legislation. Section 203, read with the corresponding Rule requires every listed company, and certain classes of pubic companies , to have a whole time director, managing director or CEO or a manager, Chief Financial Officer and Company Secretary (companies having a share capital of Rupees Five Crore or more), who all have been named as 'key managerial personnel'. The proposed amendment seeks to include persons not more than one level below the directors in whole time employment and designated as KMP by the Board to be considered as KMP. This will include departmental heads which are normally one level below the directors."
8	2(57)	Net Worth	"net worth" means the aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation.	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;	"Section 2(57) of the Act defines the term "net worth", and specifies various amounts that are to be taken into consideration while calculating it. The net worth of a company reflects its intrinsic value. The present definition does not include the phrase ' credit balance of the profit and loss account' and therefore, the same in not included in computation of networth. The proposed amendment seeks to add to the confusion to include both debit and credit balances in Profit and Loss A/c for the purpose of calculation of Net worth."
9	2(71)	Public Company	""public company" means a company which— (a) is not a private company; (b) has a minimum paid-up share capital of five lakh rupees or such higher paid-up capital, as may be prescribed Provided that a company which is a subsidiary of a company, not being a private company, shall be deemed to be public company for the purposes of this Act even where such subsidiary company continues to be a private company in its articles. "	"In clause (71), in sub-clause (a), after the word "company;", the word "and" shall be inserted; "public company" means a company which— (a) is not a private company; and (b) has a minimum paid-up share capital of five lakh rupees or such higher paid-up capital, as may be prescribed. Provided that a company which is a subsidiary of a company, not being a private company, shall be deemed to be public company for the purposes of this Act even where such subsidiary company continues to be a private company in its articles. "	"Section 2(71) of the Act defines the term 'Public Company' which specifies the criteria which are required to be satisfied by a company to be called as a Public Company. The insertion of the word 'and' makes it clear that both the conditions are required to be satisfied by a Company to be called as a 'Public Company'."

Sl. No	Section	Heading	Companies Act, 2013	Companies Bill, 2016	Remarks
10	2(76)(viii)	Related Party	"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;"	"(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;"**	"The term "related party", as currently defined, used the word 'company' in Section 2(76)(viii), meaning thereby that those entities that were incorporated in India would come in the purview of the definition. This resulted in the impression that companies incorporated outside India (such as holding/ subsidiary/ associate / fellow subsidiary of an Indian company) were excluded from the purview of related party of an Indian company. This seemed to be unintentional. The substitution of the word 'company' with 'body corporate' would remove any ambiguity or interpretational difficulties that may arise in determining the status of a foreign company as a related party to a company. However, this would be a more stricter provision. Also, a new sub-clause has been proposed to be inserted in the definition of a related party in a body corporate which is an investing company or the venturer of a company. Pertinent to note that the word 'investing company' should actually have been replaced with 'investing body corporate', otherwise it will create the same situation of excluding investing companies incorporated outside India."
11	2(85)	Small Company	"small company" means a company, other than a public company,— (i) paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than five crore rupees; or - (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 crores rupees."	"small company" means a company, other than a public company,— (i) paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than **ten crore rupees**; or - (ii) turnover of which as per its last profit and loss account **for the immediately preceding financial year** does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than **one hundred crore rupees."**	"In Section 2(85) of the Act, **the replacement of the words "last profit and loss account" with the words "last profit and loss account for the immediately preceding financial year", were made to take care of what seemed to be an inadvertent drafting error.** The threshold of maximum turnover in definition of small company is proposed to be increased from from 20 crores to 100 crores and paid up share capital from 5 crores to 10 crores. Further, the turnover as per last Profit and Loss A/c is sought to be replaced with turnover as per its last Profit and Loss A/c for the immediately preceding Financial year."
12	2(87)	Subsidiary Company or Subsidiary	"subsidiary", in relation to any other company (that is to say the holding company), means a company in which the holding company— (i) controls the composition of the Board of Directors; or (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.	""subsidiary", in relation to any other company (that is to say the holding company), means a company in which the holding company— (i) controls the composition of the Board of Directors; or ii) exercises or controls more than one-half of the **total voting** power either at its own or together with one or more of its subsidiary companies: **(Proviso omitted)** Explanation: (a)### (b)### (c)### (d)**Omitted"**	"Section 2(87) of the Act defines a "subsidiary company", in relation to another company (that is to say a holding company), as a company in which the holding company controls the composition of the Board of Directors, or exercises or controls more than one-half of the total share capital. Further, Rule 2(1) (r) of the Companies (Specification of Definitions Details) Rules, 2014, specifies that the 'total share capital' shall be the aggregate of the paid up equity share capital and the convertible preference share capital. By virtue of the present definition, a company in which the preference share capital is greater than its equity share capital, becomes a subsidiary of an entity that holds the preference shares, even though it might not have control, or any voting rights in such a company. Further, inclusion of the preference share capital in the total share capital has created confusion about ownership of the company. Further, such companies are shown as subsidiaries, but are not considered for consolidation purposes, as per the applicable Accounting Standards. It has been problematic to treat preference shares at par with equity shares, and this has affected raising of funds for several industries, especially infrastructure and allied sectors."

Sl. No	Section	Heading	Companies Act, 2013	Companies Bill, 2016	Remarks
			"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; (b) the composition of a company's Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors; (c) the expression "company" includes any body corporate; (d) "layer" in relation to a holding company means its subsidiary or subsidiaries;"		In order to address the practical problems, the Bill proposes to replace the term "total share capital" with the term 'total voting power', as equity share capital should be the basis for determining holding/subsidiary status.
13	2(91)	Turnover	"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.	"The clause shall be substituted, namely: "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."	"Section 2(91) of the Act defines the term "turnover" to mean the aggregate value of the realisation from the sale, supply or distribution of goods, or on account of services rendered, or both, by the company, during a financial year. The term has been used in the Act, mainly in the provisions giving prescriptive power on the basis of the criteria of a company's turnover. The proposed definition of turnover seeks to bring much clarity in the definition of turnover with reference to the amounts recognized in Profit and Loss A/c."
14	3A	Formation of Company	"3. (1) A company may be formed for any lawful purpose by— (a) seven or more persons, where the company to be formed is to be a public company; (b) two or more persons, where the company to be formed is to be a private company; or (c) one person, where the company to be formed is to be One Person Company that is to say, a private company, by subscribing their names or his name to a memorandum and complying with the requirements of this Act in respect of registration:"	"After section 3 , the following section shall be inserted, namely: 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."	"Section 3(1) of the Act provides for the minimum number of persons required for formation of a company. However, the minimum number of persons required for continuation of a company after it is formed and legal consequences of number of members falling below the minimum number is not provided in section 3 of the Act. Similar provision was there in Section 45 of the 1956 Act. The proposed insertion seeks to provide for liability of members when the minimum number of members falls below the statutory minimum (seven or two in case of public or private company respectively) and such a situation continues for a period exceeding six months."

Sl. No	Section	Heading	Companies Act, 2013	Companies Bill, 2016	Remarks
			"Provided that the memorandum of One Person Company shall indicate the name of the other person, with his prior written consent in the prescribed form, who shall, in the event of the subscriber's death or his incapacity to contract become the member of the company and the written consent of such person shall also be filed with the Registrar at the time of incorporation of the One Person Company along with its memorandum and articles: Provided further that such other person may withdraw his consent in such manner as may be prescribed: Provided also that the member of One Person Company may at any time change the name of such other person by giving notice in such manner as may be prescribed:"		
			"Provided also that it shall be the duty of the member of One Person Company to intimate the company the change, if any, in the name of the other person nominated by him by indicating in the memorandum or otherwise within such time and in such manner as may be prescribed, and the company shall intimate the Registrar any such change within such time and in such manner as may be prescribed. Provided also that any such change in the name of the person shall not be deemed to be an alteration of the memorandum. (2) A company formed under sub-section (1) may be either— (a) a company limited by shares; or (b) a company limited by guarantee; or (c) an unlimited company"		
15	4(1)(c)	Memorandum	"Thememorandumofacompanyshallstate— (a) the name of the company with the last word "Limited" in the case of a public limited company, or the last words "Private Limited" in the case of a private limited company: Provided that nothing in this clause shall apply to a company registered under section 8; (b) the State in which the registered office of the company is to be situated; (c) the objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof;"	"Clause (c) 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; "	"Section 4 of the Act requires a company to have a 'Memorandum of Association' (MOA), which has to be subscribed to by the persons incorporating a company. The Companies Act, 2013 has done away with the bifurcation of objects into 'main' and 'other' objects. Instead, Section 4(1)(c) and Schedule I require the MOA of every company to state "the objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof." While the new Act has liberalised the manner of specifying the objects in the MoA, certain problems in implementation , such as, for the approval of name of a company, and the allotment of Corporate Identity Number for a company with multiple objects. The English Companies Act, 2006 provides that a company's objects will be unrestricted, unless the articles specifically restrict them. With annual reporting on the major activities undertaken by a company, there are adequate provisions for disclosures on the current objects of a company. Sectoral regulators prescribe restrictive criteria to suit their requirements. The proposed amendment seeks to provide for addition of such generic objects clause which will provide for a liberal operational regime for companies."

Sl. No	Section	Heading	Companies Act, 2013	Companies Bill, 2016	Remarks
16	4(5)(i)	Memorandum	(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.	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 -	"The fact that a changed process for centralised processing of name reservation/approval has already been implemented, as well as the fact that only one re-submission is allowed, there is a need for building in efficiency in the system and reduce misuse by reducing the period of reservation to 20 days by amending Section 4(5)(i). To simplify and fast track the procedure for company registration in India, the Ministry of Corporate Affairs (MCA) has proposed amendment w.r.t reservation of name. Now, the proposed name will be reserved for a period of only 20 days from the date of approval instead of 60 days from the date of application. "
17	4(6)	Memorandum	(6) The memorandum of a company shall be in respective forms specified in Tables A, B, C, D and E in Schedule I as may be applicable to such company.	"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.""	
18	7(1)(c)	Incorporation of Company	(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;	(c) a declaration 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;	"Section 7 of the Act provides for requirements in relation to the incorporation of companies. Section 7(1)(c) requires affidavits to be given by directors and the first subscribers regarding their not being convicted of offences indicated therein. This requirement caused additional documentary burden, and , at times, lead to a delay in the incorporation of companies. The requirements with respect to affidavits under Section 7(1)(c) has been proposed to be replaced with self-declarations. "

Sl. No	Section	Heading	Companies Act, 2013	Companies Bill, 2016	Remarks
19	12(1) & (4)	Registered Office of the Company	"(1) 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. (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."	"(1) A company shall, within thirty days 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. (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 thirty days of the change, who shall record the same."	"Section 12 of the Act governs the provisions relating to the registered office of a company. Section 12(1) requires that a company shall, on and from the fifteenth day of its incorporation, and at all times thereafter, have a registered office. Technically, this interpretation would not allow a company to have its registered office immediately on incorporation, or earlier than the fifteenth day of its incorporation, whereas a company could have its office from the day of its incorporation. Hence, this sub-section has been proposed to be amended to provide for a company to have its registered office within thirty days of its incorporation. Section 12(4) provides for the recording of the change of the registered office of a company by the Registrar, after being given notice of the same by the company within fifteen days of such change. In respect of certain documents like lease deeds, rent agreements and other related documents that are required to be submitted, the prescribed time period of fifteen days is insufficient, especially where various approvals may have to be obtained. So, the time limit for registering change in registered office is been proposed to be increased to thirty days."
20	21	Authentication of documents, proceedings and contracts	"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."	"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. (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 or employee of the company** duly authorised by the Board in this behalf."	"Section 21 of the Act provides that a document requiring authentication by a company, or contracts made by, or on behalf of a company, may be signed by any key managerial personnel or an officer of the company duly authorized by the Board in this behalf. Since the definition of "officer" under Section 2(59) includes only top level management persons in a company, it would be practically very difficult for only such top level persons to sign the documents, without providing for any other employee to sign, even with a board resolution. The proposed amendment to Section 21 allows authorizations, on the signature of 'any employee of the company duly authorised by the Board'."
21	26	Matters to be stated in prospectus	"(1)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— (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."	"(i) After the words "signed and shall", the following shall be inserted, namely: "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: 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." (ii) the clauses (a) and (b) shall be omitted."	"SEBI is in the process of simplifying the contents of the prospectus/offer document by amending the provisions of SEBI (ICDR) Regulations, 2009 so as to reduce the volume of disclosures following suggestions from the stakeholders that those offer documents are becoming too long, too detailed, and repetitive as also too difficult to understand. This objective could be achieved only if Section 26(1) of the Companies Act, 2013 is modified to empower SEBI to prescribe the contents in consultation with MCA. The proposed amendment seeks to address this issue."

Sl. No	Section	Heading	Companies Act, 2013	Companies Bill, 2016	Remarks
22	35(2)	Civil liability for mis-statements in Prospectus	"2. No person shall be liable under sub-section (1), if he proves— (a) that, having consented to become a director of the company, he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; or Issue of application forms for securities. (b) that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue, he forthwith gave a reasonable public notice that it was issued without his knowledge or consent."	"In section 35 of the principal Act, in sub-section (2), after clause (b), the following clause shall be inserted, namely - **"(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 there under."**	"Section 35 of the Act prescribes civil liability for directors, promoters and experts for issuing misleading statements in a prospectus; and the defences available to them. Directors could not rely on the statements made by experts in a prospectus, as a defence for civil liability under the new Act , although such defence was available to them under Section 62(2)(d)(ii) of the Companies Act, 1956. In the United States, under the Securities Exchange Act, 1934, named experts (including accountants, engineers and appraisers) who prepare or certify a portion of the registration statement, or any report supporting the registration statement, are subject to liability for the portions they prepare. The English Companies Act, 2006 provides for director's liability in case of untrue or misleading statements, but also provides for a safe harbour provision, such that the director is only liable to compensate the company for the loss suffered by the company in reimbursing an investor if the director knew, or was reckless in not checking whether the statement was untrue or misleading or knew the omission to be dishonest concealment of a material fact. The proposed insertions of clause (c) to Section 35(2) is being done to provide for similar provision as that under the 1956 Act."
23	42	Issue of Shares by 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. (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."	"For section 42 the following shall be substituted, namely: (1) A company may, subject to the provisions of this section, make a private placement of securities. (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."	The section has been entirely re-written. The bars on the use of money is now until return of allotment has been filed with the Registrar of Companies. It is surprising to notice that the use of the money has been linked with filing of a document, for which the time allowed is as much as 60 days for allotment, and 15 days for filing the return. The only relief in the private placement provisions seems to be that the amount of penalty for contravention has been limited to a maximum of Rs 2 crores, which was earlier extending to the entire amount raised by private placement.

Sl. No	Section	Heading	Companies Act, 2013	Companies Bill, 2016	Remarks
			"(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. (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,"	"(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: Provided that the private placement offer and application shall not carry any right of renunciation. Explanation 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."	
			"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."	"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. 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 to the public and shall accordingly be governed by the provisions of Part I of this Chapter."	

Sl. No	Section	Heading	Companies Act, 2013	Companies Bill, 2016	Remarks
			"(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, "	"(4) Every identified person willing to subscribe to the private placement issue shall apply in the private placement and application issued to such person along with subscription money paid either by cheque or demand draft or other banking channel and not by cash: 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. (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:"	
			"including the complete list of all securityholders, 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."	"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: 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—"	

Sl. No	Section	Heading	Companies Act, 2013	Companies Bill, 2016	Remarks
				"(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. (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 allottees, with their full names, addresses, number of securities allotted and such other relevant information as may be prescribed."	
				"(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 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 subsection (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.	

Companies Amendment Bill 2016 Referencer

Sl. No	Section	Heading	Companies Act, 2013	Companies Bill, 2016	Remarks
24	47(1)	Voting Rights	"(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."	"(1) Subject to the provisions of section 43 and sub-section (2) of section 50 **and sub-section (1) of section 188**,— (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."	Inclusion of section 188(1) within the ambit of section 47 is a desired change because section 188 prohibits a member, who is related party to a particular transaction, to vote for such transaction.
25	53(2)	Prohibition of issue of shares at a discount	"(2)Any share issued by a company at a discounted price shall be void."	"(2)Any share issued by a company at a discount shall be void. 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."	"Sub-section (1) of Section 53 of the Act prohibits issue of shares at a discount. Sub-section (2) makes the issue of shares at a discounted price void. The use of the words "discounted price" can be interpreted to mean a price lower than the market value of shares, and not lower than its nominal value, as intended in sub-section (1). To remove the ambiguity, the words 'discounted price', is proposed to be replaced the word "discount" in the provision. It may be noted that Companies Act 1956 allowed companies to issue shares at a discount with the prior approval of the Company Law Board (CLB). To enable restructuring of a distressed company, when the debt of such a company is converted into shares in accordance with any debt restructuring guidelines specified by Reserve Bank of India (Strategic Debt Restructuring Scheme issued by RBI vide Circular dated 8.06.2015), a company may issue shares at a discount to a creditor referred to in, and as per the guidelines. The proposed insertion of subsection 53(2A), which allows issuing of shares by a company 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, will make a significant impact, as the bar in the Act, 2013 against issuing shares at a discount forced a banker to convert the loans at least at par value of the equity."
26	54	Issue of sweat equity shares	"(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:— Clause: (c) not less than one year has, at the date of such issue, elapsed since the date on which the company had commenced business."	Clause (c) shall be omitted.	The proposed deletion of this clause allows the newly incorporated companies to issue sweat equity shares of a class of shares already issued , which is a welcome change.

Sl. No	Section	Heading	Companies Act, 2013	Companies Bill, 2016	Remarks
27	62	Further Issue of share capital	"Where at any time a company having a share capital proposes to increase its subscribed capital by issue of further shares, such shares shall be offered:- (a)### (b) ### (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."	"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; For sub-section (2), the following sub-section shall be substituted, namely:— "(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."	Section 62 of the Act deals with the further issue of share capital. Sub-section (2) requires the notice with regard to offers on rights basis to be despatched through registered post, or speed post, or an electronic mode. The proposed amendment seeks to allow delivery by courier or any other mode having proof of delivery. Further, the proposed amendment seeks to include compliance of Chapter III as part of Section 62(1)(c).
28	73(2)	Prohibition on acceptance of deposits from public	"(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 "	"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." (d) Omitted (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 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;""	"Companies accepting deposits from their members or the public, are required to comply with the requirements of Section 73(2)(c) and 73(5), that is, of keeping an amount not less than fifteen percent of the amount of its deposits maturing during a financial year and the next financial year, deposited and kept in a scheduled bank in a separate bank account to be called as the deposit repayment reserve account. This account is not to be used by the company for any purpose other than the repayment of deposits. Private companies accepting deposits from their members are already exempted from this requirement. The proposed amendment in section 73(2)(c) seeks to increase the percentage by 5% and now confines to only of the amount of deposits maturing during the following financial year. Section 73(2)(d) mandates a company accepting deposits to provide for deposit insurance in the manner and extent as is prescribed in Part 5 of the Companies (Acceptance of Deposits) Rules,2014. However, as insurance companies are not offering any products for covering company deposit default risks, this requirement was relaxed till 31/03/2016. The requirement of providing of deposit insurance is done away with."

Sl. No	Section	Heading	Companies Act, 2013	Companies Bill, 2016	Remarks
					"Section 73(2)(e) requires a certification from the company that no default has been committed in the repayment of deposits, accepted either before or after the commencement of the Act, or the payment of interest on such deposits. This requirement was harsh on companies which might have defaulted due to reasons beyond their control, such as industry conditions at some point of time in the past, but repaid such deposits with earnest efforts thereafter. The amendment seeks to permit Companies to accept deposits from its members, who made default and made good the default and a period of five years had lapsed since the date of making good the default. Through this change a fair chance is being proposed to be given to the Companies whose intention were not mala fide in the past."
29	74(1)(b)	Repayment of deposits, etc., accepted before commencement of this Act.	1(b) Repay within one year from such commencement or from the date on which such payments are due, whichever is earlier	"for clause (b), the following clause shall be substituted, namely:— 1(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 there under.""	Rule 19 of the Companies (Acceptance of Deposit) Rules, 2014, allows for deposits accepted under the Companies Act, 1956 to be repaid as per the original terms . The proposed amendment seeks to amend the law increasing the time limit from one to three years.
30	77	Duty to register charges	"(1) It shall be the duty of every company creating a charge within or outside India, on its property or assets or any of its undertakings, whether tangible or otherwise, and situated in or outside India, to register the particulars of the charge signed by the company and the charge-holder together with the instruments, if any, creating such charge in such form, on payment of such fees and in such manner as may be prescribed, with the Registrar within thirty days of its creation: Provided that the Registrar may, on an application by the company, allow such registration to be made within a period of three hundred days of such creation on payment of such additional fees as may be prescribed. "	"After the third proviso the following proviso shall be inserted namely, Provided also that this section shall not apply to such charges as may be prescribed in consultation with the Reserve Bank of India."	"Section 77 of the Act mandates registration of charges with the Registrar. Unlike the Companies Act, 1956, a specific list of charges to be so registered had not been included in the new Act or the Rules. Thus, in the absence of a specific list of charges to be registered, and the wide definition of the word "charge", 'pledges' and 'liens' are also required to be registered. These were earlier exempted from registration requirements under the previous Act. Registration of pledges and liens creates various practical difficulties, relating to the quantum and frequency of registrations required, etc. for example members of the 'Clearing Corporation' (CC) deposited cash, bank guarantees, FDRs, approved securities etc. with the Corporation towards meeting the margin and security deposit requirements requires registration of charges, creating operational difficulties. The proposed amendment seeks to provide that the requirement of registration of certain charges may be done away with, as may be prescribed by the Government."
			"Provided further that if registration is not made within a period of three hundred days of such creation, the company shall seek extension of time in accordance with section 87: Provided also that any subsequent registration of a charge shall not prejudice any right acquired in respect of any property before the charge is actually registered."		

Sl. No	Section	Heading	Companies Act, 2013	Companies Bill, 2016	Remarks
31	78	Application for registration of charge	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.	Where a company fails to register the charge within the period of thirty days referred to in sub-section (1) of 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.	The proposed amendment seeks to provide the charge-holder to register the charge after a period of 30 days as against 300 days, other conditions remaining the same.
32	82	Company to report satisfaction of charge	(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.	"The words "and the provisions of sub-section (1) of section 77 shall, as far as may be, apply to an intimation given under this section" shall be omitted; The following proviso shall be inserted namely, **"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."**	"Section 82 of the Act provides that a company shall give intimation to the Registrar of the payment or satisfaction in full, of any registered charge so registered within thirty days from the date of such payment or satisfaction. Further, sub-section (1) of Section 77 shall, as far as may be, apply to an intimation given under this Section. The proposed amendment seeks to allow similar timelines for satisfaction of charge as allowed for registering a charge ."
33	89	Declaration in respect of beneficial interest in any share	"(1)### (2)### (3)### (4)### (5)### (6)### (7)### (8)### (9) Nothing in this section shall be deemed to prejudice the obligation of a company to pay dividend to its members under this Act and the said obligation shall, on such payment, stand discharged."	"In section 89 of the principal Act, after sub-section (9), the following sub-section shall be inserted, namely:— "(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 (ii)receive or participate in any dividend or other distribution in respect of such share."	Section 89 of the Companies Act, 2013 deals with the concept of beneficial interest in a share which obligates every person acquiring/holding beneficial interest in a share as well as the legal owner to make a declaration to the company in respect of such beneficial interest. In view of the absence of a definition of beneficial interest in a share in a company, absence of any obligation on a company to collect information on beneficial ownership, the absence of the concept of beneficial ownership in a company, no enabling provisions to maintain a separate register on beneficial ownership, in the Act, the existing provisions were considered inadequate for the purpose of mandating a register of beneficial owners of the company. The proposed amendment seeks to include all such provisions.

Sl. No	Section	Heading	Companies Act, 2013	Companies Bill, 2016	Remarks
34	90	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.	"For section 90 of the pricinipal Act, the following section shall be substituted, namely:— 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:	
				"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. (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."	

Sl. No	Section	Heading	Companies Act, 2013	Companies Bill, 2016	Remarks
				"(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) 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; (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, 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. (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. (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. (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).	

Sl. No	Section	Heading	Companies Act, 2013	Companies Bill, 2016	Remarks
				(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. (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. (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."	
35	92(1)	Annual return	"(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— (a) its registered office, principal business activities, particulars of its holding, subsidiary and associate companies; (b) its shares, debentures and other securities and shareholding pattern; **(c) its indebtedness;** (d) its members and debenture-holders along with changes therein since the close of the previous financial year; (e) its promoters, directors, key managerial personnel along with changes therein since the close of the previous financial year; (f) meetings of members or a class thereof, Board and its various committees along with attendance details;"	" (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."	Section 92 of the Act, read with Rule 11 of the Companies (Management and Administration) Rules, 2014, provides for the filing of annual return of a company in the prescribed form. The amendment seeks to provide prescriptive powers for separate Annual Return format for small companies and one person companies.

Sl. No	Section	Heading	Companies Act, 2013	Companies Bill, 2016	Remarks
			"(g) remuneration of directors and key managerial personnel; (h) penalty or punishment imposed on the company, its directors or officers and details of compounding of offences and appeals made against such penalty or punishment (i) matters relating to certification of compliances, disclosures as may be prescribed; (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 (k) such other matters as may be prescribed, and signed by a director and the company secretary, or where there is no company secretary, by a company secretary in practice:"		
			Provided that in relation to One Person Company and small company, the annual return shall be signed by the company secretary, or where there is no company secretary, by the director of the company.		
36	92(3)	Annual return	(3) An extract of the annual return in such form as may be prescribed shall form part of the Board's report	"(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."	Section 92(3) mandates the filing of an extract of the annual return as a part of the Board's report. This requirement is leading to duplication of information being reported to the shareholders under other provisions of the Act or mandated to be made available on the website of the companies. Hence, this is proposed to be omitted, and instead the web address/link of the Annual Return filed by the company and hosted on its website, if any, should be provided in the Board's Report.
37	93	Returns to be filed with the registrar in case the Promoters' stake changes	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.	Section Omitted	Section 93 of the Act, as worded presently, requires filing of a return by a listed company with the Registrar, in a prescribed form with respect to changes in the number of shares held by promoters, and top ten shareholders. Further, the information was also required to be filed with Stock Exchanges/SEBI, leading to duplication of reporting. Moreover, the present prescription required filings on changes in individual holding, and not the changes that are linked to the paid up share capital. This has led to an increase in the amount of filings being made under the Act. Hence, the requirement has been proposed to be omitted altogether.
38	94	Place of keeping and inspection of registers, returns, etc	"(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. (2)###"	"(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.""	"Section 94 of the Act pertains to the place of keeping of registers, required to be maintained by a company under Section 88. The register of members contained various personal details of shareholders, like their PAN card details, E-Mail ID, address of members and is available for public inspection and making copies thereof. The proviso to Section 94(1) deals with the place of keeping and inspection of registers, returns, etc. at any place in India other than the registered office of a company. The present law requires the registrar to be given a copy for the proposed special resolution in advance. The amendment seeks to remove this requirement. The proposed amendment also seek to do away with public inspection or copies of extracts of registers as may be prescribed."

Sl. No	Section	Heading	Companies Act, 2013	Companies Bill, 2016	Remarks
			"(3) Any such member, debenture-holder, other security holder or beneficial owner or any other person may— (a) take extracts from any register, or index or return without payment of any fee; or (b) require a copy of any such register or entries therein or return on payment of such fees as may be prescribed. (4)### (5)###"		
39	96(2)	Annual general Meeting	"(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."	"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"""	"Section 96(2) requires holding of Annual General Meeting 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. The proposed amendment seeks to allow unlisted companies to convene the AGMs at any place in India provided approval of 100% shareholders is obtained in advance."
40	100(1)	Calling of EGM	(1) The Board may, whenever it deems fit, call an extraordinary general meeting of the company.	"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."""	"Section 100 read with Explanation to Rule 18 deals with the provisions relating to calling of extraordinary general meeting within India. Explanation to Rule 18(3) requires that an EGM shall be held only in India. The amendment seeks to provide that EGM shall be held only in India. Further exemptions to wholly owned subsidiaries of companies incorporated outside India is proposed to be provided to hold EGM at any place outside India. "
41	101(1)	Notice of meeting	"(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: **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."**	"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:"	The proviso to Section 101 (1) of the Act allows for the convening of a general meeting of a company by giving a shorter notice than the required twenty-one days, provided that consent is given by not less than ninety-five percent of the members entitled to vote at such a meeting. Private companies have been given flexibility to make suitable provisions through their AOA. The amendment seeks to provide that shareholders who are not entitled to vote on some resolutions shall not be counted for the purpose of the said limit of 95%.

Sl. No	Section	Heading	Companies Act, 2013	Companies Bill, 2016	Remarks
				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.	
42	110(1)	Postal Ballot	"(1) Notwithstanding anything contained in this Act, a company— (a) shall, in respect of such items of business as the Central Government may, by notification, declare to be transacted only by means of postal ballot; and (b) may, in respect of any item of business, other than ordinary business and any business in respect of which directors or auditors have a right to be heard at any meeting, transact by means of postal ballot, in such manner as may be prescribed, instead of transacting such business at a general meeting."	"In section 110 of the principal Act, in sub-section (1), the following proviso shall be inserted, namely:— "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."	Section 110(1)(a) prescribes for mandatorily transacting certain items through postal ballot. The mandatory requirement of a postal ballot is not relevant for companies which are required to conduct voting using electronic means, as this mode equally provides for that no shareholder is deprived of his right to vote on resolutions in case he cannot attend the AGM/general meeting. Therefore, it is proposed to amend Section 110 of the Act to provide for dispensation of postal ballot, if the item can be transacted in GM and facility of electronic voting is there.
43	117(2)	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.	(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 one 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 **fifty thousand rupees** but which may extend to five lakh rupees.	The proposed amendment seeks to reduce the fine.
44	117(3)	Resolutions and agreements to be filed	"(3) The provisions of this section shall apply to— (a) special resolutions; (b) resolutions which have been agreed to by all the members of a company, but which, if not so agreed to, would not have been effective for their purpose unless they had been passed as special resolutions; (c) any resolution of the Board of Directors of a company or agreement executed by a company, relating to the appointment, re-appointment or renewal of the appointment, or variation of the terms of appointment, of a managing director; (d) resolutions or agreements which have been agreed to by any class of members but which, if not so agreed to, would not have been effective for their purpose unless they had been passed by a specified majority or otherwise in some particular manner; and all resolutions or agreements which effectively bind such class of members though not agreed to by all those members; "	"(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:— ""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.""	"Sub-section (3) of Section 117 lays down the matters in respect of which such filings need to be made. Section 117(3)(a) provides that special resolutions need to be filed by the company, and Section 117 (3)(e) imposes such filing obligations, where resolutions are passed under Section 180 (1) (a) and Section 180 (1) (c). Section 180 (1) required the passing of a special resolution, and that the filing requirements were triggered under Section 117(3)(a) itself. Since clause (e) of Section 117(3) appeared to be repetitive, it is proposed to be deleted. Further banking companies have been relaxed from filing certain resolutions."

Sl. No	Section	Heading	Companies Act, 2013	Companies Bill, 2016	Remarks
			"(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; (f) resolutions requiring a company to be wound up voluntarily passed in pursuance of section 304; (g) resolutions passed in pursuance of sub-section (3) of section 179; and (h) any other resolution or agreement as may be prescribed and placed in the public domain."		
45	123(3)	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."	"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: "	"Sub-section (3) of Section 123 of the Act, allows the Board of Directors to declare interim dividend during any financial year out of the surplus in the profit and loss account, and out of the profits of the financial year in which such dividend is sought to be declared. The sub-section could be interpreted to mean that the interim dividend for a particular financial year could only be declared during that particular financial year period; restricting the ability of companies to declare interim dividend after the close of the financial year but before the Annual General Meeting (AGM). Such an interpretation could not have been the intent of the Act and causes difficulties for companies, as declaration of interim dividend after the close of financial year is an accepted practice. Further, the use of the word "and" after the words "surplus in the profit and loss account", and before the words "out of the profits of the financial year" in sub-section (3) of Section 123 appears at disharmony with the provisions of sub-section (1)(a), which provides for the declaration of dividend out of the profits of the company for that financial year, or the profits of the company from any previous financial year(s) (subject to deduction of depreciation and other conditions), or both the amounts. Hence, It is proposed to allow declaration of interim dividend from out of the profits of the current financial year, generated till the date of declaration, including brought forward surplus in the Profit & Loss Account, and the same could be declared anytime up to convening of AGM for the said financial year. "
				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."	

Sl. No	Section	Heading	Companies Act, 2013	Companies Bill, 2016	Remarks
46	129(3)	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."	"For sub-section (3), the following sub-section shall be substituted, namely:— "(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): 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:"	The Explanation to Section 129(3) provides that "for the purposes of this sub-section, the word "subsidiary" shall include associate company, and joint venture." The amendment seeks to include associates in Section 129(3).
				Provided further that the Central Government may provide for the consolidation of accounts of companies in such manner as may be prescribed.".	
47	130(1)	Re-opening of accounts on court's or Tribunal's orders	"(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: "	"(a) After the words ""regulatory body or authorities concerned"", the words ""or any other person concerned"" shall be inserted; (b) after the words ""the body or authority concerned"", the words ""or the other person concerned"" shall be inserted;"	"Section 130 of the Act provides for the re-opening of accounts, after due approval from a court or a Tribunal. The Proviso to Section 130(1) provides that the court or the Tribunal shall give notice to the Central Government, the Income-tax authorities, SEBI or any other statutory regulatory body or authority concerned and shall take into consideration any representations made by them before passing any order under this Section. Therefore, While a court/Tribunal always had the inherent power to call/give notice to any concerned party in the process, it is proposed to insert a provision enabling the Court/Tribunal to give notice to any other party/person concerned, in addition to those specifically referred to in the provisions. "
			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.		

Sl. No	Section	Heading	Companies Act, 2013	Companies Bill, 2016	Remarks
48	130(2)	Re-opening of accounts on court's or Tribunal's orders	(2) Without prejudice to the provisions contained in this Act the accounts so revised or re-cast under sub-section (1) shall be final.	"After sub-section (2), the following sub-section shall be inserted, namely:— "(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.""	"Section 128 of the Act required a company to keep its accounts for a minimum period of eight years, unless a direction was issued under a proviso to Section 128(5) by the Central Government. It is a heavy burden on companies if they have to maintain their accounts forever, or beyond a reasonable time limit because of the provision of re-opening of accounts. **Thus, the applicability of provisions of Section 130 for the re-opening of accounts is proposed to be restricted to eight years, unless a longer period is required through a specific direction issued by Central Government, under Section 128(5).**
49	132(4)(c)	Constitution of National Financial Reporting Authority	"(4) Notwithstanding anything contained in any other law for the time being in force, the National Financial Reporting Authority shall— (a)### (b)### (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;"	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.	The proposed amendment seeks to reduce the penalty from 10 lacs to Rs 5 lacs in case of firms.
			(B) debarring 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.		
50	134(1)	Financial Statement, Board's report, etc.	(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.	"For sub-section (1), the following sub-section shall be substituted, namely:— **"(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."**	"Section 134(1) of the Act states that the financial statement, including the CFS, is to be signed by the chairperson of the company, where he is so authorised by the Board, or by two directors, out of which one has to be the 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. As per the proposed amendments The Financials are now also required to be signed by the CEO of the company even if he is not a director of the company where ever he/she is appointed. "

Sl. No	Section	Heading	Companies Act, 2013	Companies Bill, 2016	Remarks
51	134(3)	Financial Statement, Board's report, etc.	"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;** (b)-(o) ### (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;** (q) such other matters as may be prescribed"	"(i) for clause (a), the following clause shall be substituted, namely:— "(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;"	Due to the numerous disclosures in the Board's Report, the Report had become lengthier, and more expensive to produce. While some of the disclosures in the Board's Report under the Companies Act, 1956 was insufficient and had become redundant, there was a need to fine-tune the current requirements, without reducing the information content of the Report. The proposed amendment seeks to omit the requirement of Form MGT-9 regarding enclosing extract of annual return as part of Board Report. Further Salient points of the CSR Policy, Remuneration Policy etc is proposed to be included in the Report and the detailed documents/ policies provided on the website of the company, if any, and web address or link of these documents/policies provided. Changes in the policies are to be specifically highlighted in the salient points. Disclosures with regard to loans or investments under section 186 and particulars of contracts with related parties under section 188, if provided in the financial statements, may be only referred.
				"(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: 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."; (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."	

Companies Amendment Bill 2016 Referencer

Sl. No	Section	Heading	Companies Act, 2013	Companies Bill, 2016	Remarks
52	135(1)	Corporate Social Responsibility	(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.	"(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."	"Section 135 (1) requires every company having a net worth of Rupees Five Hundred Crore or more; or a turnover of Rupees One Thousand Crore or more; or a net profit of Rupees Five Crore or more, during any financial year, to constitute a 'Corporate Social Responsibility Committee' of the Board, consisting of three or more directors, out of which at least one director has to be an independent director. Rule 5(1) of CSR Policy Rules, 2014, allows unlisted companies, private companies, and foreign companies, to have the Committee with less than three directors, and without Independent Directors, where they were not required to be appointed. The proposed amendment provides clarification with regards to the financial year for the eligibility of a company to comply with CSR and also give clarification regarding the criteria of appointment of ID in company which are not required to appoint them but are eligible to form a CSR committee."
53	135(3)	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**; (b) recommend the amount of expenditure to be incurred on the activities referred to in clause (a); and (c) monitor the Corporate Social Responsibility Policy of the company from time to time"	"(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 **in areas or subject, specified in Schedule VII.** (b) recommend the amount of expenditure to be incurred on the activities referred to in clause (a); and (c) monitor the Corporate Social Responsibility Policy of the company from time to time"	"Section 135(3)(a) requires that the CSR Policy shall indicate 'the activities to be undertaken by the company as specified in Schedule VII'. Schedule VII indicates broad areas, which have been further explained to be interpreted liberally in circular no. 21/2014 issued by MCA. The proposed amendment seeks to refer to subjects in Schedule VII within which CSR activities could be taken up by an eligible company. "
54	135(5)	Corporate Social Responsibility	"(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. "	"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.'"	"The Explanation below Section 135(5) provides that for the purpose of this provision, the 'average net profit' shall be calculated in accordance with Section 198. The term "average net profit" to be replaced with the words "net profit", to remove any ambiguity. "
			Explanation.—For the purposes of this section "average net profit" shall be calculated in accordance with the provisions of section 198		

Sl. No	Section	Heading	Companies Act, 2013	Companies Bill, 2016	Remarks
55	136(1)	Right of member to copies of audited financial statement	"(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: **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 "	"(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:—"	"Section 101 of the Act provides for a twenty-one day notice period to call for a general meeting, and also provides for a meeting to be called for at a shorter notice, provided at least ninety-five percent of the voting power consented to such shorter notice. However, under Section 136, for the circulation of annual accounts to the members, the Section requires twenty-one days' notice, and does not provide for a shorter notice period to circulate the annual accounts. In this regard, the Ministry of Corporate Affairs had issued a circular dated 21st July 2015, in which it had clarified that the shorter notice period would also apply to the circulation of annual accounts. The proposed amendment seeks to align the two provisions."
			"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 a listed company shall also place its financial statements including consolidated financial statements, if any, and all other documents required to be attached thereto, on its website, which is maintained by or on behalf of the company:"	"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; "	
			"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."	(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.";	

Sl. No	Section	Heading	Companies Act, 2013	Companies Bill, 2016	Remarks
56	136(2)	Right of member to copies of audited financial statement	(2) A company shall allow every member or trustee of the holder of any debentures issued by the company to inspect the documents stated under sub-section (1) at its registered office during business hours	"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.""	The proposed amendment seeks to provide 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
57	137(1)	Copy of Financial Statements to be filed with Registrar	"(1) A copy of the financial statements, including consolidated financial statement, if any, along with all the documents which are required to be or attached to such financial statements under this Act, duly adopted at the annual general meeting of the company, shall be filed with the Registrar within thirty days of the date of annual general meeting in such manner, with such fees or additional fees as may be prescribed within the time specified under section 403: Provided that where the financial statements under sub-section (1) are not adopted at annual general meeting or adjourned annual general meeting, such unadopted financial statements along with the required documents under sub-section (1) shall be filed with the Registrar within thirty days of the date of annual general meeting and the Registrar shall take them in his records as provisional till the financial statements are filed with him after their adoption in the adjourned annual general meeting for that purpose."	"After the fourth proviso, the following proviso shall be inserted, namely:— 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."'	
			"Provided further that financial statements adopted in the adjourned annual general meeting shall be filed with the Registrar within thirty days of the date of such adjourned annual general meeting with such fees or such additional fees as may be prescribed within the time specified under section 403: Provided also that a One Person Company shall file a copy of the financial statements duly adopted by its member, along with all the documents which are required to be attached to such financial statements, within one hundred eighty days from the closure of the financial year: Provided also that a company shall, along with its financial statements to be filed with the Registrar, attach the accounts of its subsidiary or subsidiaries which have been incorporated outside India and which have not established their place of business in India."		

Sl. No	Section	Heading	Companies Act, 2013	Companies Bill, 2016	Remarks
58	139(1)	Appointment of Auditors	"(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:** Provided further that before such appointment is made, the written consent of the auditor to such appointment, and a certificate from him or it that the appointment, if made, shall be in accordance with the conditions as may be prescribed, shall be obtained from the auditor: "	in sub-section (1), the first proviso shall be omitted	"Section 139(1) provides that the shareholders at the 'Annual General Meeting' (AGM) shall appoint an auditor of a company, for a consecutive period of five years, and that his appointment shall be ratified every year at the AGM. The first proviso to the said sub-section requires the company to place the matter relating to such appointment, for ratification by the members in each AGM. It is proposed to omit the provisions with respect to ratification, as it defeats the objective of giving five year term to the auditors. This would also remove the inconsistency in the Act. "
			"Provided also that the certificate shall also indicate whether the auditor satisfies the criteria provided in section 141: Provided also that the company shall inform the auditor concerned of his or its appointment, and also file a notice of such appointment with the Registrar within fifteen days of the meeting in which the auditor is appointed."		
59	140(3)	Removal, resignation of auditor and giving of special notice	(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.	(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 or the remuneration of the auditor, whichever is less,** but which may extend to five lakh rupees.	The fine for not filing the intimation of resignation with the registrar is proposed to be substantially reduced .
60	141(3)	Eligibility, qualifications and disqualifications of auditors	"(3) The following persons shall not be eligible for appointment as an auditor of a company, namely:— (a) a body corporate other than a limited liability partnership registered under the Limited Liability Partnership Act, 2008; (b) an officer or employee of the company; (c) a person who is a partner, or who is in the employment, of an officer or employee of the company; **(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;"**	"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; 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.'"	"Section 141 (3) (d) of the Act, inter alia, provides that a person shall not be eligible for appointment as an auditor of a company, if he, or his relative, or partner, holds any security, or gives a guarantee, or is indebted to the company for specified amounts, etc. For the purpose of section 141(3)(d), the term relative is proposed to be suitably modified. Section 141 (3) (i) provides that any person whose subsidiary, or associate company, or any other form of entity is engaged on the date of appointment, in the services prohibited under Section 144, shall be disqualified from being appointed as an auditor. For bringing clarity to the clause, the said clause is proposed to be amended."

Sl. No	Section	Heading	Companies Act, 2013	Companies Bill, 2016	Remarks
			"(ii) is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of such amount as may be prescribed; or (iii) has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, for such amount as may be prescribed; (e) a person or a firm who, whether directly or indirectly, has business relationship with the company, or its subsidiary, or its holding or associate company or subsidiary of such holding company or associate company of such nature as may be prescribed; (f) a person whose relative is a director or is in the employment of the company as a director or key managerial personnel;" "(g) a person who is in full time employment elsewhere or a person or a partner of a firm holding appointment as its auditor, if such persons or partner is at the date of such appointment or reappointment holding appointment as auditor of more than twenty companies; (h) a person who has been convicted by a court of an offence involving fraud and a period of ten years has not elapsed from the date of such conviction; (i) any person whose subsidiary or associate company or any other form of entity, is engaged as on the date of appointment in consulting and specialised services as provided in section 144."		
61	143(1)	Powers and duties of auditors and auditing standards	"(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:— (a)-(f) ### 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."	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 and associate companies in so far as it relates to the consolidation of its financial statements with that of **its subsidiaries and associate companies.**	"The first proviso to Section 143 (1) of the Act provides that the auditor of a holding company shall also have the right to access the books of accounts of subsidiary companies, in connection to the consolidation of accounts. The proposed amendment seeks to provide that the Auditor Shall now have right of access to the records of all associate companies of a company for the purpose of consolidation."

Sl. No	Section	Heading	Companies Act, 2013	Companies Bill, 2016	Remarks
62	143(3) & 143(14)	Powers and duties of auditors and auditing standards	"(3) The auditor's report shall also state— (a)-(h) ### (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"	"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; in sub-section (14), in clause (a), for the words ""cost accountant in practice"", the words ""cost accountant"" shall be substituted."	"Section 143 (3) (i) requires the auditor to state in his report whether the company has adequate internal financial controls system in place and the operating effectiveness of such controls. This has to be read with Section 134 (5) (e) on the Directors' Responsibility Statement which also defines internal financial controls, and Rule 8(5)(viii) of Companies (Accounts) Rules, 2014. Rule 10A of the Company (Audit and Auditors) Rules, 2014, makes the requirement under Section 143(3)(i) optional for FY 14-15 and is mandatory from FY 15-16 onwards. Auditing internal financial control systems by auditors is an onerous responsibility and that their responsibility should have been limited to the auditing of the systems with respect to financial statements only, and that this cannot be compared with responsibility of directors which is wider and can be discharged as they have other resources like internal auditors, etc. who can be used for this purpose. The proposed amendment seeks to reduce the the reporting obligations of auditors on internal controls only with reference to the financial statements. "
63	147(2)	Punishment for contravention	"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."	"Section 147(2) shall be substituted as under: 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 or four times the remuneration of the auditor whichever is less. 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 fifty thousand rupees but which may extend to twenty-five lakh rupees or eight times the remuneration of the auditor, whichever is less."**	The proposed amendment seeks to reduce the penalty on auditors.
64	147(3)	Punishment for contravention	"(3) Where an auditor has been convicted under sub-section (2), he shall be liable to— (i) refund the remuneration received by him to the company; and (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 ."	"(3) Where an auditor has been convicted under sub-section (2), he shall be liable to— (i) refund the remuneration received by him to the company; and (ii) pay for damages to the company, statutory bodies or authorities or to **members and creditors** for loss arising out of incorrect or misleading statements of particulars made in his audit report"	The punishment under Section 147(3) is linked to conviction under Section 147(2) which refers to creditors, members and so to align the scope of both the sub sections , the term any other person is proposed to be replaced with " members or creditors".

Sl. No	Section	Heading	Companies Act, 2013	Companies Bill, 2016	Remarks
65	147(5)	Punishment for contravention	5) Where, in case of audit of a company being conducted by an audit firm, it is proved that the partner or partners of the audit firm has or have acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to or by, the company or its directors or officers, the liability, whether civil or criminal as provided in this Act or in any other law for the time being in force, for such act shall be of the partner or partners concerned of the audit firm and of the firm jointly and severally.	"Following proviso shall be inserted in the section: **"Provided that in case of criminal liability of audit firm, in respect of liability other than 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."**	"Section 147(5) provides that where an audit is conducted by an audit firm, and it is proved that the partner or partners of the audit firm have acted in a fraudulent manner or abetted or colluded in any fraud, the liability, whether civil or criminal for such act shall be of the partner or partners concerned of the audit firm and of the firm jointly and severally. Rule 9 of the Companies (Audit and Auditors) Rules, 2014, provides that in case of criminal liability of any audit firm, the liability other than fine shall devolve only on the concerned partners, who acted in a fraudulent manner or abetted or colluded in any fraud. The provisions of Rule 9 is proposed to be introduced in the Act. "
66	148(3)	Central Government to specify audit of items of cost in respect of certain companies	"(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: Provided that no person appointed under section 139 as an auditor of the company shall be appointed for conducting the audit of cost records: Provided further that the auditor conducting the cost audit shall comply with the cost auditing standards. 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."	"In sub section 3, for the words ""Cost Accountant in practice", the words ""Cost Accountant" shall be substituted. In explanation, for the words ""Institute of Cost and Works Accountants of India"", the words ""Institute of Cost Accountants of India""."	
67	149(3)	Company to have Board of Directors	(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.	"The section shall be substituted as under: (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 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."**	"Section 149(3) requires a company to have at least one Director to have stayed in India for a total period of not less than one hundred and eighty-two days in the previous calendar year. The requirements for residency in the previous year forces a new subsidiary of a company incorporated outside India to appoint an individual/professional unconnected with the company as Director, which did not aid in any way in Board decision making and many a time leads to unnecessary disputes. The amendment shall make the requirement in relation to the director's stay in India during the financial year and not the calendar year. In case of new companies , the requirement shall apply proportionately at the end of the financial year in which it is incorporated."

Sl. No	Section	Heading	Companies Act, 2013	Companies Bill, 2016	Remarks
68	149(6)	Company to have Board of Directors	"(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;"	"(c) who has or had no 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 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) 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:"**	"Section 149(6) prescribed certain qualifications and criteria for the selection of an Independent Director with the sole purpose of securing his independence. Clause (c) of sub-section (6) prescribes that an independent director must not have or had any 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. Even minor pecuniary relationships are covered within this clause (c) even though such transactions may not compromise the independence of the directors, whereas, Regulation 16 of the SEBI (Listing Obligations & Disclosure Requirements) Regulations, 2015 prohibits only 'material' pecuniary relationships for disqualifying appointment of persons as Independent Directors. It was also noted that Dr. J.J. Irani Committee in its report, used the word 'material pecuniary relationships or transactions' and also explained what the term 'material transaction' should mean. International best practices also indicate adoption of such a test. Further, the 2010 Standing Committee Report on the Companies Bill also recommended that Independent Directors should not have any kind of pecuniary relationship at all with the company. It was also noted that the Standing Committee Report, 2012 had, however, suggested regulatory harmonization between the Companies Act, 2013 and SEBI's listing agreement. In view of the difficulties being faced, the test of materiality for the purpose of determining whether pecuniary relationships could impact the independence of an individual to be an independent director has been proposed to be introduced."
			(e) (i) holds or has held the position of a key managerial personnel or is or has been employee of the company or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed;	"Provided that the relative may hold security or interest in the company of face value not exceeding fifty lakh rupees or two percent. 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"	"Section 149(6)(d) further prescribes that a director can be appointed as an Independent Director only if none of his relatives has or had a pecuniary relationship or transaction of a prescribed value 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. The proposed amendment seeks to define the scope of the restriction on "pecuniary relationship or transaction" entered into by a relative by clearly categorising the types of transactions. "

Sl. No	Section	Heading	Companies Act, 2013	Companies Bill, 2016	Remarks
				"(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);"" (e) 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.""	
69	152	Appointment of directors	"(3) No person shall be appointed as a director of a company unless he has been allotted the Director Identification Number under section 154. (4) Every person proposed to be appointed as a director by the company in general meeting or otherwise, shall furnish his Director Identification Number and a declaration that he is not disqualified to become a director under this Act."	"(3) No person shall be appointed as a director of a company unless he has been allotted the Director Identification Number **or any other number as may be prescribed under section 153.** (4) Every person proposed to be appointed as a director by the company in general meeting or otherwise, shall furnish his Director Identification Number or such other number as may be prescribed under Section 153 and a declaration that he is not disqualified to become a director under this Act."	
70	153	Application for allotment of DIN	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	"The following proviso shall be inserted after 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."	

Sl. No	Section	Heading	Companies Act, 2013	Companies Bill, 2016	Remarks
71	160(1)	Right of persons other than retiring directors to stand for directorship	(1) A person who is not a retiring director in terms of section 152 shall, subject to the provisions of this Act, be eligible for appointment to the office of a director at any general meeting, if he, or some member intending to propose him as a director, has, not less than fourteen days before the meeting, left at the registered office of the company, a notice in writing under his hand signifying his candidature as a director or, as the case may be, the intention of such member to propose him as a candidate for that office, along with the deposit of one lakh rupees or such higher amount as may be prescribed which shall be refunded to such person or, as the case may be, to the member, if the person proposed gets elected as a director or gets more than twenty-five per cent. of total valid votes cast either on show of hands or on poll on such resolution.	"In section 160 of the principal Act, in sub-section (1), the following proviso shall be inserted namely: ""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.""	"Section 160 provides that an individual (who is not a retiring director under Section 152) shall be eligible to be appointed as a director, if he or some member proposing him as a director, leaves a written notice of candidature at the registered office of the company, at least fourteen days prior to the date of the general meeting along with a deposit of Rupees One Lakh, or such higher amount, as may be prescribed. Exemptions/modifications have already been notified for wholly owned Government companies, Section 8 companies and Nidhis. Under Section 149(10), an independent director is eligible for appointment for a term of five consecutive years. As per the present provisions, on completion of the tenure, for his re-appointment also, the requirements under Section 160 will need to be complied with, which is unreasonable as such appointments will be recommended by the Board. Similar will be the case for other persons recommended by the Nomination and Remuneration Committee, as also by the Board, to be considered for appointment. Hence, in case of appointment of Independent Directors and Directors recommended by the Nomination and Remuneration Committee, the requirements of Section 160 is proposed to be dispensed with. "
72	161(2)	Appointment of additional director, alternate director and nominee director	"(2) The Board of Directors of a company may, if so authorised by its articles or by a resolution passed by the company in general meeting, appoint a person, not being a person holding any **alternate directorship for any other director in the company,** to act as an alternate director for a director during his absence for a period of not less than three months from India."	In sub section 2, after the words "any alternate director for any other director in the Company", the words **"or holding directorship in the same company"**	"Section 161(2) deals with the appointment of a person as an alternate director by the Board. This Section does not prohibit the appointment of an existing director as an alternate director and that same individual acting as a director and alternate director for some other director of the same company leads to conflict of interest and also ambiguity in the calculation of quorum. Hence, it is proposed that there should be a prohibition in the Act for appointing a director of a company as an alternate director in the same company. "
73	161(4)	Appointment of additional director, alternate director and nominee director	"(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."	"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."	Section 161(4) authorises the Board of a public company to fill a vacancy caused by vacation of the office of any director before the expiry of his term, however subject to the AOA of the company. The proposed amendment extends this to private companies as well . However it is further proposed that such appointment shall be subsequently approved by members in the immediate next general meeting.
74	164(2)	Disqualifications for appointment of Director	"(2) No person who is or has been a director of a company which— (a) has not filed financial statements or annual returns for any continuous period of three financial years; or (b) has failed to repay the deposits accepted by it or pay interest thereon or to redeem any debentures on the due date or pay interest due thereon or pay any dividend declared and such failure to pay or redeem continues for one year or more, shall be eligible to be re-appointed as a director of that company or appointed in other company for a period of five years from the date on which the said company fails to do so."	"The following proviso shall be inserted after sub section 2, 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.;"	"Section 164(1) provides for disqualifications which are incurred by a director in his personal capacity such as being an undischarged bankrupt, of unsound mind, convicted of an offence etc., and Section 164(2) lists out disqualifications related to the company such as non-compliance of annual filing requirements, etc. This Section created a paradoxical situation, as the office of all the directors in a Board would become vacant where they are disqualified under Section 164(2), and a new person could not be appointed as a director as they would also attract such a disqualification. The proposed amendment seeks to provide that in case of a continuing non-compliance, the new director shall not incur the disqualification for a period of six months from the date of his appointment."

Sl. No	Section	Heading	Companies Act, 2013	Companies Bill, 2016	Remarks
75	164(3)	Disqualifications for appointment of Director	"(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) 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."	"The following proviso shall be substituted after sub section 3, 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."**	"The current proviso to Section 164 (appearing under sub-section (3) of the section) creates an inconsistent situation when read with the proviso to Section 167(1)(f), as these provide for a person to be appointed as a Director if he has been convicted/disqualified by a Court but has an appeal preferred in a Court whereas for a sitting Director, it does not allow such consideration and he has to vacate office on conviction, even if an appeal had been preferred against such conviction and sentence. The proposed amendment seeks to be very harsh and provides for disqualification even during pendency of appeal."
76	165(1)	Number of directorships	"(1) No person, after the commencement of this Act, shall hold office as a director, including any alternate directorship, in more than twenty companies at the same time. Provided that the maximum number of public companies in which a person can be appointed as a director shall not exceed ten. Explanation.— For reckoning the limit of public companies in which a person can be appointed as director, directorship in private companies that are either holding or subsidiary company of a public company shall be included."	"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."**	"Section 165 prescribes the maximum number of companies in which a person may hold office as a director, including any alternate directorship, that is, not more than 20 companies. The Bill proposes to clear the position with respect to number of directorships in dormant companies as defined in section 455 of the Act. Therefore, taking of directorships in dormant companies will not lead to squeezing the limits of section 165."
77	167(1)(a)	Vacation of office of director	"(1) The office of a director shall become vacant in case— (a)he incurs any of the disqualifications specified in section 164;"	"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."	"Section 167(1)(a) dealing with vacation of office by a director triggers an automatic vacation of office of the director if he incurs any of the disqualifications stipulated under Section 164. Section 164(1) provides for disqualifications which are incurred by a director in his personal capacity such as being an undischarged bankrupt, of unsound mind, convicted of an offence etc., and Section 164(2) lists out disqualifications related to the company such as non-compliance of annual filing requirements, etc. This Section created a paradoxical situation, as the office of all the directors in a Board would become vacant where they are disqualified under Section 164(2), and a new person could not be appointed as a director as they would also attract such a disqualification. 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. This means that the director can continue the appointment in the Company in which he has defaulted. However, he will have to vacate the office in that company as well at the time of reappointment."

Sl. No	Section	Heading	Companies Act, 2013	Companies Bill, 2016	Remarks
78	167(1)(f)	Vacation of office of director	"(e) he becomes disqualified by an order of a court or the Tribunal; (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."**	"(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; (ii) where an appeal or petition is preferred within thirty days as aforesaid against the conviction resulting in sentence or order, until expiry of seven days from the date on which such appeal or petition is disposed of; or (iii) where any further appeal or petition is preferred against order or sentence within seven days, until such further appeal or petition is disposed of."**	"The proviso to Section 164 (appearing under sub-section (3) of the section) creates an inconsistent situation when read with the proviso to Section 167(1)(f), as these provide for a person to be appointed as a Director if he has been convicted/disqualified by a Court but has an appeal preferred in a Court whereas for a sitting Director, it does not allow such consideration and he has to vacate office on conviction, even if an appeal had been preferred against such conviction and sentence. Therefore, such inconsistency is proposed to be corrected and in case of requirement for vacation of office of a Director, it should not take effect until the appeals are disposed off, while in case of disqualification, it is not required to provide for period of pendency of appeal. "
79	168(1)	Resignation of Director	"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: 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."	"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: Provided that a director may 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."	"The proviso to Section 168(1) requires that a resigning Director should file a copy of his resignation along with the reasons for resignation with the Registrar, within thirty days. The intent is to address likely misuse by some companies of the Director's name after his resignation. The proposed amendment seeks to amend section 168 to provide that the requirement for forwarding of copy of resignation by the resigning director in e-form DIR 11 to the Registrar shall be optional. This is a welcome change for those companies where the resignation is with mutual consent unlike where there are management disputes. In such companies, the directors still have an option to file DIR 11."

Sl. No	Section	Heading	Companies Act, 2013	Companies Bill, 2016	Remarks
80	173(2)	Meetings of the Board	"(2) The participation of directors in a meeting of the Board may be either in person or through video conferencing or other audio visual means, as may be prescribed, which are capable of recording and recognising the participation of the directors and of recording and storing the proceedings of such meetings along with date and time Provided that the Central Government may, by notification, specify such matters which shall not be dealt with in a meeting through video conferencing or other audio visual means."	"(2) The participation of directors in a meeting of the Board may be either in person or through video conferencing or other audio visual means, as may be prescribed, which are capable of recording and recognising the participation of the directors and of recording and storing the proceedings of such meetings along with date and time Provided that the Central Government may, by notification, specify such matters which shall not be dealt with in a meeting 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."**	"The participation of directors, through video-conferencing, is governed by Section 173(2). The proviso to the sub-section also delegates the authority to prescribe matters that may not be dealt with through video conferencing to the Central Government. Accordingly, Rule 4 of the Companies (Meetings of Board and its Powers) Rules, 2014 specifies matters which shall not be dealt with in any meeting held through video conferencing or other audio-visual means. This requirement completely bars participation in these specified matters of the Board meetings through video conferencing, which unnecessarily restricts wider participation even if the necessary quorum as specified in Section 174 is physically present. Therefore, its is proposed to allow participation of Directors through video conferencing, subject to quorum through physical presence of directors being there. "
81	177(1)	Audit Committee	(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	(1) The Board of Directors of every listed public company and such other class or classes of companies, as may be prescribed, shall constitute an Audit Committee	This brings ease and relief to debt listed companies as the companies were surely falling within the meaning of listed but were not public.
82	177(4)	Audit Committee	"Every Audit Committee shall act in accordance with the terms of reference specified in writing by the Board which shall, inter alia, include,— (i) the recommendation for appointment, remuneration and terms of appointment of auditors of the company; (ii) review and monitor the auditor's independence and performance, and effectiveness of audit process; (iii) examination of the financial statement and the auditors' report thereon; **(iv) approval or any subsequent modification of transactions of the company with related parties**; (v) scrutiny of inter-corporate loans and investments; (vi) valuation of undertakings or assets of the company, wherever it is necessary; (vii) evaluation of internal financial controls and risk management systems; (viii) monitoring the end use of funds raised through public offers and related matters."	"The following proviso shall be inserted after clause (iv) 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:"	"The audit committee under Section 177(4) (iv) is required to approve or modify transactions of the company with related parties. To be read in harmony with the provisions of Section 188, which entrust the Board and the shareholders with the responsibility of approving specified related party transactions, this thus brings clarity to the position in role of audit committee for transactions not listed in sec 188 but are related party transactions. This will therefore include transactions falling within the meaning of Listing Regulations and also financial transactions with related parties and bill 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."
				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.".	

Sl. No	Section	Heading	Companies Act, 2013	Companies Bill, 2016	Remarks
83	178(1)	Nomination & Remuneration Committee and Stakeholders Relationship Committee	"(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: 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."	"(1) The Board of Directors of **every listed public 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: 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."	This brings ease and relief to debt listed companies as the companies were surely falling within the meaning of listed but were not public.
84	178(2)	Nomination & Remuneration Committee and Stakeholders Relationship 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.**	(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 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.**	"As per the current provisions of Section 178(2), the Nomination & Remuneration Committee (NRC) is required to carry out evaluation of every director's performance. It was pointed out by the Industry that as Independent Directors (ID) are required to carry out review of performance of non-Independent Directors and the Board as a whole separately as per Schedule IV requirements, the Board is also required to carry out its evaluation (refer Section 134(3)(p)), carrying out another set of performance evaluations by the Nomination and Remuneration Committee is avoidable. It is now proposed that the NRC will only specify the manner of evaluation of directors, board and its committees which can be evaluated by the board, NRC or Independent External Agency. The Listing Regulations also provide that NRC shall formulate criteria for evaluation. However, Board and IDs shall anyways have to continue evaluation in line with provisions of Act and Listing Regulations."
85	178(4)	Nomination & Remuneration Committee and Stakeholders Relationship Committee	"The Nomination and Remuneration Committee shall, while formulating the policy under sub-section (3) ensure that— (a) the level and composition of remuneration is reasonable and sufficient to attract, retain and motivate directors of the quality required to run the company successfully; (b) relationship of remuneration to performance is clear and meets appropriate performance benchmarks; and (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."	"The Nomination and Remuneration Committee shall, while formulating the policy under sub-section (3) ensure that— (a) the level and composition of remuneration is reasonable and sufficient to attract, retain and motivate directors of the quality required to run the company successfully; (b) relationship of remuneration to performance is clear and meets appropriate performance benchmarks; and (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 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."**	"The proviso to Section 178(4) prescribes that the remuneration policy should be disclosed in the report of the Board. It is proposed that it would be sufficient for the company to place the remuneration policy on the website of the company, if any, and to disclose only the salient features of the policy in the Board's report along with the web link/address."

Sl. No	Section	Heading	Companies Act, 2013	Companies Bill, 2016	Remarks
86	178(8)	Nomination & Remuneration Committee and Stakeholders Relationship Committee	"(8) In case of any contravention of the provisions of section 177 and this section, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both. Provided that **non-consideration of resolution of any grievance** by the Stakeholders Relationship Committee in good faith shall not constitute a contravention of this section."	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.	
			Explanation.—The expression "senior management" means personnel of the company who are members of its core management team excluding Board of Directors comprising all members of management one level below the executive directors, including the functional heads.		
87	180(1)(c)	Restrictions on power of the Board	"(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:— (a) ### (b)### (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."	(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, free reserves and securities premium,** apart from temporary loans obtained from the company's bankers in the ordinary course of business.	This brings us back to the position under the regime of Act, 1956 as the words "securities premium" was dropped from section 180 and is a welcome amendment.
			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.		
88	184(4)	Disclosure of interest by director	(4) If a director of the company contravenes the provisions of sub-section (1) or sub 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.	In sub-section (4), the words "shall not be less than fifty thousand rupees but which" shall be omitted.	"The minimum limit of fine u/s 184 (4) has been omitted which means that there is no lower limit but an upper limit of one lakh continues."

Sl. No	Section	Heading	Companies Act, 2013	Companies Bill, 2016	Remarks
89	184(5)	Disclosure of interest by director	"5) Nothing in this section— (a) shall be taken to prejudice the operation of any rule of law restricting a director of a company from having any concern or interest in any contract or arrangement with the company; (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"	"5) Nothing in this section— (a) shall be taken to prejudice the operation of any rule of law restricting a director of a company from having any concern or interest in any contract or arrangement with the company; **(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."**	"The bill seeks to include words "body corporate" in sub-section (5) and therefore in case of director(s) holding more than 2% in the other company/body corporate, 184(2) will get attracted."
90	185	Loan to directors, etc.	"(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"	"For section 185 of the principal Act, the following section shall be substituted, namely:- (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,— (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. (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."	"There are difficulties being faced in genuine transactions due to the complete embargo on providing loans to subsidiaries with common directors, but at the same time there is no doubt that the route has been misused in the past for siphoning of funds by controlling shareholders. The limited relaxation has already been provided to private companies not having other body corporates invested in them by way of Exemption Notification dated June 5, 2015. The bills seeks to rewrite Section 185 in the matter of loan, guarantee, security to persons in which director is interested. The rates of interest have been aligned with Section 186 and now loans can be granted to director interested entities with approval of members by way of special resolution. It may however be noted that a company which does not in the ordinary course of business provides loans , gives guarantees, provides securities, cannot give loans , guarantees, securities to (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 even by passing a special resolution."

Sl. No	Section	Heading	Companies Act, 2013	Companies Bill, 2016	Remarks
			"(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"	"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 (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"	
			"(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."	"(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"	

Sl. No	Section	Heading	Companies Act, 2013	Companies Bill, 2016	Remarks
				"(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.	
91	186(1)	Loan and investment by Company	"(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. 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."	Sub Section (1) shall be omitted.	"The layering restrictions on investment companies under Section 186(1) became too obtrusive and impractical in the modern business world. While companies that became a subsidiary of another investment company due to any corporate action such as the non-subscription of a rights issue from the layering requirements, etc. could be exempted, it would not address the core issue that there may be several legitimate business justifications for use of a multi layered structure, and such restriction hampers the ability of a company to structure its business. The proposed amendment provides for deletion of this provision."

Sl. No	Section	Heading	Companies Act, 2013	Companies Bill, 2016	Remarks
92	186(2)	Loan and investment by Company	"(2) No company shall directly or indirectly — (a) give any loan to any person or other body corporate; (b) give any guarantee or provide security in connection with a loan to any other body corporate or person; and (c) acquire by way of subscription, purchase or otherwise, the securities of any there body corporate, exceeding sixty per cent. of its paid-up share capital, free reserves and securities premium account or one hundred per cent. of its free reserves and securities premium account, whichever is more."	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.';	"The occurrence of the word 'person' in sub-section (2) of Section 186 covers employees. Therefore, it is proposed to insert an 'explanation' to clarify the exclusion of employees from the requirement of the sub-section/clause. "
93	186(3)	Loan and investment by Company	(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.	"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."	The bill seeks to exempt loan or guarantee or security provided by a company to its wholly owned subsidiary company or a joint venture company, or acquisition made by a holding company, by way of subscription, purchase or otherwise of, the securities of its wholly owned subsidiary company in computation of limits specified under Section 186(3).
				"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)."	

Sl. No	Section	Heading	Companies Act, 2013	Companies Bill, 2016	Remarks
94	186(11)	Loan and investment by Company	"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."	"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."	"Under the present Act, a Company engaged in the business of financing of Companies or providing infrastructural facilities and giving loan, guarantee or security is exempted for the purpose of section 186 [except section 186(1)]. The Bill seeks to now provide replace these class of companies with companies established with the object of and engaged in the business of financing Industrial enterprises or of providing infrastructural facilities. The Bill seeks to even exempt investments made by such companies from applicability of Section 186. Further, the present law provides exemption from section 186 in respect of any acquisition made by a company whose principal business is acquisition of securities. The Bill seeks to replace this with any investment made by an investment company."
95	186	Loan and investment by Company	"Explanation.—For the purposes of this section,— (a) the expression "investment company" means a company whose principal business is the acquisition of shares, debentures or other securities; (b) the expression "infrastructure facilities" means the facilities specified in Schedule VI."	"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."""	The definition of the expression 'Investment Company' is sought to be amended if it satisfies any of the income/asset test. i.e. either not less than 50% of asset is in the form of shares, debentures or other securities, or income derived from investment business is not less than 50% of its gross income.

Sl. No	Section	Heading	Companies Act, 2013	Companies Bill, 2016	Remarks
96	188(1)	Related Party Transactions	"(1) Except with the consent of the Board of Directors given by a resolution at a meeting of the Board and subject to such conditions as may be prescribed, no company shall enter into any contract or arrangement with a related party with respect to— (a) sale, purchase or supply of any goods or materials; (b) selling or otherwise disposing of, or buying, property of any kind; (c) leasing of property of any kind; (d) availing or rendering of any services; (e) appointment of any agent for purchase orsale of goods, materials, services or property; (f) such related party's appointment to any office or place of profit in the company, its subsidiary company or associate company; and Related party transactions. (g) underwriting the subscription of any securities or derivatives thereof, of the company:"	"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:"";"	Second proviso to section 188 provides that no member of the company shall vote on any resolution to approve any contract or arrangement which may be entered into by the Company if such member is a related party. MCA has clarified that the related party is a party with whom the transactions is proposed to be entered into. MCA vide exemption notification dated June 5, 2015 has exempted private companies from the applicability of second proviso. The amendment now seeks to provide that the second proviso relating to voting at a general meeting by a related party shall not apply to any public company and private companies which are subsidiaries of public companies as well in which ninety per cent. or more members, in number, are relatives of promoters or are related parties. However, ban on voting by related parties continue to be applicable on listed companies in view of Listing Obligations.
			"Provided that no contract or arrangement, in the case of a company having transactions not exceeding such sums, as may be prescribed, shall be entered into except with the prior approval of the company by a resolution. Provided further 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 in this sub-section shall apply to any transactions entered into by the company in its ordinary course of business other than transactions which are not on an arm's length basis."		
97	188(3)	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.	(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 or, as the case may be, of the shareholders** 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.	

Sl. No	Section	Heading	Companies Act, 2013	Companies Bill, 2016	Remarks
98	194	Prohibition on forward dealings in securities of Company by director or KMP	"(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."	**Section Omitted**	"The Companies Act 2013 vide Sections 194 and 195 restrict forward dealing by directors and KMPs and insider trading by any person including directors and KMPs respectively. The aforesaid provisions are seemingly applicable in respect of both private and public companies. Prima facie, Section 195 seems to be applicable to private companies and restricts insider trading. However, it can be argued that since the securities in private companies would not be marketable, as a market in securities in the absence of an alternative market platform would mean a stock market on which securities of different companies are listed for the purpose of trade, they would not qualify as securities within the meaning of Section 195, and thus would exclude private companies from the ambit of the said provision. On the same basis, it would be unjustified to apply the insider trading regulations to private companies. It can also be argued, on the basis of legislation in some jurisdictions, that there are valid reasons for including the insider trading prohibitions in company law in addition to securities law, and these flow from the fiduciary responsibilities of the directors who may abuse their position and use confidential information, which have come to them through their position, for personal profit and not act in the best interests of the company. However, insider trading prohibitions can be problematic in the context of the rights of first refusal that are frequently contained in the shareholders' agreements of private companies. Hence, it was represented that SEBI regulations are comprehensive in the matter (and also apply to companies intending to get listed), and in view of the practical difficulties expressed by stakeholders, sections 194 and 195 is proposed to be omitted from the Act. "
			(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.		
99	195	Prohibition on insider trading of securities	"(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. (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."	**Section Omitted**	**same as above-**

Sl. No	Section	Heading	Companies Act, 2013	Companies Bill, 2016	Remarks
100	197(1)	Overall Maximum managerial remuneration	"(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: 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."	"(i)In the first proviso, the words "with the approval of the Central Government," shall be omitted; (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."	"Section 197 prescribes that the total managerial remuneration payable by a public company shall not exceed eleven per cent of the net profits of that company and such limits may be exceeded with the approval of the shareholders and the Central Government. Limits on remuneration payable by companies having inadequate/ no profits prescribed in Schedule V to the Act, though increased as compared to the Companies Act, 1956, were still very low and insufficient to attract good managerial talent for turning around of such companies. Further, a restrictive regime of seeking Central Government and shareholders' approval (by way of special resolution) for the payment of remuneration to Managerial Personnel by companies having inadequate/no profits would, apart from causing delays, also result in talented professionals moving away from such companies in search of higher assured compensation. Currently, the law in countries like the US, the UK and Switzerland, does not require the company to approach government authorities for approving remuneration payable to their managerial personnel, even in a scenario where they have losses or inadequate profits and empowers the Board of the companies to decide the remuneration payable to Directors. "
			"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."		The bill seeks to dispense with the requirement of obtaining CG approval and further replaces ordinary with special resolution in case of payment of remuneration beyond the specified limits. Further prior approval of banks etc is required in some cases.
101	197(3)	--DO--	"(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. "	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.	"Section 197(3) provides that if a company has no profit or inadequate profits, the company shall not pay remuneration (excluding any sitting fees or other fees decided by the Board, to a prescribed limit) to its directors except in accordance with Schedule V, and in case it is not able to comply with the requirements, prior approval of the Central Government is required. The requirement for government approval is proposed to be omitted altogether."

Sl. No	Section	Heading	Companies Act, 2013	Companies Bill, 2016	Remarks
102	197(9)	--DO--	(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.	"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."**	The bill proposes a maximum time limit of 2 years for the directors to refund the excess remuneration paid.
103	197(10)	--DO--	(10) The company shall not waive the recovery of any sum refundable to it under sub-section (9) unless **permitted by the Central Government.**	**"(10) The company shall not waive the recovery of any sum refundable to it under sub-section (9) unless approved by the company by special resolution within two years from the date the sum becomes refundable**. 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."**	No approval of CG is required for waiver of remuneration and approval of members by way of SR is required. In specified cases , prior approval of banks etc are required.
104	197(11)	--DO--	(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.**	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	

Sl. No	Section	Heading	Companies Act, 2013	Companies Bill, 2016	Remarks
105	197(16) & 197(17)	-DO-	New sub sections inserted	"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."	The Bill provides that the auditor shall report about payment of managerial remuneration and this is in addition to reporting requirements under CARO. Any application pending on the commencement of the Act, 2016 to the CG shall abate and require the company to comply with and obtain necessary approvals as per the amendments made.
106	198(3)(a)	Calculation of profits	"(3) In making the computation aforesaid, credit shall not be given for the following sums, namely:— (a) profits, by way of premium on shares or debentures of the company, which are issued or sold by the company;"	"(3) In making the computation aforesaid, credit shall not be given for the following sums, namely:— (a) profits, by way of premium on shares or debentures of the company, which are issued or sold by the company, **unless the company is an investment company as referred to in the Explanation to section 186.**"	
107	198(4)(l)	Calculation of profits	(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;	in sub-section (4), in clause (l), the words "which begins at or after the commencement of this Act" shall be omitted.	"Section 198(4)(l) mandates the deduction of 'brought forward losses' of the company while calculating the net profit, for the purpose of computing managerial remuneration in the subsequent years. However, the clause did not provide for the deduction of brought forward losses of the years prior to the commencement of the Act, which may be an inadvertent omission. Therefore, the amendment of Section 198(4)(l) proposes to include brought forward losses of the years subsequent to the enactment of the Companies (Amendment) Act, 1960."

Sl. No	Section	Heading	Companies Act, 2013	Companies Bill, 2016	Remarks
108	200	Central or Government or Company to fix limit with regard to remuneration	"Notwithstanding anything contained in this Chapter, the C**entral 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."	In section 200 of the principal Act, the words "the Central Government or" appearing at both the places shall be omitted.	The amendment is consequential in view of proposed removal of CG approval in Section 197.
109	201	Appointment and Remuneration of Managerial personnel --Forms of, and procedure in relation to, certain applications	"(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."	"(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."	This is consequential amendment in view of the fact that approval of CG for Section 197 will no longer be required.
110	216(1)	Investigation of ownership of company	"(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"**	"(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; or 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."**	

Sl. No	Section	Heading	Companies Act, 2013	Companies Bill, 2016	Remarks
111	223(3)	Inspector's report	(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.	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.	
112	236(4)(5)(6)	Purchase of Minority shareholding	"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: 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. "	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.	
			(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.		
113	247(2)(d)	Valuation by registered valuers	"(2) The valuer appointed under sub-section (1) shall,— (a) make an impartial, true and fair valuation of any assets which may be required to be valued; (b) exercise due diligence while performing the functions as valuer; (c) make the valuation in accordance with such rules as may be prescribed; and (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.**"	"(2) The valuer appointed under sub-section (1) shall,— (a) make an impartial, true and fair valuation of any assets which may be required to be valued; (b) exercise due diligence while performing the functions as valuer; (c) make the valuation in accordance with such rules as may be prescribed; and (d) not undertake valuation of any assets in which he has a direct or indirect interest or becomes so interested at any time **during a period of three years prior to his appointment as valuer or three years after the valuation of assets was conducted by him.**"	

Sl. No	Section	Heading	Companies Act, 2013	Companies Bill, 2016	Remarks
114	366(2)	Companies capable of being registered	"(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: Provided that— (i) a company registered under the Indian Companies Act, 1882 or under the Indian Companies Act, 1913 or the Companies Act, 1956, shall not register in pursuance of this section;"	"In section 366 of the principal Act, in sub-section (2),— (i) for the words "seven or more members", the words ""two or more members" shall be substituted; (ii) after clause (vi), the following clause shall be inserted, namely:— "(vii) a company with less than seven members shall register as a private company."	
			"(ii) a company having the liability of its members limited by any Act of Parliament other than this Act or by any other law for the time being in force, shall not register in pursuance of this section as an unlimited company or as a company limited by guarantee; iii) a company shall be registered in pursuance of this section as a company limited by shares only if it has a permanent paid-up or nominal share capital of fixed amount divided into shares, also of fixed amount, or held and transferable as stock, or divided and held partly in the one way and partly in the other, and formed on the principle of having for its members the holders of those shares or that stock, and no other persons; (iv) a company shall not register in pursuance of this section without the assent of a majority of such of its members as are present in person, or where proxies are allowed, by proxy, at a general meeting summoned for the purpose;"		

Sl. No	Section	Heading	Companies Act, 2013	Companies Bill, 2016	Remarks
			(v) where a company not having the liability of its members limited by any Act of Parliament or any other law for the time being in force is about to register as a limited company, the majority required to assent as aforesaid shall consist of not less than three-fourths of the members present in person, or where proxies are allowed, by proxy, at the meeting; (vi) where a company is about to register as a company limited by guarantee, the assent to its being so registered shall be accompanied by a resolution declaring that each member undertakes to contribute to the assets of the company, in the event of its being wound up while he is a member, or within one year after he ceases to be a member, for payment of the debts and liabilities of the company or of such debts and liabilities as may have been contracted before he ceases to be a member, and of the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount.		
115	384	Debentures, annual returns, registration of charges, books of accounts and their inspection	(2) The provisions of section 92 shall, subject to such exceptions, modifications and adaptations as may be made therein by rules made under this Act, apply to a foreign company as they apply to a company incorporated in India.	(2) The provisions of section 92 and section 135 shall, subject to such exceptions, modifications and adaptations as may be made therein by rules made under this Act, apply to a foreign company as they apply to a company incorporated in India.	
116	403(1)	Fee for filing, etc.	"(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. **Provided that any document, fact or information may be submitted, filed, registered or recorded, after the time specified in relevant provision for such submission, filing, registering or recording, within a period of two hundred and seventy days from the date by which it should have been submitted, filed, registered or recorded, as the case may be, on payment of such additional fee as may be prescribed."**	"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;"	

Sl. No	Section	Heading	Companies Act, 2013	Companies Bill, 2016	Remarks
			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.	"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."	
117	406	"Power to modify Act in its application to Nidhis (Not yet notified)"	"(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. "	"The following section shall be substituted, namely:— '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."	

Sl. No	Section	Heading	Companies Act, 2013	Companies Bill, 2016	Remarks
			(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.	"(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 subsection (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."	
118	409(3)	Qualification of President and Members of Tribunal	"(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 (b) is, or has been, in practice as a chartered accountant for at least fifteen years; or (c) is, or has been, in practice as a cost accountant for at least fifteen years; or (d) is, or has been, in practice as a company secretary for at least fifteen years; 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, about "**	"(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."**	
			"matters, or such other disciplines related to management, conduct of affairs, revival, rehabilitation and winding up of companies; or (f) is, or has been, for at least five years, a presiding officer of a Labour Court, Tribunal or National Tribunal constituted under the Industrial Disputes Act, 1947."		

Sl. No	Section	Heading	Companies Act, 2013	Companies Bill, 2016	Remarks
119	411(3)	Qualifications of chairperson and members of Appellate Tribunal	(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.	"for sub-section (3), the following sub-section shall be substituted, namely:— "(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."	
120	412(2)	Selection of Members of Tribunal and Appellate Tribunal	"(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 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"	"For sub-section (2), the following sub-sections shall be substituted, namely:— "(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."	
121	435	Establishment of Special Courts	"(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. (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."	"For section 435 of the principal Act, the following shall be substituted, namely:— (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. (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."	

Sl. No	Section	Heading	Companies Act, 2013	Companies Bill, 2016	Remarks
122	438	Application of Code to proceedings before the Court	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.	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 or the court of Metropolitan Magistrate or a Judicial Magistrate of the First Class, as the case may be** and the person conducting a prosecution before a Special Court shall be deemed to be a Public Prosecutor.	
123	439(2)	Offences to be non- cognizable	"(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: Provided that the court may take cognizance of offences relating to issue and transfer of securities and non-payment of dividend, on a complaint in writing, by a person authorised by the Securities and Exchange Board of India: Provided further that nothing in this sub-section shall apply to a prosecution by a company of any of its officers."	In sub-section (2), after the words "a shareholder", the words "or a member" shall be inserted.	
124	440	Transitional Provisions	"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: 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."	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.	
125	441(1)	Compounding of certain offenses	"(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— (a) the Tribunal; or (b) where the maximum amount of fine which may be imposed for such offence does not exceed five lakh rupees, by the Regional Director or any officer authorised by the Central Government, on payment or credit, by the company or, as the case may be, the officer, to the Central Government of such sum as that Tribunal or the Regional Director or any officer authorised by the Central Government, as the case may be, may specify: Provided that the sum so specified shall not, in any case, exceed the maximum amount of the fine which may be imposed for the offence so compounded: "	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.	

Sl. No	Section	Heading	Companies Act, 2013	Companies Bill, 2016	Remarks
			"Provided further that in specifying the sum required to be paid or credited for the compounding of an offence under this sub-section, the sum, if any, paid by way of additional fee under sub-section (2) of section 403 shall be taken into account: Provided also that any offence covered under this sub-section by any company or its officer shall not be compounded if the investigation against such company has been initiated or is pending under this Act."		
126	446	Application of fines	The court imposing any fine under this Act may direct that the whole or any part thereof shall be applied in or towards payment of the costs of the proceedings, or in or towards the payment of a reward to the person on whose information the proceedings were instituted.	"After section 446 of the principal Act, the following sections shall be inserted, namely:— 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; (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. 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."	

Sl. No	Section	Heading	Companies Act, 2013	Companies Bill, 2016	Remarks
127	447	Punishment for fraud	"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: Provided that where the fraud in question involves public interest, the term of imprisonment shall not be less than three years."	"(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; (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."	"It has been proposed that punishment u/s 447 would be attracted if any person is guilty of fraud involving an amount of atleast ten lac rupees or one percent of the turnover, whichever is lower. If the fraud involves an amount less than that and does not involve public interest, then there is no minimum penalty prescribed. 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 rupees twenty lacs or both."

Private Placement : Falling Short of Expected Simplification

The poor run continues for the Companies Act, 2013('Act, 2013') with significant part of it being drafted with a blunt nib. After series of requests, clarifications and queries pouring to the MCA from various stakeholders and the bulky list of recommendations from the Company Law Committee Report[1], it seems the Ministry has been driven too close to the walls requiring them to come up with a response very soon. Without taking much time, the Companies Amendment Bill, 2016[2] ('Bill') was introduced in the Lok Sabha on March 16, 2016.

The Bill proposes nearly 100 amendments of which one significant proposal is the entire substitution of section 42 which governs the issue of securities through private placement.

Private Placement – hurdles in the existing provisions:

- The existing provisions require a separate bank account to be opened wherein the application money received shall be kept;
- Disabling the utilization of the application money for either adjustment against allotment of securities or for the repayment of monies, where the company is unable to allot the securities;
- Penalty in case of contravention which shall be an amount extending to the whole amount involved in the offer or two crore rupees, whichever is higher;
- Requirement of allotment with regard to any previous offer or invitation until which a new offer shall not be made.

Company Law Committee recommendations:

The Company Law Committee made around 14 recommendations pertaining to section 42. Emphasizing on the burden faced by the companies in preparation and filing of the Private Placement Offer Letter ('Offer Letter'), the committee had recommended to remove such a requirement and to enable the companies annex the details as disseminated vide the offer letter into the private placement application form. Additionally, it was recommended that the information presently provided in PAS 4 may be shifted as a disclosure requirement under Rule 13(2) (d) of the Companies (Share Capital and Debenture) Rules, 2014 and to do away with the requirement of PAS 4.

[1]http://www.mca.gov.in/Ministry/pdf/Report_Companies_Law_Committee_01022016.pdf

[2]http://www.prsindia.org/uploads/media/Companies,%202016/Companies%20bill,%202016.pdf

Expectations and recommendations go half heard:

The expectations that arouse from not only the recommendations of the Company Law Committee but also from various professionals, stakeholders etc. from time to time seems to have gone half heard. Seemingly, the proposed redrafted section 42 is old wine in a new bottle. Nothing much lenient has been inserted or amended in order to meet the recommendations, instead the Bill has come up with some curious insertions.

Proposed changes in section 42:

- A new proviso barring any right of renunciation being attached to the private placement offer letter and application has been inserted;
- Proviso enabling the companies to make more than one issues at any time to such identified persons;
- Restriction on utilizing the money till allotment has been extended further to filing of return of allotment with Registrar which seems to be a very absurd requirement;
- Return of Allotment needs to be filed within 15 days of allotment which was previously within 30 days;
- The penalty for any contravention of section 42 has been lowered to 2 crores i.e. it shall be extended to the amount raised through the private placement or two crore rupees, whichever is lower.

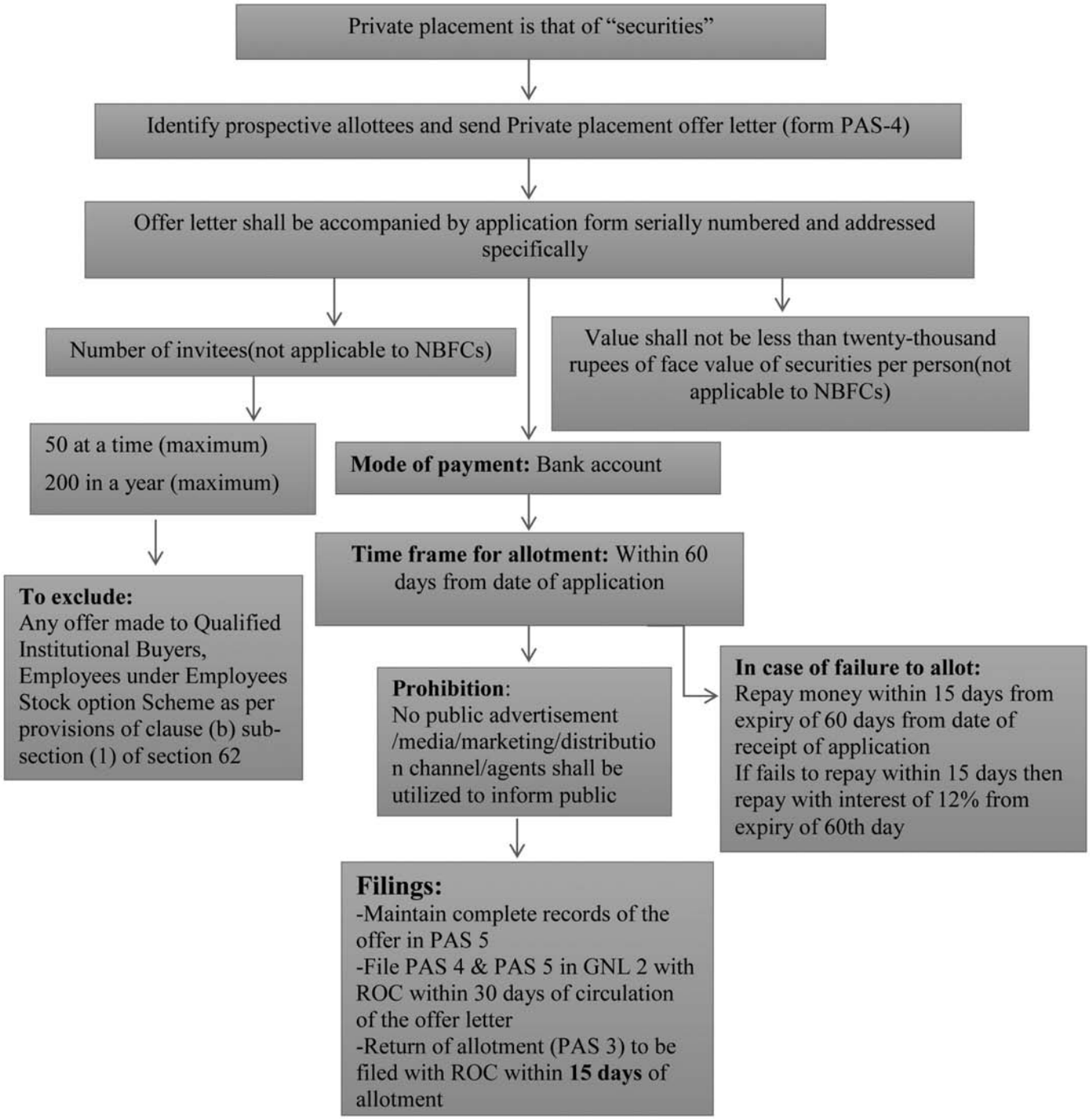
In a nutshell:

The proposed amendments in section 42 seem to have answered much of the recommendations/ expectations of the stakeholders. Instead, the same has been made a little bit topsy-turvy particularly stalling the utilization of the proceeds until filing of PAS 3. In this era of business where money is transferred within a click of a mouse having not even a minute to spare and hold, such a mandate to hold the funds till filing of return is very backward-looking. Additionally, it is well known that the stakeholders are facing recurring technical issues with filing forms from time to time in the MCA website which in turn may add up to the time the funds are to be kept idle.

Apart from the proviso enabling the companies to make parallel offer at any time, most of the previous requirements has been retained as it is which almost makes the whole activity of rewriting pointless.

The brief process of private placement as per section 42 of Act, 2013 read with Rule 14 of the Companies (Prospectus of securities) Rules, 2014 post amendment shall be as follows:

A brief process chart of private placement (if the proposal comes into effect):



Companies Amendment Bill 2016 :

Section 89 : Clarity on Meeting of "Beneficial Interest"

Background

In view of several recommendations made in the Company Law Committee report (CLC Report) dated 1st February, 2016, Companies (Amendment) Bill, 2016 (Bill, 2016) was introduced in Lok Sabha on 16th March, 2016[1] by the Finance Minister, which has proposed a chain of 87 amendments to the Companies Act, 2013 (hereinafter called as the Act) which in itself is yet to be fully notified. The government had amended the Act last year[2] to promote the corporate law to be in line with the mission of promoting Ease of Doing Business in India. Finance Minister has been jumping on his toes ever since our Prime Minister has launched the Make in India scheme for turning India into a manufacturing hub. The potential market that India has for the start-up space is said to be hindered by the prevailing laws which seek strict compliances in terms of day to day operations and more importantly in terms of raising funds from different sources. The lengthy and cumbersome process and timeline does not give the required boost to the entrepreneurs and therefore the Act commands a lot of such amendments or better seeks another repealing.

Introduction

This article will be cover up the amendments proposed to section 89 of the Act which at present deal with the – "declaration in respect of beneficial interest in any share".

Section 89 of the Act is the guiding provision for the concept of beneficial interest in a share. The said provision puts every person under liability who has a beneficial interest in a share as well as the beneficial owner to make a declaration to the company in respect of such beneficial interest.

For a broad understanding of the topic, one needs to first understand the following terms –

a) Registered owner – A person whose name is registered in the Register of Members as the as the holder of shares in that company but who does not hold the beneficial interest in such shares is commonly called as the registered owner of the shares.

b) Beneficial/Legal owner – Whereas a person who actually holds the beneficial interest in the shares but whose name is not registered in the Register of Members is commonly called as the beneficial owner/legal owner.

c) Beneficial interest – The phrase beneficial interest is not explained in the Act, 2013, due to which the companies were left powerless when it came to obtain information from the stakeholders

[1] http://www.prsindia.org/billtrack/the-companies-amendment-bill-2016-4232/

[2] http://www.mca.gov.in/Ministry/pdf/AmendmentAct_2015.pdf

in respect of beneficial interest. Also it was a dicey situation as to what is to be constituted as beneficial interest in the lack of a proper definition for the term.

The proposed amendments vide the bill, aims to bring certain changes to section 89 by inserting the definition of beneficial interest.

The Report of the Companies Law Committee[3]

The Finance Minister had set up a Companies Law Committee (CLC) on 4th June, 2015, to make recommendations to the Central Government on various issues arising from the implementation of the Companies Act, 2013. Besides this CLC was authorized to report on the recommendations received from the following –

a) The Bankruptcy Law Reforms Committee

b) The High Level Committee on CSR

c) The Law Commission

d) Other agencies

The Report of the Companies Law Committee was submitted to the Union Ministry on 1st February, 2016 suggesting various amendments in the Act to facilitate "ease of doing business in India" and to create a favorable environment for the start-ups.

The Committee analyzed the provisions of section 89 and found that there are various gaps which are capable of being filled through amendment to the Act. The areas indicated by the committee were as follows –

a) absence of definition of beneficial interest in a share in a company,

b) absence of any obligation on a company to collect information on beneficial ownership

c) absence of the concept of beneficial ownership in a company

d) inadequacy of existing provisions to maintain a register on beneficial ownership

For all the recommendations made by the CLC, except for definition of beneficial interest which is proposed to be covered by amendment to section 89 itself, the government has proposed to replace the existing section 90 and introduce provisions based on such recommendations in the new section 90 of the Act.

CLC had suggested using the definition given under SEBI Circulars/Guidelines or under the Prevention of Money Laundering Act or the rules given under the United States Securities Exchange Act of 1934 as a basis to provide for a definition of beneficial interest for the Companies Act, 2013.

---

[3] http://www.mca.gov.in/Ministry/pdf/Report_Companies_Law_Committee_01022016.pdf

Definitions of beneficial interest United States Securities Exchange Act of 1934[4]

Under this law any person who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise holds or shares voting power and investment power which includes the power to vote, or to direct the voting of, such security, the power to dispose, or to direct the disposition of, such security is supposed to be the beneficial owner with respect to such shares.

However, certain person and transactions are provided as exception to this provision, which are as follows –

a) A member of a National Security Exchange who holds securities on behalf of another person solely because such member is the record holder of such securities

b) A person who in the ordinary course of his business is a pledgee of securities under a written pledge agreement

c) A person engaged in business as an underwriter of securities and registered under the Securities Act of 1933

d) Executors or administrators of a decedent's estate generally will be presumed not to have acquired beneficial ownership of the securities in the decedent's estate until such time as such executors or administrators are qualified under local law to perform their duties.

The Amendment

The bill proposes for the following amendments:

I. Definition of beneficial interest – to be added as sub-section (10) to section 89

II. Provisions for covering up remaining recommendations of the Companies Law Committee – by replacing section 90 with a new section (Discussed in our another write-up)

Let us now understand the amendments in more detail by taking them one by one –

1. Definition for beneficial interest

Where earlier the Act missed out on this part, the bill seeks to amend its deficiency. Beneficial interest in a share has now been defined for the purpose of both the sections, i.e, section 89 and 90. By the virtue of the proposed amendment any direct or indirect right or entitlement of any person severally or jointly with any other person, through any contract, arrangement or otherwise, to exercise any rights attached to the share or to receive any dividend or other distribution in respect of such share, shall attract provisions of section 89 and 90.

Breakdown of the section:

Some important points to be noticed here are that the definition does not specify any number of limits on the beneficial interest holders which means there can be more than one beneficial owner for

[4] http://www.ecfr.gov/cgi-bin/text-idx?node=17:4.0.1.1.1&rgn=div5

a single share or security in any manner. A broad definition of "beneficial interest in a share" has been proposed. The proposed definition includes such a pledgee of shares to have a beneficial interest in the share who by virtue of an agreement has the right on the usufructs of the shares and /or voting rights pending the discharge of the Facility, interests and other dues. Accordingly, if the proposed definition is retained, then on pledging shares with the right of usufructs to the pledgee, the pledgor will have comply with the provision of 89 in addition to the filing of pledge in e-Form CHG-1/CHG-9.

Say, for example, for security X the registered owner is Mr. A holding shares on behalf of the beneficial owner Mr. B, Mr. B enters into an pledge agreement with Mr.C by virtue of which Mr. C will be entitled to exercise voting rights of the shares pledged, thus as per the proposed definition of beneficial interest the names of beneficial owner would involve Mr. B and Mr. C.

Unlike the US Law, pledgee is not given an exemption under the bill so any person holding shares as part of pledge agreement will also be covered under provisions of section 89. Also the unregistered holder of shares shall be covered under the umbrella of beneficial interest as he/she will be the sole owner of all rights and benefits but the name in the register of members will be different.

Unless, the government gives such transactions a walk ahead by way of exemption in the rules, the scope of this proposed amendment to section seems to be wide enough to make the beneficial holders think hard and again on their holdings.

Conclusion

Though the proposed amendment bill intends to bring clarity on the concept of beneficial interest by providing a definition of beneficial interest but the same has made it more complicated by way an ambiguity in case of multiple beneficial owners.

Section 185 : As Proposed under the Companies (Amendment) Bill, 2016

Section 185 was the most unacceptable provision of Companies Act, 2013. Formerly, section 295 of the Companies Act, 1956 mandated previous approval of the Central Government for granting of loans/ guarantees/securities to directors and their related entities, whereas section 185 created a complete prohibition on the same. Effective from September 12, 2013 originally section 185 provided no exemptions or carve outs. However, the Companies (Meetings of the Board & its Powers) Rules, 2014 notified on March 31, 2014[1] provided relief to loan/guarantee/security made by a holding company to its wholly owned subsidiary company and to security/guarantee given by a holding company to its subsidiary. The exemption notification dated June 5, 2015[2] further exempted private companies form the provisions of section 185 subject to stipulated conditions. With the Companies (Amendment) Bill, 2016 proposing to replace the extant section 185 there are numerous questions in peoples' minds about the proposed provisions.

Need to replace the extant provisions of Section 185:

The intent of the extant provisions of Section 185 is to ensure that directors who hold a fiduciary position with respect to shareholders do not utilize the funds of the company for their own benefit. However, company laws the world over do not provide for a complete blanket prohibition on advancement of such loans/ guarantee/security to directors and their related entities. [3] The rationale being that where the shareholders of the company themselves approve the utilization of the funds of the company in the specified manner, the law need not create a bar on the same. Thus, at par with the global company laws the provision has been amended to remove the prohibition to an extent and provides for the passing of shareholders' resolution for granting of loans/guarantees/securities to entities in which directors are interested.

Relief brought under the proposed Section 185 of the Companies (Amendment) Bill, 2016:

Currently the provisions of section 185 prohibit the granting of loan/guarantee/security to the directors and their related entities. The proposed provisions create a part prohibition and part restriction.

They continue to prohibit the granting of loan/guarantee/security to the following:

- directors of the company, or of a company which is its holding company or any partner or relative of such director.
- any firm in which any such director is a partner or relative is a partner.

[1] http://www.mca.gov.in/Ministry/pdf/NCARules_Chapter12.pdf

[2] http://www.mca.gov.in/Ministry/pdf/Exemptions_to_private_companies_05062015.pdf

[3] http://www.india-financing.com/images/Articles/Loans_to_directors_and_related_entities_-_A_Comparative_Analysis.pdf

Whereas they provide a restriction by way of passing a special resolution by the company for advancing loan/guarantee/security to the following:

- any private company of which any such director is a director or member.
- 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.
- 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.

The condition being that such loans are utilised by the borrower for its principal business activities. It may be noted that though the text of the proposed section uses the word 'borrowing company' i.e. the loan should be utilised by the borrowing 'company' for its principal business activities, it shall be construed as to include body corporates.

A comparison between the current and proposed provisions of section 185 is presented in a tabular form below:

Current provisions	Proposed provisions
Prohibition on giving of loan/guarantee/security to the director of the company	Continues to be prohibited
Prohibition on giving of loan/guarantee/security to the director of the holding company	Continues to be prohibited
Prohibition on giving of loan/guarantee/security to any partner or relative of any such director	Continues to be prohibited
Prohibition on giving of loan/guarantee/security to any firm in which any such director is a relative or partner	Continues to be prohibited
Prohibition on giving of loan/guarantee/security to any private company of which any such director is a director or member	Requires the passing of a special resolution
Prohibition on giving of loan/guarantee/security to 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	Requires the passing of a special resolution
Prohibition on giving of loan/guarantee/ security to 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	Requires the passing of a special resolution
No parallel provision	Loans to be utilised by the borrower for its principal business activities

The words "save as otherwise provided in this Act" proposed to be omitted from section 185:

The extant provision of section 185 provides that if there is any other provision of the Act permitting lending as covered by the section then such specific permission shall prevail over this section. This creates confusion as to whether specific sanction of section 186 which starts with "without prejudice to the other provisions" can exclude section 185. To avoid ambiguity the same has proposed to be omitted.

Whether special resolution required to be a prior:

The Report of the Companies Law Committee, 2016 recommending amendments to section 185 proposed that the special resolution should be a prior resolution. However, the language of section 185 as per the Companies (Amendment) Bill, 2016 does not specify whether the special resolution should be prior to advancing the loan/guarantee/security, unlike section 186 & 188 which provide for the passing of a prior special resolution and resolution respectively. Further, the explanatory statement to the notice of the general meeting is required to disclose the full details of the loan/guarantee/security given. Thus, one may infer that such resolution may be passed after granting of such loan/guarantee/security.

Applicable limits:

The loan/guarantee/security granted under section 185 shall be subject to the provisions of section 186. As per the proposed provisions of section 186 of the Companies (Amendment) Bill, 2016 where such loan/guarantee/security along with the aggregate of loans/guarantees/securities already granted to any person/body corporate and investments already made in body corporates exceed sixty per cent. of the company's paid-up share capital, free reserves and securities premium account or one hundred per cent. of its free reserves and securities premium account, whichever is higher prior approval by way of special resolution shall be required. Hence, where such loan/guarantee/security is up to the aforesaid limit, as per section 186(5) a resolution sanctioning the same is required to be passed at the meeting of the board, with the consent of all directors present thereat.

Rate of interest:

As per the Report of the Companies Law Committee 2016 the rate of interest for loans granted under section 185 was proposed to be aligned with section 186(7). Further, the report also suggested that it may not be appropriate to apply Indian interest rates bench marks prescribed under section 186(7) to loans given by companies to foreign entities and the effective yield against the loan given, irrespective of whether the loan is given to a company incorporated outside India should not be less than the prescribed rate under section 186(7). Since the loan/guarantee/security granted under section 185 will be covered under section 186 accordingly the limits on the rate of interest shall also apply.

Procedure to be followed:

As discussed above the granting of loans/guarantee/security to entities in which directors are interested as proposed under section 185 shall require the passing of passing a special resolution by the company. The following procedure is to be followed when granting such loan/guarantee/security:

- Prior approval of the public financial institution where the aggregate of the loans/investments/ guarantee/security so far made along with the loans/guarantee/security proposed to be made is to exceed the limit as specified in section 186(2) and there is default in repayment of loan installments or payment of interest thereon as per the terms and conditions of such loan to the public financial institution.
- Convening of a board meeting for considering the granting of loan/guarantee/security and to approve the notice of the general meeting.
  - As per section 179(3) read with section 186(5) the resolution is required to be passed at a board meeting only.
  - As per section 186(5) the resolution is required to be approved by all the directors present at the meeting.
  - The explanatory statement to the notice of the general meeting to contain the prescribed details.
- Filing of e-form MGT-14 within 30 days of passing the board resolution as per section 117(3)(g).
- Convening of general meeting for:
  - Passing of special resolution as per section 185.
  - Passing of special resolution in case the loan/guarantee/security proposed to be made along with the aggregate of loans/guarantees/securities/investments made so far exceeds sixty per cent. of the paid-up share capital, free reserves and securities premium account or one hundred per cent. of its free reserves and securities premium account, whichever is higher as per the proposed section 186(3).
- Filing of e-form MGT-14 within 30 days of passing the special resolution as per section 117(3)(a).
- Granting of such loan/guarantee/security to entities in which the directors are interested.
  - The same may be granted prior to passing of the special resolution under section 185.
  - The rate of interest shall be as per section 186(7).
- Entry in register MBP-2 maintained as per section 186(9).
- Disclosure in the financial statement the full particulars of the loans/ guarantee/security provided and the purpose for which the loan/ guarantee/security is proposed to be utilized by the recipient as per section 186(4).

Exemption to private companies:

The proposed section 185 seeks to completely replace the existing provisions of section 185 of Companies Act, 2013. However, the exemption notification dated June 5, 2015 shall continue to hold good and the proposed provisions of proposed section 185 shall be not applicable to private companies subject to the conditions prescribed in the notification.

As per the exemption notification dated June 5, 2015 only those private companies which fulfill the prescribed conditions are exempted from the provisions of section 185. Hence, private companies which do not fulfill the conditions prescribed are subject to the prohibition as per the extant section 185. The proposed provisions provide some relief to such private companies as follows:

i. in whose share capital other body corporates have invested money;

ii. the borrowings of such a company from banks or financial institutions or any body corporate is more than twice of its paid up share capital of fifty crores, whichever is less; and

iii. such a company has defaulted in repayment of borrowings subsisting at the time of making transactions under section 185

Since, the proposed provisions of section 185 allow the granting of loan/guarantee/security by such private companies to entities in which their directors are interested by passing of a special resolution.

Loan/guarantee/security provided by a holding company to its subsidiary/wholly owned subsidiary:

The current and proposed exemptions from the provisions of section 185 with respect to loan/guarantee/security provided by a holding company to its subsidiary/wholly owned subsidiary are compared in a tabulated form below:

Provision	Current provisions	Proposed provisions
Any loan made by a holding company to its wholly owned subsidiary company Provided that the loans made are utilized by the wholly owned subsidiary company for its principal business activities.	Exempted	Continues to be exempted

Provision	Current provisions	Proposed provisions
Any guarantee/security provided by a holding company in respect of any loan made to its wholly owned subsidiary company Provided that the loans made are utilized by the wholly owned subsidiary company for its principal business activities.	Exempted	Continues to be exempted
Any loan made by a holding company to its subsidiary company	Not exempted	Continues to be not exempted
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 are utilized by the wholly owned subsidiary company for its principal business activities.	Exempted	Continues to be exempted

Notes

Notes

EASTERN INDIA REGIONAL COUNCIL
THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

Russell Street Office: ICAI Bhawan 7, Anandilal Poddar Sarani (Russell Street), Kolkata - 700071
Kasba Office : ICAI Bhawan, 382/A, Prantik Pally, Kasba, Kolkata - 700 107

Name	Responsibility	Kasba Office	Russell Street Office	EMAIL
Dr. Alok Ray, Jt. Secretary (9330001192)	Decentralised Office - Head	30840277	30211102	alokray@icai.in
Mr. Abhijit Basu, Dy. Secretary (98306 64225)	In charge of Members & Articles	30840271		abhijit.basu@icai.in
MEMBERS SECTION				
Mr. Pradip Sarkar, Consultant	Disputes, Query Redressal Fees Enquiry	30840296		eromem@icai.in
Mr. Arun Kumar Santra, Asst. Secretary	Fellow COP, Cancellation & Restoration of COP, Script Certificate and Fees enquiry, CA. Main Exam	30840287		erofellow@icai.in; eroexam@icai.in
Ms. Nandini Guha, Executive Officer	Enrollment of Associate Membership, Identity Card, Script Certificate and fees enquiry	30840299		eroenroll@icai.in
Mr. Somnath De, Executive Officer	Merger, Networking, Reconstitution of Firms	30840288		erofirm@icai.in,
Mr. Soumen Mondal, DEO	Restoration of Name, Registration of Firms	30840289		erorestore@icai.in
ARTICLES SECTION				
Mr. Utpal Basu, Consultant	Article Registration, Completion	30840257		utpal.basu@icai.in
Ms. Anindita Kundu, Sr. Executive Officer	Article Re-registration, termination, Other Courses, Exam eligibility	30840265		eroart@icai.in; anindita.kundu@icai.in
CA Shreya Agarwal, Executive Officer	Registration alongwith other courses, Supplementary, Registration Post Qualification Couse Exam, RTI	30840256		shreya@icai.in
Ms. Sutapa Das, Executive Officer	Article Completion & Secondment	30840263		erocompl@icai.in
Mr. Swarup Karmakar, LDC	Registration, Industrial Training, ATC	30840259		eroreg@icai.in
Ms. Moushumi Bhadra Chatterjee, DEO	Article Re-registration, termination & Other Course	30840266		eroterm@icai.in
BOARD OF STUDIES				
Mr. Bivas Kanti Dasgupta, Consultant	Final & ITT Certificate, Campus Placement	30840242		erocct@icai.in
Ms. Susmita Sen, BOS Head, Student Counsellor (Gr. A.S.)	To know about CA Course, Student Programmes, Campus Placement	30840239		erobos@icai.in
Ms. Sarmistha Biswas, Section Officer	Orientation Course, Mock Test	30840237		eircorient@icai.in
Ms. Piyali Chatterjee, DEO	CPT, IPCC	30840238		erocpt@icai.in
Mr. Kaushik Bhattacharjee, DEO	IPCC, CPT, Revalidation	30840241		eroipcc@icai.in
Post Qualification Courses (PQC) CELL				
CA Debasish Sen, Asst. Secretary	Co-ordinator and Nodal Officer of all Post Qualification & Certificate Courses, Computer Centres & Publication		30211117	ero@icai.in
CALCUTTA COMPUTER CENTRE				
Ms. Malini Sinha Chowdhury, Sr. Faculty	In Charge of Computer Centers.		30211142	malini.sinha@icai.in
REGIONAL COUNCIL				
Mr. Kabir Ghosh, Consultant	Seminar information		30211134	eircpubn@icai.in
Mr. Pradyut Chakraborty, Consultant	Seminar information		30211104	Pradyut.chakraborty@icai.in
Mr. Saibal Krishna Chakraborty, Asst. Secretary	Seminar information		30211104	schakraborty@icai.in
Mr. Amit Paul, Assistant Secretary	Seminar information		30211133	eirc@icai.in, amit.paul@icai.in,
CA Manish Agarwal, Executive Officer	GMCS		30211260	eircgmcs@icai.in, manish.agarwal@icai.in
CA Jyoti Luharuka, Executive Officer	Website(eirc-icai.org), Seminar information		30211108	jyoti.luharuka@icai.in
Mr. Santanu Bose, DEO	Seminar information, CPE Hrs.		30211108	eircevents@icai.in; eirccpe@icai.in
LIBRARY				
Ms. Swati Banerjee, Librarian (Gr. A.S.)	In Charge of Library Section		30211103	eirc.library@icai.in, swati.banerjee@icai.in
SALES COUNTER / PUBLICATIONS				
Mr. Avijit Roy, LDC	Sale of Books		30211101/47	psc_ero@icai.in

EIRC TOLL FREE NO.
FOR MEMBERS & STUDENTS

EIRC has introduced a toll free no.

operational from Monday to Friday, from 10.00am to 5.30pm.
Members/ Students can call to the above toll free no. for any type of queries.

An initiative of TEAM EIRC to serve its esteemed Members & Students

CALL US AT : 1800-3000-1019