

THE COMPANIES (AMENDMENT) BILL, 2016 - KEY FEATURES

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With a focus to ease doing business in India, the Government of India through this Bill addresses inconsistencies and procedural restrictions in the present Companies Act, 2013. Considering the changes the Bill propose to bring about, it can be clearly said that there will be a sea change in the present Act which will boost economic growth and upheave foreign investment in India.

INTRODUCTION

In order to facilitate ease of doing business in India, the Lok Sabha on 27th July, 2017 passed The Companies (Amendment) Bill, 2016 (“**Bill**”) thereby bringing change to the present Companies Act, 2013 (“**Act**”) with respect to structuring, disclosure and compliance requirements for the companies.

Some of the focal points of the Bill are discussed hereinbelow:

1. **Associate Company:** In order to align the definition with the Accounting Standards, the Bill propose to change the definition of “significant influence” in section 2(6) of the Act and accordingly, it shall mean control of twenty percent of the total voting power, or control of or participation in business decisions under an agreement.

The Bill propose to include the definition of “joint venture” which shall mean a joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement.

2. **Key Managerial Personnel (KMP):** The definition of KMP as given in section 2(51) has been extended to include any other officer of the company (i) who is not more than one level below the directors; (ii) who is in whole time employment; and (iii) has been designated by the Board as a KMP.
3. **Related Party:** The term “company” under section 2(76) (viii) is proposed to be substituted with “body corporate” so as to include the companies incorporated outside India related to the Indian company under the related party definition.

Additionally, a body corporate which is an investing company or the venturer of a company would also be a related party.

4. **Small Company:** Paid-up Capital is proposed to be increased from INR 5 Million to INR 100 Million in section 2(85). Turnover from minimum of INR 20 Million and maximum of INR 200 million is proposed to be revised to a maximum of INR 1000 Million in the said section.
5. **Liability of Members:** Insertion of new clause 3A providing for liability of members when the minimum number of members falls below the statutory limit i.e. seven in case of a public company or two in case of a private company and such a situation continues for a period exceeding six months or more. The persons continuing to be involved with the company as members shall be severally liable for the payment of the debts contracted during the above period and they shall also be liable to be sued severally for such debts.

6. **Business Objects:** The company would not be required to have main objects in its Memorandum of Association as required under section 4(1) (c) and 4 (5) (i) and is permitted to 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.

However, where the company propose to carry out any specific object or activity, it has to mention the same in the Memorandum and the company shall not pursue any other activity than mentioned in the Memorandum.

The time limit for reservation of name of the company by the Registrar of Companies has been proposed to be reduced to twenty days from the existing period of sixty days.

7. **Registered Office:** It is proposed that the company shall within 30 of its incorporation have registered office instead of present requirement of 15 days as provided under section 12 (1). Also, in case of change of registered office of the company, it shall intimate such change to the Registrar of Companies within 30 days from the date of change instead of 15 days.
8. **Beneficial Interest:** The Bill propose to define “beneficial interest” under section 89 in a share shall now include holding directly or indirectly, through any contract, arrangement or otherwise, the right or entitlement of a person alone or together with another person to either exercise the rights attached to the shares or to receive or participate in respect of the dividend on the said shares.
9. **Annual Return:** The Bill propose to exclude the extract of Annual Return forming part of the Board’s Report as provided under section 92.
10. **Place of Annual General Meeting:** The Bill Propose to amend section 96 whereafter Annual General Meeting (AGM) of 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.
11. **Global Extra-Ordinary General Meeting:** Extra-Ordinary General Meeting (EGM), as provided under section 100, of wholly owned subsidiary of a company incorporated outside India can be held outside India.

EGM can be called at a shorter notice where consent is given by members holding not less than 95% of paid-up share capital in case the company is having share capital.

12. **Consolidated Financial Statements:** The company shall 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 then be laid before the AGM of the company. Presently, as per section 129 (3) the company is required to file consolidated financial statement of only its subsidiaries.
13. **Board’s Report:** Few of the proposed changes in section 134 are as follows:
- The Board Report shall be signed by the Chief Executive Officer, whether he is a director in the company or not.
 - Disclosures which have been provided in the financial statement shall not be required to be reproduced in the report again.
 - The extract of the Annual Return is not required to be annexed with the board’s Report. Only the of the web address where the Return can be accessed needs to be furnished;

- The company need not mention the exact text of the policies, key feature of policies along with its web link shall be disclosed in Board's Report.
14. **Corporate Social Responsibility (CSR):** Eligibility criteria for constituting the corporate social responsibility committee and incurring expenditure towards CSR as provided under section 135 is proposed to be calculated based on immediately preceding financial year instead of preceding three financial years.
- The CSR committee can be constituted with two or more directors in case the company is not required to appoint independent director.
15. **Ratification of Auditors:** The requirement of ratification of appointment of auditors under section 139 at every AGM shall not be necessary.
16. **Qualifications of Directors:** Few of the proposed changes in chapter XI are as follows:
- The computation of 182 days for determining whether a director is resident in India shall be done in reference to previous financial year instead of calendar year;
 - The Central Government should be empowered to recognize any other identification number in place of Director Identification Number;
 - Directorships in dormant company shall be counted for the purpose of calculating the ceiling limit of number of directorships;
 - Any director who has been disqualified under section 167(2) shall cease to his directorship in other companies except the company in which he has defaulted;
 - It is optional to file form DIR-11 by the director upon resignation; and
 - The directors shall be allowed to participate on restricted items at board meetings through video conferencing or other audio-visual means if there is quorum through physical presence of directors.
17. **Loans to Director:** The entire section 185 has been substituted. Some important changes are:
- The Bill propose to impose complete restriction on providing loan, guarantee or security in connection with loan to any director, director of the holding company or any partner or relative of any such director or any firm in which any such director or relative in a partner;
 - Loan to 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; or 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; is allowed subject to special resolution passed by the shareholders of the company.
18. **Loan and investment by a company:** The Bill propose to remove the restriction under section 186 of making investment through not more than two layers of investment companies.

CONCLUSION

With a focus to ease doing business in India, the Government of India through this Bill addresses inconsistencies and procedural restrictions in the present Companies Act, 2013. Considering the changes the Bill propose to bring about, it can be clearly said that there will be a sea change in the present Act which will boost economic growth and upheave foreign investment in India.

(The author would like to thank Ankita Singh, Associate of the firm for the valuable assistance in researching for this article.)

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