

COMPANIES (AMENDMENT) BILL, 2016



Background

The Government has proposed The Companies (Amendment) Bill, 2016 before Lok-sabha to amend the Companies Act, 2013. After receiving the requisite approvals from the authorities, it will be called as Companies (Amendment) Act, 2016.

The proposed changes in the Companies (Amendment) Bill, 2016 are broadly aimed at address the following:

- ▶ Difficulties in implementation owing to stringency of compliance requirements
- ▶ To facilitate ease of doing business in India
- ▶ Harmonization with other applicable rules and regulations
- ▶ Rectifying omission and inconsistencies in the Act, etc.

We have summarised the key changes in the below slides.

Accounts

Nature	Extract of Companies Act, 2013	Companies Bill, 2016
Financial statement, Board's report, etc.	<p>134 (1) The financial statement, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board at least by the chairperson of the company where he is authorised by the Board or by two directors out of which one shall be managing director and the Chief Executive Officer, if he is a director in the company, the Chief Financial Officer and the company secretary of the company, wherever they are appointed, or in the case of a One Person Company, only by one director, for submission to the auditor for his report thereon.</p> <p>(3) There shall be attached to statements laid before a company in general meeting, a report by its Board of Directors, which shall include—</p> <p>(a) the extract of the annual return as provided under sub-section (3) of section 92;</p>	<ul style="list-style-type: none"> ▶ It is proposed that CEO whether appointed as a Director or not, will sign the financial statement. Currently CEO is required to sign only if he is also acting as a Director. ▶ Modification in the prescribed contents of Board's Report to provide – web address for annual return of the Company. ▶ Disclosures referred to in this sub-section if included in the financial statements, such disclosures shall be referred to instead of being repeated in the Board's report. ▶ Further instead of exact text of the policies, salient features of the policy and any changes and web link shall be disclosed. ▶ The Central Government may prescribe an abridged Board's Report for One Person Company and Small Company.

Accounts

Nature	Extract of Companies Act, 2013	Companies Bill, 2016
Consolidated Financial Statements (CFS)	<p>129 (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):</p> <p>For the purposes of this sub-section, the word “subsidiary” shall include associate company and joint venture.</p>	<p>▶ "(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).</p> <p>▶ 'joint venture' is omitted.</p>
Re-opening of accounts	<p>130 (1) A company shall not re-open its books of account and not recast its financial statements, unless an application in this regard is made by the Central Government, the Income-tax authorities, the Securities and Exchange Board, any other statutory regulatory body or authority or any person concerned and an order is made by a court of competent jurisdiction or the Tribunal to the effect that—</p>	<p>▶ The authority could not make the order for re-opening of books of account relating to a period earlier than 8 financial years immediately preceding the current financial year, unless the authority has directed to keep the books of accounts for more than 8 FYs.</p>

Accounts

Nature	Extract of Companies Act, 2013	Companies Bill, 2016
Rights of members to copies of audited FS	<p>136 (1) Without prejudice to the provisions of section 101, a copy of the financial statements, including consolidated financial statements, if any, auditor's report and every other document required by law to be annexed or attached to the financial statements, which are to be laid before a company in its general meeting, shall be sent to every member of the company, to every trustee for the debenture-holder of any debentures issued by the company, and to all persons other than such member or trustee, being the person so entitled, not less than 21 days before the date of the meeting:</p> <p>Provided also that every company having a subsidiary or subsidiaries shall,—</p> <p>(a) place separate audited accounts in respect of each of its subsidiary on its website, if any;</p> <p>(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</p>	<ul style="list-style-type: none"> ▶ Copy of the Financial Statement could be sent at a period lesser than 21 days if 95% of the members entitled to vote at the meeting agrees for the same. ▶ Every Listed Company having subsidiary shall place separate audited accounts in respect of each of subsidiary on its website, if any. However, If a Listed Company which has a foreign subsidiary: <ul style="list-style-type: none"> – Where If the foreign subsidiary is statutorily required to prepare consolidated financial statement under the law of the country of its incorporation, the requirement shall be met if such consolidated accounts are placed on the website. – Where if the foreign subsidiary is not required to audit its financial statements, the Listed Company may place the unaudited financial statement on its website and if the language is not in English, a translated copy of the same shall be placed on the website. ▶ Further, copy of either audited or unaudited financial statement of subsidiary could be provided to the shareholder who asks for it.

Accounts

Nature	Extract of Companies Act, 2013	Companies Bill, 2016
Filing of subsidiary accounts	137(1)...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.	▶ In case a foreign subsidiary is not required to get its financial statements audited, the Indian Listed Company is required to file the unaudited financial statements of its subsidiary and a declaration to this effect.

Related Party Transactions

Nature	Extract of Companies Act, 2013	Companies Bill, 2016
Definition	<p>2(76)(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;</p>	<ul style="list-style-type: none"> ▶ Additional clause incorporated to cover an investing company or the venturer of the company under definition. ▶ The word 'company' is substituted with 'body corporate' to essentially cover companies incorporated outside India.
Voting Rights	<p>47 (1) Subject to the provisions of section 43 and sub-section (2) of section 50,— (a) every member of a company limited by shares and holding equity share capital therein, shall have a right to vote on every resolution placed before the company; and (b) his voting right on a poll shall be in proportion to his share in the paid-up equity share capital of the company.</p>	<ul style="list-style-type: none"> ▶ Members who are related to the contract/ arrangement are not entitled to vote. (Restriction does not apply to private companies). <p>MCA issued a circular no 30/2014 on 17 July 2014 which clarified that 'related party' has to be construed with reference to only to the contract or arrangement for which the said special resolution is being passed.</p> <p>Resolution passed by holding company shall be sufficient in case of transaction with Wholly owned Subsidiary ('WOS'). Further, as per CA, 2015, for related party transactions between a holding company and its WOS, no resolutions are required to be passed if the accounts are consolidated with holding company and placed before the shareholders at the general meeting for approval. (may not apply to private company due to exemption under sec 2(76) r/w 188)</p> <p>Considering all of these, the Act has amended section 47 to state that Voting rights shall additionally be subject to the provisions of related party transaction u/s 188.</p>

Related Party Transactions

Nature	Extract of Companies Act, 2013	Companies Bill, 2016
Related Party Transactions	<p>(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.</p>	<ul style="list-style-type: none">▶ It is proposed that the requirement related to restriction on voting by relatives in a general meeting shall not apply to a company in which 90% or more members in numbers are relatives of promoters or related parties.▶ It also seeks to provide that non-ratification of transaction shall be voidable at the option of the Board or Shareholders, as the case may be.

Corporate Social Responsibility

Nature	Extract of Companies Act, 2013	Companies Bill, 2016
Corporate Social Responsibility (CSR)	<p>135 (1) Every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during any financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director....</p> <p>Explanation.—For the purposes of this section “average net profit” shall be calculated in accordance with the provisions of section 198.</p>	<ul style="list-style-type: none"> ▶ Eligibility criteria for the purpose of constituting the corporate social responsibility committee and incurring expenditure towards CSR is proposed to be calculated based on immediately preceding financial year. (Currently this eligibility is decided based on preceding 3 financial years) ▶ If any Company is not required to appoint Independent Director, it shall have its CSR Committee with 2 or more Directors. ▶ To remove ambiguity, the term ‘average net profit’ (i.e. 3 preceding financial year) in section 135(5) has been replaced with the words ‘net profit’.

Audit and Auditors

Nature	Companies Bill, 2016
Appointment and disqualification of auditors	<ul style="list-style-type: none"> ▶ The requirement related to annual ratification of appointment of auditors by members is proposed to be omitted. ▶ If auditor does not file his resignation in the prescribed time period, he or it shall punishable with fine which shall not be less than INR 50,000 or the remuneration of auditor, whichever is less but which may extend to INR 5 lakhs. ▶ The term 'relative' has been defined in relation to section 141. 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.
Powers and duties of auditors and auditing standards	<ul style="list-style-type: none"> ▶ The auditors are provided with right to access the records of the subsidiaries & associate companies. ▶ Auditors' Report shall state that whether the Company has adequate internal financial controls with reference to financial statements is in place and the operating effectiveness of such controls. ▶ Provisions of Section 143 shall apply to Cost Accountant in conducting cost audit (the words 'in practice' has been removed).
Punishment	<ul style="list-style-type: none"> ▶ It is also provided that in case of criminal liability of an audit firm, in respect of liability other than fine, the concerned partner who acted in the fraudulent manner shall only be liable.

Dividend

Nature	Extract of Companies Act, 2013	Companies Bill, 2016
Interim dividend	<p>▶ 123(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:</p>	<p>▶ It is proposed that 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:</p> <ul style="list-style-type: none">– 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.

Deposits

Nature	Extract of Companies Act, 2013	Companies Bill, 2016
Acceptance of deposits from public	<p>Conditions for accepting deposits:</p> <p>(c) depositing such sum which shall not be less than 15% 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;</p> <p>(d) providing such deposit insurance in such manner and to such extent as may be prescribed;</p> <p>(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;</p>	<ul style="list-style-type: none"> ▶ Requirement of depositing, on or before the 30th day of April each year, such sum which shall not be less than 20% 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. ▶ It is proposed to omit the requirement of deposit insurance. ▶ It is proposed that in case a company has made default in repayment of deposit and period of 5 years has elapsed since the date of making the default good, then such company can accept the deposits further.
Repayment of deposits	<p>(1) Where in respect of any deposit accepted by a company before the commencement of this Act, the amount of such deposit or part thereof or any interest due thereon remains unpaid on such commencement or becomes due at any time thereafter, the company shall—</p> <p>(b) repay within one year from such commencement or from the date on which such payments are due, whichever is earlier.</p>	<ul style="list-style-type: none"> ▶ Where any amount of such deposit or part thereof or interest thereof remains unpaid on the commencement of the Companies Act, 2013, it is proposed that such amount shall be repaid within 3 years from the date of commencement or before the expiry of the period for which the deposit was accepted, whichever is earlier.

Deposits

Nature	Extract of Companies Act, 2013	Companies Bill, 2016
Punishment for contravention	76 (A) the company shall, in addition to the payment of the amount of deposit or part thereof and the interest due, be punishable with fine which shall not be less than Rs. 1 crore but which may extend to Rs. 10 crore ; and	▶ The penalty has been modified to include Rs. 1 crore or twice the amount of deposit accepted by the Company , whichever is lower, but which may extend to Rs. 10 crore .

Corporate Governance

Nature	Extract of Companies Act, 2013	Companies Bill, 2016
Appointment and Qualification of Independent Directors	<p>(6) An independent director in relation to a company, means a director other than a managing director or a whole-time director or a nominee director,—</p> <p>(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;</p>	<p>► In the definition of Independent Director, the words 'pecuniary relationship' is proposed to be substituted by 'pecuniary relationship, other than remuneration as such director or having transaction not exceeding 10% of his total income or such amount as maybe prescribed'.</p>
Relative having pecuniary relationship	<p>(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;</p>	<p>► Specific clauses inserted to specify the scope of restriction on pecuniary relationship entered into by a relative.</p>
Relative who is an employee	<p>(e) who, neither himself nor any of his relatives—....</p> <p>(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 3 financial years immediately preceding the financial year in which he is proposed to be appointed.</p>	<p>► In case of a relative who is an employee, the restriction of not being appointed as an ID, shall not apply for his employment during preceding 3 financial years.</p>

Corporate Governance

Nature	Extract of Companies Act, 2013	Companies Bill, 2016
DIN	(3) No person shall be appointed as a director of a company unless he has been allotted the Director Identification Number under section 154.	▶ It is proposed to empower the central government to recognise any other identification number to be treated as DIN.
Residence	149 (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.	<p>▶ It is proposed that 182 days for determining whether a director is resident in India shall be computed with reference to the current financial year. [Currently it is calculated in reference to previous calendar year.]</p> <p>▶ Further it is proposed that in case of new companies, the requirement of period of 182 days shall apply proportionately.</p>
Return filing	93. Every listed company shall file a return in the prescribed form with the Registrar with respect to change in the number of shares held by promoters and top ten shareholders of such company, within fifteen days of such change	▶ To omit the requirement of filing eForm MGT-10 by Listed companies for any change relating to increase or decrease by 2% in the shareholding pattern of promoters and top 10 shareholders.
Deposit for nomination of director	160 (1)...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....	<p>The requirement of deposit of INR 1 Lakh with respect to nomination of directors shall not be applicable for following:</p> <ul style="list-style-type: none"> ▶ Appointment of Independent Directors ▶ Directors nominated by Nomination and Remuneration Committee

Corporate Governance

Nature	Extract of Companies Act, 2013	Companies Bill, 2016
Alternate director	<p>161 (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:</p> <p>(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:</p>	<ul style="list-style-type: none"> ▶ To restrict a person from being appointed as an alternate director if he is holding directorship is the same Company. ▶ The words in case of public company has been omitted to cover even private companies. Accordingly, to enable every Company to fill up the casual vacancy of director by the Board but it shall be approved at the next AGM held.
Disqualification of Director	<p>164 (2) No person who is or has been a director of a company which—</p> <p>(a) has not filed financial statements or annual returns for any continuous period of three financial years; or</p> <p>(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,</p> <p>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.</p>	<ul style="list-style-type: none"> ▶ Provided that a director of a company which is in default of clause (a) or (b), then the director shall not incur the disqualification for a period of 6 months from the date of his appointment.

Corporate Governance

Nature	Extract of Companies Act, 2013	Companies Bill, 2016
Private Company– Disqualification of directors	164(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).	▶ Certain disqualification shall continue to apply even if appeal or petition is filed in case of clauses (d), (e), (g) of section 164(1).
Directorship	165 (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.	▶ The limit of directorship of 20 Companies shall not include the directorship in Dormant Companies.
Vacation of office	167(1)The office of a director shall become vacant in case— (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;	▶ Director shall vacate office in all other Companies except the Company which is in default, in case of disqualification relating to non filing of Financial Statement or Annual Return or failure to repay the deposit etc. ▶ The time period for vacation is provided with respect to appeal against conviction order.

Corporate Governance

Nature	Extract of Companies Act, 2013	Companies Bill, 2016
Audit Committee	177 (1) The Board of Directors of every listed company and such other class or classes of companies, as may be prescribed, shall constitute an Audit Committee....	<ul style="list-style-type: none"> ▶ It is proposed that instead of listed company, listed public company shall constitute an audit committee. ▶ It is proposed that related party transactions other than prescribed under section 188, if not approved by audit committee, will require the approval of BOD. ▶ If any transaction involving any amount not exceeding Rs. 1 crore 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 3 months from the date of 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 authorized by any other director, the director concerned shall indemnify the company against any loss incurred by it. ▶ Exemption for transactions between holding company and its WOS (if not covered by section 188).

Corporate Governance

Nature	Extract of Companies Act, 2013	Companies Bill, 2016
Nomination and Remuneration Committee and Stakeholders Relationship Committee	<p>178 (1) The Board of Directors of every listed company and such other class or classes of companies, as may be prescribed shall constitute the Nomination and Remuneration Committee consisting of three or more non-executive directors out of which not less than one-half shall be independent directors:</p> <p>(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.</p>	<ul style="list-style-type: none"> ▶ It is proposed that instead of listed company, listed public company shall constitute a Nomination and Remuneration Committee. ▶ It is proposed that committee "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". ▶ Place the remuneration policy on its website and will disclose its salient features of such policy with web address in the Board's report.
Participation of directors through Video Conferencing	<p>(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:</p>	<ul style="list-style-type: none"> ▶ Allow participation of Directors on certain items at Board Meetings through VC or other audio visual means if there is quorum through physical presence of Directors.

Corporate Governance

Nature	Extract of Companies Act, 2013	Companies Bill, 2016
Disclosure of Interest	<p>184 (4) If a director of the company contravenes the provisions of sub-section (1) or subsection (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 Rs.50,000 but which may extend to Rs.1 lakh, or with both.</p> <p>(5) Nothing in this Section (a)... (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 percent of the paid-up share capital in the other company</p>	<ul style="list-style-type: none"> ▶ Omit cap of minimum penalty of Rs. 50,000 with respect to failure by directors to disclose interest. ▶ Incorporated body corporates to cover under clause (b).
Authentication of documents	<p>21. Save as otherwise provided in this Act,— (a) a document or proceeding requiring authentication by a company; or (b) contracts made by or on behalf of a company, may be signed by any key managerial personnel or an officer of the company duly authorised by the Board in this behalf.</p>	<ul style="list-style-type: none"> ▶ Any employee of the company duly authorised by the Board can authenticate company's documents.
Managerial Remuneration	<p>197 (1).... First Proviso: 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:</p>	<ul style="list-style-type: none"> ▶ It is proposed that the approval of the central government shall not be required at the time of the payment of remuneration exceeding 11% of the net profits of the Company.

Corporate Governance

Nature	Extract of Companies Act, 2013	Companies Bill, 2016
Managerial Remuneration	<p>Second Proviso: Provided further that, except with the approval of the company in general meeting,—</p> <p>(i) the remuneration payable to any one managing director; or whole-time director or manager shall not exceed 5% of the net profits of the company and if there is more than one such director remuneration shall not exceed 10% of the net profits to all such directors and manager taken together;</p> <p>(ii) the remuneration payable to directors who are neither managing directors nor whole-time directors shall not exceed,—</p> <p>(A) 1% of the net profits of the company, if there is a managing or whole-time director or manager;</p> <p>(B) 3% of the net profits in any other case.</p>	<p>▶ It is also stated that approval through special resolution is required instead of ordinary resolution from shareholders in relation to items covered in second proviso.</p> <p>Further, 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.</p> <p>▶ If any director draws or receives sums in excess of the limit without approval required under this section, he shall refund the sum within 2 years of such lesser or such lesser period as may be allowed by the company. Further, no waiver is permitted for recovery of money unless approved by the company by special resolution within 2 years from the date of sum becoming refundable (earlier Central Govt. approval required). Further approval from bank or financial institution as mentioned above would be required.</p>

Corporate Governance

Nature	Extract of Companies Act, 2013	Companies Bill, 2016
Managerial Remuneration	<p>(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.</p>	<ul style="list-style-type: none"> ▶ 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. ▶ 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. ▶ Approval of Central Government is required only for the matters specified in Part I of Schedule V.

Corporate Governance

Nature	Companies Bill, 2016
Declaration in respect of beneficial interest in any share	<ul style="list-style-type: none">▶ It is proposed that beneficial interest in a shares 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 –<ul style="list-style-type: none">(a) Exercise or cause to be exercised any or all the rights attached to such share or(b) Receive or participate in any dividend or other distribution in respect of such share.▶ A declaration by an individual including a trust and a non resident, whether singly or jointly holds more than 25% interest, shall be provided, specifying the nature of interest and other prescribed particulars.▶ Central Government may define certain classes not required to provide such declaration.▶ A Register of significant beneficial owners shall be maintained and a return of significant beneficial owners shall be filed.▶ Company may give notice to any individual whom he believes or knows or has been a significant beneficial owner in the immediately preceding 3 financial years. If such individual does not provide the information in the notice, the Company may ask for an order from NCLT.▶ Penalty for not providing the declaration, non-maintenance of Register and non-filing of return.
Postal Ballot	<ul style="list-style-type: none">▶ Proposed that the mandatory requirement of taking up some items only through postal ballot should be relaxed in case of a company that is required to provide electronic voting at its general meeting.
Registers	<ul style="list-style-type: none">▶ Restricts inspection of certain personal information which would be prescribed through rules, in the register of members. It also seeks to do away with filing of special resolution in advance with registrar for keeping of registers an returns at a place other than the registered office of the company.

Corporate Governance

Nature	Companies Bill, 2016
Annual Return	<ul style="list-style-type: none"> ▶ The requirement of MGT-9 is proposed to be omitted. The copy of annual return shall be uploaded on the website of the Company, if any and its link shall be disclosed in the director's report. ▶ The requirement of the Annual Return to include the Company's indebtedness and FII details relating to names, addresses, countries of Incorporation, registration and percentage of shareholding held by them is removed. ▶ Central Government may prescribe an abridged version of Annual Return for OPC and Small Company.
AGM	<ul style="list-style-type: none"> ▶ It is proposed that 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.
EGM	<ul style="list-style-type: none"> ▶ It is proposed that EGM of wholly owned subsidiary of a company incorporated outside India can be held outside India.
Short notice	<ul style="list-style-type: none"> ▶ In case of AGM, the consent for shorter notice shall be received by 95% of the members entitled to vote thereat and in case of other general meetings, the consent shall be given by members holding not less 95% of paid up share capital/total voting power. ▶ 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.
Video conferencing	<ul style="list-style-type: none"> ▶ Allow participation of directors through video conferencing on matters presently restricted (approval of annual financial statements, approval of mergers etc), subject to such participation not being counted for the purposes of quorum.

Loans to directors and Loans and Investment by a Company – Sec 185 and 186

Nature	Extract of Companies Act, 2013	Companies Bill, 2016
Loan to director	<p>185. (1) Save as otherwise provided in this Act, no company shall, directly or indirectly, advance any loan, including any loan represented by a book debt, to any of its directors or to any other person in whom the director is interested or give any guarantee or provide any security in connection with any loan taken by him or such other person:.....</p> <p>Explanation.—For the purposes of this section, the expression “to any other person in whom director is interested” means—</p> <p>(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;</p> <p>(b) any firm in which any such director or relative is a partner;</p> <p>(c) any private company of which any such director is a director or member;</p> <p>(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</p> <p>(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.</p>	<ul style="list-style-type: none"> ▶ Complete restriction on providing loan, guarantee or security in connection with loan to <ul style="list-style-type: none"> (a) any director, director of the 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. ▶ Loan to parties covered under clause (c) to (e) of explanation to section 185(1) is allowed subject to special resolution of shareholders and certain other prescribed conditions. ▶ Interest is charged at a rate not less than the rate of prevailing yield of 1 year, 3 year, 5 year or 10 year Government security closest to the tenor of the loan; ▶ Current exemption continues to remain (i.e. the following exemptions added within the Act): <ul style="list-style-type: none"> – any loan made by a holding company to its WOS or any guarantee given or security provided by a holding company in respect of any loan made to its WOS or – 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; <p>Provided that the loans made under these clauses are utilised by the subsidiary company for its principal business activities.</p>

Loans to directors and Loans and Investment by a Company – Sec 185 and 186

Nature	Extract of Companies Act, 2013	Companies Bill, 2016
Loan and Investment by Company	<p>186 (1) Without prejudice to the provisions contained in this Act, a company shall unless otherwise prescribed, make investment through not more than two layers of investment Companies</p> <p>186 (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.</p>	<ul style="list-style-type: none"> ▶ It is proposed to omit the restrictions on layers of investment companies ▶ It is proposed to exclude employees from the ambit of section ▶ It is proposed that the shareholders' approval will not be required where <ul style="list-style-type: none"> - Loan or guarantee is given or where a security has been provided by a company to its WOS 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 WOS. <p>However disclosure is required in financial statements as per clause (4).</p> ▶ Clarification with respect to the investment company has been provided stating that “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 50% of its total assets, or if its income derived from investment business constitutes not less than 50% as a proportion of its gross income.”

Other Provisions

Nature	Extract of Companies Act, 2013	Companies Bill, 2016
Subsidiary Company	<p>(87) "subsidiary company" or "subsidiary", in relation to any other company (that is to say the holding company), means a company in which the holding company—</p> <p>(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:</p> <p>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.</p>	<ul style="list-style-type: none"> ▶ The term 'total share capital' (i.e. equity and preference share capital) to be replaced with the term 'total voting power' (i.e. equity share capital) as the basis for deciding holding/subsidiary relationship. [currently, convertible preference share capital with or without voting rights is considered for determining subsidiary or holding company] ▶ Omission of provision relating to restriction on number of layers for subsidiaries.
Associate Company	<p>(6) "associate company", in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.</p> <p>Explanation.—For the purposes of this clause, "significant influence" means control of at least 20% of total share capital, or of business decisions under an agreement;</p>	<ul style="list-style-type: none"> ▶ Explanation.—For the purpose of this clause— <ul style="list-style-type: none"> (a) the expression "significant influence" means control of at least 20% 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;

Other Provisions

Nature	Extract of Companies Act, 2013	Companies Bill, 2016
Small Company	<p>(85) "small company" means a company, other than a public company,—</p> <p>(i) paid-up share capital of which does not exceed Rs 50 lakhs or such higher amount as may be prescribed which shall not be more than Rs. 5 crores; AND</p> <p>(ii) turnover of which as per its last profit and loss account does not exceed Rs. 2 crore or such higher amount as may be prescribed which shall not be more than Rs 20 crore;</p>	<ul style="list-style-type: none"> ▶ (a) in sub-clause (i), for the words "Rs. 5 crore", the words "Rs. 10 crore" shall be substituted; ▶ (b) in sub-clause (ii),— <ul style="list-style-type: none"> (A) for the words "as per its last profit and loss account", the words "as per profit and loss account for the immediately preceding financial year" shall be substituted; (B) for the words "Rs. 20 crores", the words "Rs. 100 crores" shall be substituted;
Key Managerial personnel	<p>(51) "key managerial personnel", in relation to a company, means—</p> <p>(iv) the Chief Financial Officer;</p>	<ul style="list-style-type: none"> ▶ Additional personal included as KMP: <ul style="list-style-type: none"> (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;
Holding company	<p>(46) "holding company", in relation to one or more other companies, means a company of which such companies are subsidiary companies;</p>	<ul style="list-style-type: none"> ▶ Explanation inserted to amend the term 'company' to include 'body corporate' to essentially cover companies incorporated outside India.
Prohibition on forward dealing and insider trading of securities		<ul style="list-style-type: none"> ▶ Proposed that the provisions relating to forward dealing and insider trading to be omitted from the 2013 Act.

Other Provisions

Nature	Extract of Companies Act, 2013	Companies Bill, 2016
Incorporation of company	<p>4. (1) The memorandum of a company shall state—</p> <p>(c) the objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof;</p>	<ul style="list-style-type: none"> ▶ Replaces with below clause (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. i.e. Allows 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. ▶ Provided that in case a company proposes to pursue any specific object or objects or restrict its objects, the MOA can provide for the same. ▶ The option is provided to adopt the model memorandum.
Financial Year	<p>Section 2(41) 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.</p>	<ul style="list-style-type: none"> ▶ The bill now proposes that the Company having associates incorporated outside India to apply for a different financial year to the Tribunal.

Other Provisions

Nature	Companies Bill, 2016
Issue of sweat equity shares	<ul style="list-style-type: none"> ▶ Proposed to omit that a company is allowed to issue Sweat Equity Share of a class of shares already issued after a gap of 1 year since commencement of business.
Punishment for fraud	<ul style="list-style-type: none"> ▶ It is proposed instead of 'any fraud', only fraud involving an amount of at least Rs. 10 lakhs or 1% of the turnover of the Company, whichever is lower shall be punishable with imprisonment for a term which shall not be less than 6 months but which may extent to 10 years and shall also be liable to a fine which shall not less than the amount involved in the fraud but which may extent to 3 times the amount involved in the fraud. ▶ Further, that where the fraud involves an amount less than Rs. 10 lakhs or 1% 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 tem which may extend to 5 years or with fine which may extend to Rs. 20 lakhs or with both.
Private placement	<ul style="list-style-type: none"> ▶ Simplification of the private placement process by doing away with separate offer letter, by making filing of details or records of applicants to be part of return of allotment only, and reducing number of filings to Registrar . ▶ Also seeks to modify penalty provisions for contravention of the section. Also seeks to provide for restrictions on utilization of moneys raised through private placement unless allotment is made and return of allotment is filed with registry.
Conversion of partnership firm into company	<ul style="list-style-type: none"> ▶ Allow conversion into companies from partnership firms etc. with 2 or more members provided that in case of less than 7 members the conversion would be into a Private Company.

Other Provisions

Nature	Companies Bill, 2016
Restriction on powers of the board	▶ To include securities premium for the purpose of calculating the borrowing limits which the board can approve without corresponding shareholders' consent (currently, paid-up capital and free reserves are only considered).
Issue of shares at discount	▶ The Company may issue shares at a discount to its creditors when debt is converted into shares in pursuance of any plan or scheme.
Foreign companies	▶ Allow for exempting class of foreign companies from registering and compliance regime under the Act.
Prospectus	▶ Instead of detailed disclosures in the Prospectus, it is proposed that information and reports in financial statements as specified by SEBI in consultation with the Central Government may prescribe shall be provided.

Thank you

