



## **Regulatory Alert** Stay Ahead...

### **Companies (Amendment) Act 2017**

**Issue no: RA/01/2018**

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This Alert summarizes the salient features of the Companies (Amendment) Act, 2017 (Amendment Act).

## Background

- In March 2016, the Government of India (GoI) introduced Companies (Amendment) Bill, 2016 in the Lok Sabha to amend Companies Act, 2013, (2013 Act), on the basis of recommendations of the report submitted by the Companies Law Committee and based on comments received from various stakeholders.
- The Bill was subsequently referred to the Parliamentary Standing Committee on Finance (the Committee) in April 2016, for further examination.
- The Committee after taking into consideration comments received from various industry bodies, professional institutes and other stakeholders, presented its report to the Parliament in December 2016.
- GOI after considering the suggestions of the Committee introduced the Companies (Amendment) Bill 2017 in the Parliament in July 2017 which has been approved and received the assent of the President of India on 3 January 2018, and is enacted as law.

## Highlights

The underlying theme of the Amendment Act is to simplify the law, eliminate redundancies, provide clarity for provisions which were considered ambiguous, address specific concerns of stakeholders and rationalize penal provisions.

It lays emphasis on the Government's philosophy of *less Government and more governance*. Amendment in provisions relating to managerial remuneration is one such example where the discretionary powers enjoyed by the Government to approve higher managerial remuneration and to waive off payment of excess managerial remuneration, has been given up in favor of shareholders' democracy and lender's interests.

Imprint of the Government's philosophy can be seen in amendments to provisions such as those concerning related party transactions, loans to interested persons, constitution of holding – subsidiary company and company formation process.

Care has also been taken to rationalize provisions relating to enforcement of the law so that delinquent managements are not let off the hook.

It is up to the shareholders and those charged with governance to ensure that the business and management of a company is conducted as envisaged by various provisions of the 2013 Act, as any failure or delay in compliance will entail high monetary fine and other penal consequences.

## Revised Definitions

- Meaning of "significant influence" and "joint venture" in the definition of "associate company" has been altered / clarified as under:
  - "significant influence" would mean control of at least 20% of total voting power (as against earlier requirement of 20% of total share capital), or control of or participation in business decisions under an agreement
  - "joint venture" would mean a joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement
- To adopt a different financial year i.e. other than April-March, approval of the National Company Law Tribunal (NCLT) can be obtained by an "associate company" (being an Indian company) of a company incorporated outside India. Earlier the relaxation was available only to an Indian subsidiary of a foreign body corporate.
- "Holding company" would now also include a body corporate.
- An officer of the company, one level below the directors, who is in whole-time employment may be designated as "Key Managerial Personnel" (KMP) by the Board.
- Meaning of "Related Party" expanded - investing company or the venturer of the Company i.e. a body corporate whose investment in the Company would result in the Company becoming an "associate company" of the body corporate would be regarded as a related party of the investee company (i.e. two-way relation).
- Further, consequential changes made in definition of "related party" to reflect the change in definition of the term "holding company".
- Power of the GoI to set an upper limit for reckoning a "small company" raised from
  - (a) ₹ 50 million to ₹ 100 million for paid-up share capital; and
  - (b) from ₹ 200 million to ₹ 1 billion of the "turnover" as per the profit and loss account for the immediately preceding financial year.
- For reckoning "subsidiary company", if holding company *inter alia* exercises or controls more than one-half of the total voting power (as against earlier requirement of exercises or control of more than one-half of total share capital, i.e. aggregate paid-up equity share capital and convertible preference share capital) either at its own or together with one or more of its subsidiary companies.

## Key takeaway

- View taken by some professionals and corporates that a foreign holding company is not a "holding company" under the 2013 Act cannot be sustained any longer. As a "holding company" includes a body corporate, the revised definition is consistent with the definition of a "subsidiary company".
- Determination of holding – subsidiary relationship to be based on exercise or control of total voting power by the holding company as against exercise or control of total share capital.

- Universe of "related party" expanded significantly by including investing company and venturer, thus covering transactions with such related parties. This is expected to promote corporate governance.

### **Incorporation of a Company**

- In case number of members is reduced below statutory limit of 7 in the case of public company or 2 in case of a private company and such company carries business for more than 6 months, then every person who is a member during the period when the Company carries on business after those 6 months and who is cognizant of the fact that the Company is carrying on business with less than 7 or 2 members respectively, shall be severally liable for the debts of the Company contracted during that period.
- In case of incorporation of companies, the name availability period is reduced to 20 days (earlier 60 days) from date of approval or such other period as may be prescribed.
- Company shall have registered office within 30 days of date of incorporation (earlier 15 days). Further, notice of every change of situation of registered office to be filed with Registrar of Companies (ROC) within 30 days (earlier 15 days).

#### **Key takeaway**

- Provisions relating to consequence of carrying on business with lower than statutory minimum number of members introduced.
- Time period of name availability reduced to ensure that only persons with full readiness for incorporation of a company may reserve the name.

### **Prospectus and Allotment of Securities**

- Every prospectus issued by a public company shall state such information and set out reports on financial information as may be specified by Securities and Exchange Board of India (SEBI) in consultation with the Government.

#### **Key takeaway**

- This will bring consistency and will align the provisions of the Act with regulations framed by SEBI in respect of issue of prospectus and remove prevalent duplication.

### **Private Placement**

- Return of allotment on private placement needs to be filed with ROC within 15 days of allotment (earlier 30 days). Penalty provisions for delay in filing rationalized to ₹ 1000 per day during which default continues but not exceeding ₹ 2.5 million on the Company, its promoters and directors.
- Money received under the private placement cannot be utilized unless the return of allotment is filed with the ROC.
- Private placement offer letter cannot contain any right of renunciation.

### **Key takeaway**

- Restriction on renunciation is to ensure that the shares are issued to identified persons only and the persons so identified cannot renounce their share in favor of any other identified person.

### **Share Capital and Debentures**

- Company permitted to issue shares at discount to its creditors if their debt is converted into shares in pursuance of any statutory resolution plan or debt restructuring scheme framed in accordance with guidelines or directions or regulations specified by Reserve Bank of India (RBI).
- Sweat equity shares may be issued at any time after registration of the Company (as against the earlier cooling period of completion of 1 year from the date of commencement of business).

### **Key takeaway**

- Lenders may assume ownership of the company on conversion of their debt into equity at fair value of shares of the Company during debt restructuring.
- Issue of sweat equity shares by newly-formed / start-up companies will help in attracting talent and bring sense of ownership.

### **Acceptance of deposits by Companies**

- Companies shall deposit 20% of the amount of deposits maturing during the following financial year (as against earlier requirement of depositing 15% of deposit amount maturing in current and subsequent financial year) in a scheduled bank in a separate bank account to be called Deposit Repayment Reserve Account on or before the 30<sup>th</sup> day of April each year.
- The requirement of providing deposit insurance is omitted.
- Companies which had defaulted in repayment of deposits, can now accept deposits after a period of 5 years from the date of making good the default.
- Penalty for contravention of provisions relating to deposits increased.

### **Key takeaway**

- New formula of depositing amount in Deposit Repayment Reserve Account may impact liquidity available with companies.
- Acceptance of fresh deposits by defaulting company after cooling-off period of 5 years once the default is made good, will help genuine companies raise deposits.

### **Management and Administration**

#### **Declaration of beneficial interest**

- Provisions relating to declaration of beneficial interest completely revamped.
- For the purpose of declaration, 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.

- Concept of Significant Beneficial Owner (SBO) has been introduced.
- SBO means every individual who acting alone or together with one or more person or Trust, including a Trust and persons resident outside India, who hold beneficial interest, of at least 25% 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.
- SBO to make declaration of beneficial interest to the Company.
- Company shall maintain the register of SBO and file a return of SBO and the changes therein with the ROC.
- Powers provided to Company to seek information from SBO or person having knowledge of SBO. In case of failure to get satisfactory response, Company may approach NCLT to provide directions such as freezing / suspension of rights related to shares etc.
- Stringent penalties provided for default including liability for fraud under Section 447 of 2013 Act.

#### **Others**

- Requirement of providing extract of Annual Return as part of Board's Report omitted. Instead, companies are required to place copy of the Annual Return on its website, if any, and the web-link of the same shall be disclosed in the Board's Report.
- Requirement of disclosure of indebtedness in the Annual Return is omitted.
- Unlisted companies may hold Annual General Meeting (AGM) at any place in India if consent is given by all the members in advance.
- Removal of the requirement of filing of changes in number of shares held by promoters and top 10 shareholders with ROC by listed companies.
- Only a wholly-owned subsidiary (WOS) of a company incorporated outside India may hold its extraordinary general meeting (EGM) outside India.
- Companies which are mandatorily required to provide electronic voting facility to its members, may also transact items that are required to be transacted by means of postal ballot at a general meeting.
- EGM may be held at a shorter notice if majority of members (in number) entitled to vote and who represent not less than 95% of paid-up share capital (if company has share capital) or total voting power exercisable at the meeting (if company does not have share capital).

#### **Key take away**

- New concept introduced in relation to SBO to enhance transparency and identification of ultimate beneficiaries of shares.
- Additional / duplication of disclosures in Board's Report and Annual Return done away with.
- Freedom given to unlisted companies to hold AGM at any place in India and to WOS of foreign entity to hold EGM outside India.

## Dividend, Financial Statements, CSR and Auditors

- Any amount representing unrealized gains, notional gains or revaluation of assets and any changes in carrying amount of an asset or of a liability on measurement of the asset or the liability at fair value shall be excluded in computing profit for declaration of dividend.
- Board of Directors may declare an interim dividend for a financial year after closure of the financial year till holding of the AGM.
- Re-opening of accounts on Court's or Tribunal's orders restricted to a period of up to 8 financial years immediately preceding the current financial year, unless directed by GoI to preserve the accounts for a longer period.
- Appeal against the order of National Financial Reporting Authority (NFRA) may be preferred to the National Company Law Appellate Tribunal (NCLAT) instead of separate appellate authority.
- CEO mandatorily to sign the financial statement irrespective of whether he is a Director on the Company's Board.
- In case of listed companies, the requirement of annual performance evaluation of the Board, its Committees and individual directors by the Board, is removed. Only a statement indicating the manner in which such annual performance evaluation is made, to be included in the Board's Report.
- Disclosures provided in the financial statements need not be repeated in the Board's Report but should be cross-referenced.
- Government may prescribe abridged form of Board's Report for Small Companies and One Person Companies (OPCs).
- Applicability of Corporate Social Responsibility (CSR) provisions to be determined on the basis of defined parameters (i.e. "net profit" of ₹ 50 million or more, or "turnover" of ₹ 10 billion or more or "net worth" of ₹ 5 billion or more) forming part of financial statement of immediately preceding financial year. Prior to the Amendment Act, the determination of applicability of CSR provisions was based on "net profit", "turnover" or "net worth", as the case may be, with respect to financial statements of the immediately preceding three financial years. No change is made in the quantum of CSR spend.
- It has been explicitly stated in the 2013 Act itself that the CSR provisions will also need to be complied by foreign companies having a place of business in India by way of branch office or project office.
- Only listed companies need to mandatorily place a copy of financial statements of their subsidiaries on their website.
- If the foreign subsidiary is not required to get its financial statement audited, the listed holding company may place un-audited financial statement of its foreign subsidiary on its website.
- If the foreign subsidiary is not required to get its financial statement audited, Indian holding company can file such an unaudited financial statement with RoC along with a declaration to this effect.
- The mandatory requirement for ratification of appointment of auditor by members at every annual general meeting has been omitted.

- The eligibility criteria for appointment of an auditor has been clarified to state that a person who “directly” or “indirectly” renders any service referred to in section 144 to a company, or its holding company or its subsidiary company, shall not be eligible to be appointed as an Auditor. Section 144 deals with services that cannot be provided by the auditor “directly” or “indirectly”.
- Auditor’s reporting on Internal Financial Controls (IFC) restricted to the financial statements instead of IFC system.
- When the auditor has been convicted of any default in compliance with the provisions relating to appointment of auditor (section 139), powers and duties of auditor (section 143), restriction on ability of an auditor to render certain services (section 144) or auditor’s responsibility to sign audit report etc. (section 145), liability of auditor to pay damages to any person for loss arising out of incorrect or misleading statements made in the audit report is now restricted only to members and creditors of the Company, instead of any persons at large.
- In case of criminal liability of an audit firm, in respect of liability other than fine, the concerned partner or partners, who acted in a fraudulent manner or abetted or, colluded in any fraud shall only be liable, instead of joint and several liability of the audit firm.

### **Key takeaway**

- Much-needed clarity has been provided on declaration of interim dividend for a financial year after closure of financial year but before AGM.
- Duplication of information in Board’s Report and financial statements done away with.
- Simplified compliance for small companies and OPCs by enabling Government to prescribe abridged form of Board’s Report.
- Companies including foreign companies operating in India through branch office or project office, may have to reassess applicability of CSR provisions in light of the changed criteria.
- Rationalizing auditor’s reporting on IFC and penalties / punishment for default by auditors.

### **Board, Committees of the Board and Loans to Directors**

- Residential status of a director (minimum 182 days in India) to be calculated based on stay in India during the “financial year” instead of “previous calendar year” and in case of newly-incorporated company, residence criteria to be calculated proportionately at the end of the financial year in which the Company is incorporated.
- For evaluation of eligibility to be appointed as ‘independent director’:
  - “Pecuniary relationship” with the Company shall not include remuneration paid to such director or having transactions up to 10% of his total income or other prescribed amount.
  - Pecuniary relationship of relatives of such director with the Company, its holding, subsidiary or associate company have been elaborated in terms of shareholding, indebtedness, financial transactions etc.

- Person whose relative is an employee of the Company during 3 financial years immediately preceding the financial year in which appointment is proposed to be made, can be appointed as Independent Director.
- In addition to Director's Identification Number (DIN), Government may prescribe any other identification number to be treated as DIN for purpose of the 2013 Act.
- Board's right to appoint directors in casual vacancy in public companies now extended to all companies, subject to the company's Articles of Association (public and private) and such appointment to be subsequently regularized by the members of the Company in immediate next general meeting.
- Director on the Board of a company cannot be appointed as an alternate director for another director on the Board of the same company.
- Person appointed as a director in a company, which has defaulted in filing financial statements or annual return or repayment of deposits or payment of interest or redemption of debentures or payment of interest thereon or payment of dividend (defaulting company), has been granted grace period of 6 months from the date of his appointment to make good the default and shall not be considered as disqualified during the said 6 months.
- Director of aforesaid 'defaulting company' to vacate his office as director from companies other than 'defaulting company'.
- Directorships in dormant companies to be excluded for the purpose of computing limit of directorships of 20 companies which can be held by a director.
- Filing of resignation form with RoC by the resigning director to be optional.
- Mandatory requirement of constituting Audit Committee and NRC to apply only to listed public companies instead of 'listed companies' thereby exempting listed private companies.
- In case Audit Committee does not approve a Related Party Transaction (RPT) (other than those transactions referred in section 188 of 2013 Act) it shall make its recommendations to the Board.
- Audit Committee may ratify RPT not exceeding ₹ 10 million entered into by a director or officer of the Company without its approval. Such ratification should be done within 3 months of entering into RPT and if such RPT is not ratified by Audit Committee, then such RPT shall be voidable at an option of the Audit Committee. Further, such director shall also indemnify the Company for any loss arising from such RPT.
- RPT (other than those transactions which are prescribed under section 188 of 2013 Act) between a holding company and its Wholly-Owned Subsidiary (WOS) will not require approval of the Audit Committee.
- NRC to specify the manner of effective evaluation of the performance of the Board, its committees and individual directors. Such evaluation may be carried out either by the Board, NRC or an independent external agency, as against the existing requirement of NRC to evaluate every director's performance.
- Securities Premium along with paid-up share capital and free reserves to be taken into consideration for reckoning aggregate borrowing limits under Section 180 of the 2013 Act.

- Section 185 (loan to directors etc.) of the 2013 Act has been replaced entirely. Key features of the amended section 185 are as under:-
  - Complete ban on giving loan, providing guarantee or security in relation to loans to any director of the Company or its holding company or any partner or relative of any such director or any firm in which such director or his relative is a partner.
  - Advancing loan, providing guarantee or security in relation to loans to "interested persons" now permitted subject to approval of members by special resolution, disclosure in explanatory statement on purpose for which such loan/guarantee/security to be utilized and on lending company being satisfied that such loans are utilized only in relation to principal business activities of the borrowing company.
    - "Interested person" to include:-
      - Private companies in which concerned director is a director / member
      - Bodies corporate at a general meeting of which at least 25% of the total voting power may be exercised or controlled by any such director, or by two or more such directors, together; or
      - Bodies corporate, whose Board, Managing Director or Manager is accustomed to act in accordance with the directions or instructions of the Board, or of any director or directors, of the lending company.
  - Exemption provided to investment companies to continue with interest on loans being now benchmarked with prevailing yield of 1-year, 3-year, 5-year or 10-year government security closest to the tenor of the loan, as against earlier benchmarking of interest with Bank rate declared by RBI.
  - In case of contravention of section 185, officers-in-default shall also be liable for the penalty, in addition to the existing penalty on the company, concerned director or other person to whom loan / guarantee etc. is advanced.
- Explicit provision made in the Act itself to facilitate that loans to employees by a company. Consequently, a view may be taken that loans to individuals who are in employment of the company may be interest-free.
- The restrictions related to voting in respect of related party transactions by relatives in the general meeting shall not apply to a company in which 90% or more members are relatives of promoters or are related parties.
- Non-ratification of related party transaction shall be voidable at the option of the Board or shareholders, as the case may be.
- Provision relating to Prohibition on Forward Dealings in Securities of Company by Director or key Managerial and Prohibition on Insider Trading of Securities have been omitted.

#### **Key takeaway**

- Relaxation of provisions regarding loan to directors and interested persons is expected to go a long way in easing genuine difficulties faced by businesses in structuring their finances.

- Simplification of compliance in terms of RoC filing, requirements to constitute Audit Committee, NRC, appointment of directors in casual vacancy, ratification of RPT by Audit Committee etc.
- Pro-rating of requirement of resident director for newly incorporated companies to facilitate ease of doing business.
- Clarity provided regarding ratification of related party transaction.
- SEBI is empowered to deal with matters relating to Forward Dealing and Insider Trading. Deletion of provisions relating to Forward Dealing and Insider Trading is to eliminate duplication of regulatory oversight.

### **Appointment and Remuneration of Managerial Personal**

- A person beyond 70 years of age may be appointed as Managing Director (MD) or Whole-time Director (WTD) or Manager even if the appointment is approved by a resolution at a general meeting and the Government is satisfied with an application made by the Board that such appointment is most beneficial to the Company.
- Approval of the Government is now not required for making payment of remuneration exceeding 11% of the net profits of the Company or exceeding the individual limits prescribed in case of executive or non-executive directors and the remuneration exceeding the aforesaid limits can be paid by passing special resolution in general meeting.
- In case of default in payment of dues by a Company, remuneration to directors, managing director, whole time director and manager can be paid only with the prior approval of concerned bank or public financial institution or the non-convertible debenture holders or other secured creditor, as the case may be.
- Powers of Government to approve payment of higher managerial remuneration than prescribed under Schedule V of the 2013 Act is removed. In case of loss or inadequacy of profits, remuneration can only be paid in accordance with Schedule V of the 2013 Act.
- Powers of the Government to approve waiver of excess remuneration paid to directors is removed. Director to refund excess remuneration received within 2 years or such lesser period as may be allowed by the Company and until such sum is refunded, the director shall hold it in trust for the Company.
- The shareholders may waive recovery of excess managerial remuneration by passing a special resolution within 2 years from the date the sum becomes refundable. In case of default in payment of dues by the Company, such waiver is conditional on receipt of prior approval from the concerned bank or public financial institution or the non-convertible debenture holders or other secured creditor, as the case may be.
- Explicit provisions made in the 2013 Act itself requiring the auditor of the Company to include in their audit report as to whether payment of remuneration to directors is in accordance with the compliance of the 2013 Act and whether the same is in excess of the limit laid down under the 2013 Act.
- All applications pending before the Government as on the date of commencement of the Amendment Act shall abate and companies shall obtain fresh approval of shareholders within 1 year in accordance with the provision of the 2013 Act.

- For the purpose of calculation of profits for determination of managerial remuneration and CSR under section 198, following changes are made:
  - Profits by way of premium on shares or debentures of the Company which are issued or sold by an investment company shall be allowed as credit to the profit and loss account;
  - Credit shall not be given for any unrealized gains, notional gains or revaluation of assets;
  - The loss in any year included in calculation of profits, in so far as such loss has not been deducted in any subsequent year preceding the year in respect of which the net profits have to be ascertained, shall be allowed as a deduction.

#### **Key takeaway**

- Discretionary powers vested in the Government to approve higher managerial remuneration and waiver of excess payment of managerial remuneration removed.
- Waiver from recovery of excess managerial remuneration will require approval of shareholders by special resolution and also of creditors where the company is defaulting in payment of dues.

#### **Inspection, Inquiry and Investigation**

- Government has been empowered to appoint inspectors to investigate the true ownership of the Company who have or had beneficial interest in shares of a company or who have been beneficial owners or significant beneficial owner of the Company.

#### **Registered Valuers**

- Registered Valuers cannot be appointed for valuation of assets, in which he has a direct or indirect interest or becomes interested during a period of 3 years prior to his appointment as valuer or 3 years after valuation of assets conducted by him. Earlier, no period was prescribed for determination of disqualification.

#### **Key takeaway**

- The amendment eliminates perpetual disqualification of registered valuers for valuation of assets, in which he has a direct or indirect interest whether before or after his appointment.

#### **Companies capable of being registered**

- Conversion of partnership firms, LLP etc. with 2 or more persons into private companies shall be permissible instead of meeting the existing requirement of 7 persons.

#### **Key takeaway**

- Relaxation in provision relating to conversion of partnership firms, LLP etc. with 2 or more persons into private companies shall benefit promoter owned entities.

#### **Companies Incorporated outside India (Foreign Companies)**

- Government may exempt any class of Foreign Companies from complying with the provisions of the Act.
- Provision relating to winding up under the 2013 Act shall apply for closure of place of business of Foreign Companies, in case they have raised monies through offer or issue of securities (Indian Depository Receipts) which have not been repaid or redeemed. In other words, Foreign Companies which have not raised money, the provision of winding up prescribed under the 2013 Act will not apply and the same shall be approved by GOI.

### **Key takeaway**

- Relaxation and clarity provided for ease of doing of business by Foreign Companies.

### **Registration Offices and Fees**

- Annual Return or Copy of financial statement may be submitted after expiry of prescribed period, on payment of additional fee of minimum ₹ 100 per day and different amounts may be prescribed for different classes of companies.
- For delay in filing documents other than Annual Return and financial statement, prescribed additional fee will be applicable.
- Default on 2 or more occasions with regard to submission, filings, registration, etc. of documents (i.e. Annual return, financial statement and any other document) will attract payment of higher prescribed fees. Such higher prescribed fees shall not be less than twice the additional fees provided above.
- Further, if the Company defaults with regard to submission, filings, registration, etc. of documents within the prescribed period mentioned in the relevant provisions of the Act then the Company and the officers of the Company who are in default shall be liable for the penalty or punishment provided under the 2013 Act.

### **Key takeaway**

- The penalty provision has been made stringent.

### **National Company Law Tribunal (NCLT) and Appellate Tribunal (NCLAT)**

- Companies can now appeal before NCLAT against the orders of National Financial Reporting Authority (NFRA).

### **Special Courts**

- The constitution of Special Court has been changed and now includes Metropolitan Magistrate and Judicial Magistrate of First Class:
  - Single Session Judge or Additional Sessions Judge – For offences punishable with imprisonment of 2 years or more
  - Metropolitan Magistrate or Judicial Magistrate of First Class – For other offences.
- NCLT to compound offences punishable with fine as well as those offences punishable with fine or imprisonment.

- New section inserted for the purpose of determining quantum of fine or imprisonment, by the Court or Special Court considering the factors viz. size of the Company, nature of business, injury to public interest, nature of default and repetition of default.

#### **Key takeaway**

- Rationalization of provision relating to establishment of Special Courts.
- Relaxation in provision relating to compounding of offence by NCLT will provide relief to stakeholders and will help them to put at rest the past non compliances.

#### **Punishment for fraud**

- Punishment for fraud provisions rationalized. The quantum of penalty depends on amount involved in fraud determined with respect to specified amounts. Accordingly, where fraud involves an amount of :
  - More than ₹ 1 million or 1% of the turnover of the Company, whichever is lower – penalty is imprisonment for a term which varies from 6 months to 10 years and also with fine of not less than amount involved in the fraud but which may extend to 3 times amount involved in fraud.
  - Less than ₹ 1 million or 1% of the turnover of the Company, whichever is lower and does not involve public interest - imprisonment for a term which may extend to 5 years or with fine which may extend to ₹ 2 million or with both.

#### **Key takeaway**

- Rationalization of provision relating to punishment for fraud based on materiality.

## **Conclusion**

The changes made in the 2013 Act by the Amendment Act shall be effective from such date as may be notified by the Government in the Official Gazette. The Government may notify different dates for different provisions of the Amendment Act.

The various amendments to the 2013 Act will provide much needed relief to stakeholders in terms of clarity, reduction in compliance burden and simplification of procedural requirements. Above measures are aimed to enhance ease of doing business and promoting healthy corporate environment in India.

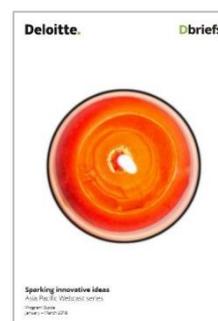
**Source:** Companies (Amendment) Act 2017 published in the Official Gazette dated 3 January 2018.

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