



Regulatory Alert Stay Ahead...

Companies (Amendment) Act, 2017 – impact on accounts and audit

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Background

- Companies (Amendment) Act, 2017 (the Amendment Act) passed on 3 January 2018 has made several changes to the Companies Act, 2013 (2013 Act). The Amendment Act has 93 sections which amends the 2013 Act.
- Ministry of Corporate Affairs (MCA) has brought in force majority provisions of the Amendment Act. Key notified provisions of the Amendment Act that are likely to have an impact on accounts and audit of companies, are summarized in this alert.

Impact on accounts and audit

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" which was not defined under the 2013 Act has been defined to mean a joint arrangement whereby the parties that have joint control of the arrangement, have rights to the net assets of the arrangement.
- One of the parameters for determining holding-subsidiary relationship would now be on the basis of the holding company exercising or controlling more than one-half of the total voting power in the subsidiary company (as against the earlier requirement of exercising or controlling of more than one-half of total share capital which was 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.

Dividend

- 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 Annual General Meeting (AGM).

Financial Statements

- 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.
- Placing of a copy of financial statements of subsidiaries on the website of the holding company mandatory only for listed companies.

- 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.
 - Indian holding company can file such an unaudited financial statement with RoC along with a declaration to this effect.

Auditors

Auditor's appointment

- The mandatory requirement for ratification of appointment of auditor by members at every AGM has been omitted w.e.f. 7 May 2018.
- The ineligibility criteria for appointment of an auditor has been aligned with the scope of non-permissible, non-audit services specified in section 144. Section 144 deals with ability of an auditor to provide non-audit services and specifies certain proscribed services which cannot be provided by the auditor "directly" or "indirectly".

Reporting by Auditor

- Auditor of a company which is a holding company shall also have the right of access to the records of all its **associate companies** in addition to its subsidiaries, so far as it relates to the consolidation of its financial statements.
- The auditor's reporting requirement on Internal Financial Controls (IFC) is aligned with the Guidance Note issued by the Institute of Chartered Accountants of India (ICAI). Accordingly, the auditor shall report on IFC with reference to the financial statements instead of Internal Financial Controls system.

Audit Committee

- Audit Committee may ratify Related Party Transactions (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 a RPT and if such RPT is not ratified by Audit Committee, then such RPT shall be voidable at the option of the Audit Committee. Further, such director shall also indemnify the company for any loss arising from such RPT.

Loans to directors and interested persons

- Section 185 (loan to directors etc.) of the 2013 Act has been substituted 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 the 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, the concerned director or other person to whom the loan/ guarantee etc. is advanced.

Others

- 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 the 'defaulting company' to vacate his office as director from companies other than 'defaulting company'.
- 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.

Conclusion

The changes made by the Amendment Act could require a re-evaluation of corporate structures, particularly in relation to holding-subsiary and associate relationship, and inter-corporate loans and advances etc. The changes are likely to affect reporting by auditors, manner of presentation of financial statements etc.

Source:

- Companies (Amendment) Act 2017 published in the Official Gazette dated 3 January 2018
- Notification No. S.O. 630(E) dated 9 February 2018 and S.O. 1833(E) dated 7 May 2018 issued by MCA

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