



## Regulatory Alert Tracking change

## The Companies (Amendment) Bill, 2016

**Issue no: RA/4/2016**

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# Background

Companies Act, 2013 (2013 Act) was brought into force in phases barring certain provisions relating to compromises, arrangements and amalgamations, prevention of oppression and mismanagement, setting up of/exercise of powers by National Company Law Tribunal / National Company Law Appellate Tribunal, Investor Education and Protection Fund, National Financial Reporting Authority, Special Court etc.

Some of the provisions of the 2013 Act were amended by the Companies (Amendment) Act, 2015.

Ministry of Corporate Affairs (MCA), Government of India (GOI) constituted the Companies Law Committee (CLC) in June 2015 with mandate, amongst other, of:

- (a) making recommendations on issues arising from the implementation of the 2013 Act; and
- (b) examining recommendations received from the Bankruptcy Law Reforms Committee, the High Level Committee on Corporate Social Responsibility (CSR), the Law Commission of India and other agencies.

The CLC gave a detailed and reasoned report on 1 February 2016 containing various suggestions to amend 2013 Act and the relevant Rules. Comments were invited from stakeholders till 15 February 2016.

GOI, on 16 March 2016, introduced the Companies (Amendment) Bill, 2016 (the Bill) in the Parliament to further amend the 2013 Act based on the recommendations of CLC report, comments received from the stakeholders and Ministries/ Departments thereon.

The proposed changes in the 2013 Act are broadly aimed at following:

- Addressing difficulties experienced in implementation of 2013 Act;
- Facilitating ease of doing business in order to promote growth with employment
- Aligning the provisions of the 2013 Act and provisions of the Accounting Standards, the Securities and Exchange Board of India Act, 1992 (SEBI Act) and Reserve Bank of India Act, 1934 (RBI Act) and the regulations made under these Acts;
- Rectifying omissions and inconsistencies in the 2013 Act and

- Carrying out amendments in the provisions relating to qualifications and selection of members of the National Company Law Tribunal (NCLT) and the National Company Law Appellate Tribunal (NCLAT) in accordance with the directions of the Supreme Court
- The Bill is based on the theme of the GOI i.e. *maximum governance – minimum government*. The Highlights of the Bill are given hereunder.

## Highlights of the Bill

### Measures for ease of doing business

- a) Simplification of the private placement process.
- b) Unrestricted “object clause” in the Memorandum of Association is allowed. No need to provide detailed listing of objects to be carried out by the company upon its incorporation. Incorporation process of companies simplified.
- c) Provisions relating to forward dealing and insider trading to be omitted from 2013 Act.
- d) Restrictions on layers of subsidiaries and investment companies removed
- e) Class of foreign companies to be exempted through the Rules mechanism from registration and compliance requirement of the 2013 Act
- f) Requirement for annual ratification of appointment or continuance of auditor removed
- g) Amendment in the provisions relating to CSR to bring greater clarity\

### Measures for enhanced governance

- h) A company may give loans to entities in which directors are interested after passing special resolution and adhering to disclosure requirements
- i) Requirement of approval of the Central Government for payment of managerial remuneration above prescribed limits in case of no profits or inadequate profits replaced by approval through special resolution by shareholders
- j) Align prescription for companies to have Audit Committee and Nomination and Remuneration Committee with that of Independent Directors
- k) Test of materiality to be introduced for pecuniary interest for testing independence of Independent Directors

- l) Align the disclosures in the prospectus required under 2013 Act and SEBI Act and allowing these prescriptions to be made by SEBI in consultation with the GOI
- m) Scope of “KMP” expanded

## Conclusion

GOI’s decision to introduce the Bill reflects its intent to improve ease of doing business and remove difficulties arising from implementation of 2013 Act.

The Bill will be discussed and approved by the Parliament and assented to by the President of India to have the effect of amending the 2013 Act from the date to be notified.

**Source:** Companies (Amendment) Bill 2016 as introduced in Lok Sabha on 16 March 2016.

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