

LATEST DEVELOPMENTS IN MCA

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RECENT DEVELOPMENTS

In MCA

- CLEANING OF CORPORATE REGISTRY
- THE COMPANIES (AMENDMENT ACT) 2017
- E-CODS

CLEANING OF CORPORATE REGISTRY

An MCA Initiative

- Total number of Companies **128000**
- Companies registered during 2016-17 **8895**
- LLPs registered during 2016-17 **1467**
- Companies struck off till today **20082**
- Companies in the process of strike off **15862**
- Companies filed strike off application **1100**

THE COMPANIES (AMENDMENT) ACT, 2017

**Notified on
3.1.2018**

- Passed by Lok Sabha on July 27, 2017
- Passed by Rajya Sabha on December 19, 2017.
- President's assent on January 3, 2018

THE COMPANIES (AMENDMENT) ACT, 2017

Purpose

- Due to difficulties in implementation owing to stringent compliance requirements
- facilitating ease of doing business
- harmonisation with accounting standards, the SEBI Act, 1992 and RBI Act, 1934

Highlights of Companies (Amendment) Act, 2017

Name Reservation / Approval

Section 4(5)

- The period for reservation of name is substituted from 'sixty days from the date of the application' to 'twenty days from the date of approval or such other period as may be prescribed'.

Highlights of Companies (Amendment) Act, 2017

Intimation of Registered Office to ROC

Section 12(1) & (4)

- A company shall, within thirty days of its incorporation, have a registered office.”
- The time period for giving notice of change of situation of registered office is increased from 15 days to 30 days

Effect of number of members falling below the minimum requirement

Section 3A

- New Section: If at any time the number of members of a company is reduced below the minimum prescribed and the company carries on business more than six months members shall be severally liable for the payment of debts of the company

Deposit Insurance

Section 73(2)(d)-

- The requirement to have deposit insurance is omitted

Financial Statements

Section 129(3)-

- While preparing the consolidated financial statements, the main concern was whether to include associate companies or not. After the amendment the concern gets addressed as the term “associate companies” (20 % Voting power) is inserted in addition to the subsidiaries.

Financial Statement, Board's Report Etc.

Section 134(1), (3)

- The amendment provides that the Chief Executive Officer shall sign the financial statements irrespective of the fact whether he is a director or not.
- The Requirement of having extract of Annual return (Form MGT-9) has been done away with.

Corporate Social Responsibility

Section 135(1)

- Section 135 is applicable to companies which falls within the threshold of the specified net worth or turnover or net profit and are required to constitute the CSR Committee in any financial year. The words “any financial year” are replaced by the words ‘immediately preceding financial year’.

Right of Member to Copies of Audited Financial Statement

Section 136(1)

- Amendment to sub-section (1) of section 136 to provide that copies of audited financial statements and other documents may be sent at shorter notice if ninety five percent of members entitled to vote at the meeting agree for the same.

Ratification of Auditors

First Proviso to Section 139(1)

- The first proviso to section 139(1) requires that the matter relating to appointment of auditor be placed for ratification by the members in each AGM.
- The requirement related to annual ratification of appointment of auditors by members is omitted.

Deposits Repayment Reserve Account

Section 73(2)(c)

- Maintenance of Deposit Repayment Reserve for Public Deposits is proposed to be changed to 20% of the amounts maturing during the next year in place of 15% of two years.
- In case of defaulting co.- Permanent ban.
- Condition of deposit insurance for public deposits is removed

Ratification of Auditors

First Proviso to Section 139(1)-

- The requirement related to annual ratification of appointment of auditors by members is omitted

Self Declaration' to replace 'Affidavit'

Section 7(1)(c)-

- With reference to incorporation of a company, 'affidavit' has been replaced by "self declaration" from the first subscribers to memorandum and first directors.
- This will ease the additional documentary burden and avoid delay in the incorporation process

Disclosures under Board's Report

Section 92(1)

- With a view to facilitate ease of doing business and for reducing the burden of One Person Company and Small Company, the Central Government is empowered to prescribe an abridged form of Annual Return.
- Indebtedness omitted.

Disclosures under Board's Report

Section 92(3)

- The requirement to file extract of Annual Return as part of the Board's report is omitted.
- But every company shall place a copy of AR on the website, if any, and give web link in Board's Report.

General Meetings

Section 92(3)

- Being a substantive provision, the explanation to Rule 18(3) be deleted and an explanation be incorporated at the end of Section 100 mandating that EGM shall be held only in India, as well as provide for exemptions to wholly owned subsidiaries of companies incorporated outside India.

General Meetings

Section 110(1)

- The items required to be passed mandatorily by postal ballot may now be transacted at a general meeting where the facility of electronic voting is provided by the company.

General Meetings

Section 160(1)-

- The requirement of deposit of rupees one lakh with respect to nomination of directors shall not be applicable in case of appointment of independent directors or directors nominated by nomination and remuneration committee.
- The exemptions/modifications have already been notified for wholly owned Government companies, Section 8 companies and Nidhis.

Disclosures to Registrar

First Proviso to Section 94(1)-

- The requirement of filing with Register a copy of special resolution in advance in respect of members approval for keeping register/returns at any other place in India then registered office under section 94 has been omitted.

Participation through video-conferencing

Section 173(2)-

- The directors are allowed to participate on certain items which were restricted at Board meetings through video conferencing or other audio visual means if there is quorum through physical presence of directors.

Disclosures in the Prospectus

Section 26(1)-

- Disclosures in the prospectus required under the Companies Act, 2013 and the Securities and Exchange Board of India Act, 1992 and the Regulations made thereunder are aligned by omitting the information, reports and declarations required in the Companies Act, 2013.
- After the amendment, the information and reports required may be specified by the Securities and Exchange Board of India in consultation with the Central Government.

SEBI Regulations

Section 194 & 195

- Section 194 and 195 of the principal Act shall be omitted.
- Since SEBI Regulations are comprehensive and cover the provisions, sections relating to prohibition on forward dealings in securities of company and insider trading of securities by director or key managerial personnel are deleted

Rationalizing Penal Provisions

**76A, 132, 140,
147 and 180**

- • The Act seeks to amend section 76A, 132, 140, 147 and 180 etc. to reduce the quantum of fine in a move towards rationalizing the severe penalties provided under the Act.
- • Two new sections with respect to factors for determining the level of punishment and for lesser penalties for one person companies and small companies are inserted.
- • Penal provisions for small companies and one person companies are reduced.
- • Section 76A provides for penal provisions with regard to defaulting company with respect to repayment of the amount of deposit and the interest due.

OTHER IMPORTANT PROVISIONS

Section 153

- The Central Government is now empowered to recognise any other universally accepted identification number as an identification document similar to director identification number

OTHER IMPORTANT PROVISIONS

Section 185-

- Granting of loan, guarantee or security (referred as assistance) is categorized as prohibited, conditional and exempted.
- The prohibition is proposed to be made applicable for assistance to director or his partner or relative or a firm in which such director or relative is a partner or to holding company of the company
- The conditional assistance is possible to any person in whom the director is interested
- The exempted categories are loan to MD/ WTD as a part of service condition or scheme and loans by companies in their ordinary course of business

Intimation of Satisfaction of charge

Section 82

- Intimation of satisfaction of charge can be filed with ROC within 300 days
- Rules made similar to creation of charge.

Managerial Remuneration

First Proviso to Section 197(1)-

- The requirement of approval of the Central Government for Managerial Remuneration, above the prescribed limits are replaced by approval through special resolution by shareholders in general meeting.”
- No CG approval for public companies for payment of remuneration to managing director even exceeding 11% of net profits
- Approval of the central government would be needed only for variance to the conditions specified in part I of Schedule V for the appointment of MD/ WTD;

Foreign Company

Section 379

- Foreign companies having incidental transactions through electronic mode are exempted from registering and compliance regime under the Act.

PRIVATE PLACEMENT

Section 42

- The Private Placement process is simplified by doing away with separate offer letter details to be kept by company and reducing number of filings to Registrar.
- the disclosures made under Explanatory Statement referred to in Rule 13(2)(d) of Companies (Share Capital and Debenture) Rules, 2014, embodied in the Private Placement Application Form.
- The Companies would be allowed to make offer of multiple security instruments simultaneously.
- Restriction on utilization of subscription money before making actual allotment and additionally before filing the allotment return to the registrar.

DEFINITIONS

Changes in definitions

- **Section 2(6) -Associate company**
- Section 2(28)- "cost accountant"
- Section 2(46)- 'holding company', the expression "company" will include any body corporate.
- Section 2(49)-Definition of the term is omitted.
- Section 2(57)-to include the debit or credit balance of profit and loss account in the calculation of net worth.
- Section 2(85)-increase the maximum paid-up share capital amount which can be prescribed
- Section 2(87)- subsidiary company

Filing Fees

Section 403

- 270 days shelter removed;
- Additional filing fees structure brought in line with the LLP
- FS & Annual Return can be filed with delayed filing fees of Rs. 100/- per day (after prescribed 30/60 days),
- For other forms – additional fees will be prescribed, different amount may be specified for different classes of companies
- In case of subsequent 2 or more defaults in submission of forms, higher fees may be prescribed

CODS-2018

General
Circular
No.16/2017
dt.29.12.2017

- The scheme shall be in force from 01.01.2018 to 31.03.2018
- This scheme is applicable to all defaulting companies (other than the stuck off Companies)
- The de-activated DIN of disqualified directors, shall be temporarily activated during the scheme period to enable them to file the overdue documents
- The defaulting company shall file the overdue documents

CODS-2018

General
Circular
No.16/2017
dt.29.12.2017

- The defaulting company after filing documents, shall seek condonation of delay by filing form e-CODS
- The fee for filing application eform CODS is Rs.30,000/-
- The Registrar concerned shall withdraw the pending prosecution(s)
- The e-Form CODS 2018 would be available from 20.02.2018 or an alternate date, which will be intimated by the ministry on www.mca.gov.in.

CODS-2018

General
Circular
No.16/2017
dt.29.12.2017

- The DINs of the Directors associated with the defaulting companies that have not filed their overdue documents and the eform CODS, shall be liable to be deactivated on expiry of the scheme period.
- For Struck off companies which filed applications for revival under section 252 of the Act, the Director's DIN shall be re-activated only on NCLT order of revival subject to the company having filing of all overdue documents.
- Only for filing B/S, A/R, F.66, 23B/ADT.1