

RELEVANT SECTIONS OF COMPANIES (AMENDMENT) ACT, 2017

Sections	Analysis
Section 2(6)- Definition of 'associate company'	The word total share capital substituted with total voting power or control of or participation in business decisions under an agreement
Section 2(28)- Definition of 'cost accountant'	Definition of Cost accountant also includes a person who holds a valid certificate of practice
Section 2(30)- Definition of 'Debenture'	Excludes instruments referred to in Chapter III-D of the Reserve Bank of India Act 1934 and it gives power to the Central Government to prescribe other instruments which will not be treated as debentures in consultation with RBI
Section 2(41)- Definition of 'Financial year'	Now Associate company of a company or incorporated outside India can also apply to the Tribunal to follow different financial year
Section 2(46)- Definition of 'Holding Company'	Company incorporated outside India as well as LLP will be treated as holding Company
Section 2(51)- Definition of 'Key Managerial Personnel'	One more sub-clause added to include other officer as KMP who is not more than one level below the directors who is in whole-time employment and designated as the KMP
Section 2(57)- Definition of 'net worth'	While calculating Net-worth, now onwards the debit or credit balance of profit and loss account is also required to be taken in to account
Section 2(76)- Definition of 'Related Party'	Two amendments have been made: The word Company has been substituted with the word Body Corporate. Scope is widened to include body corporate which is a Investing Company or the Ventures Company. In explanation – Definition is provided explaining Investing Company or Venture Company
Section 2(85)- Definition of 'small company'	Upper limit is increased for small company – 10 crore for paid up capital and 100 Crore for turnover
Section 2(91)- Definition of 'Turnover'	Turnover means as recognized in Profit & Loss Account and not the realisation amount
Section 3A Members severally liable in certain cases	Members of a Company are severally liable for whole debts of the company in case the minimum no. of members required are reduced and company carries on business for more than 6 months and is aware of the fact that it is carrying on business with reduced number of members
Section 47- Voting rights	While application of the provisions of Section 47, it will be subject to provisions of Sub- Section (1) 188 (Related Party Transaction). Hence,

	members has right to vote on all the resolutions (as per Section 47) except to approve contract or arrangement which may be entered in to by the Company, if such member is a related party
Section 53- Prohibition on issue of shares at discount	Company may issue shares at discount to its creditors at the time of conversion of debt into shares pursuant to <ul style="list-style-type: none"> • Statutory resolution plan; or • Debt restructuring scheme Accordance with the guidelines specified by RBI
Section 62- Further issue of share capital	Compliance of chapter III is required for issue of shares to any other person other than shareholder and ESOP For dispatch of notice- courier or any other mode which has proof of deliver is included
Section 76A- Punishment for Contravention of Section 73 or Section 76	Modified penal provisions for company as well as defaulting officer. For company – lower of the following 1) 1 crore ; or 2) Twice the amount of deposit accepted by the Company, whichever is lower. Defaulting officer will be punished with both i.e. Fine and Imprisonment. Earlier Fine or imprisonment or both was prescribed
Section 100- Calling of Extraordinary General Meeting	New proviso has been inserted which permits to held EGM of Wholly-Owned Subsidiary Company outside India
Section 101- Notice of meeting	Shorter notice consent - in case of AGM – Consent required from 95% of members entitled to vote. In case of other general meeting: Companies having share capital – Consent required from majority in number of members representing not less than 95% of paid up capital of Company which gives right to vote
Section 110- Postal Ballot	A new proviso is inserted Items to be transacted- postal ballot – can be transacted at general meeting – if the company is required to provide electronic voting
Section 123 Declaration of dividend	computing profits any amount representing unrealized gains, notional gains or revaluation of assets and any change in carrying amount of an asset or of a liability on measurement of the asset or the liability at fair value shall be excluded. Declaration of dividend out of free reserves only
Section 136 Right of member to copies of audited financial statement.	In case of Listed Company, copies of financial statement and other documents can be sent at shorter notice if agreed by members as prescribed. Only listed company having a subsidiary or subsidiaries shall place separate audited accounts in respect of each of subsidiary on its website. Previously it

	<p>was applicable to Every Company.</p> <p>Every listed company shall place separate audited accounts in respect of each of subsidiary on its website.</p> <p>Foreign Subsidiary statutorily required to prepare consolidated financial statement under any law of the country of its incorporation, the requirement of this proviso shall be met if consolidated financial statement of such foreign subsidiary is placed on the website of the listed company the holding Indian listed company may place such unaudited financial statement on its website, if such foreign subsidiary is not required to get its financial statement audited under any law of the country of its incorporation.</p> <p>Every company having a subsidiary or subsidiaries shall provide a copy of separate audited or unaudited financial statements, as the case may be, as prepared in respect of each of its subsidiary to any member of the company who asks for it.</p>
Section 140- Removal, Resignation of Auditor and giving of special notice	Reduced the fine in case of failure to file resignation by auditor
Section 141- Eligibility, Qualification and Disqualifications of Auditors	<p>Person is not eligible to appoint as auditor who directly or indirectly renders any services referred in section 144 to</p> <p>Company</p> <p>Holding Company</p> <p>Subsidiary company</p>
Section 143- Powers and duties of auditors and auditing standards	<p>Right of auditors of holding company to have access to accounts of records of associate companies along with subsidiary company</p> <p>Auditors report to include internal financial controls with reference to financial statements in place and the operating effectiveness of such controls</p>
Section 147- Punishment for contravention	<p>Maximum fine imposed on an auditor has been revised.</p> <p>If auditor has contravened provision of act wilfully – minimum amount of fine reduced and maximum fine related provisions revised</p> <p>The liability of auditor to pay damages for loss arising out of incorrect statements in audit report is restricted to only member and creditors.</p> <p>Criminal liability of audit firm – In case of liability other than fine – Concern partner involved is only liable and not the whole firm or other partners</p>
Section 152- Appointment of directors and Section 153 - Application for allotment of Director Identification Number	CG may prescribe another number which can be used as DIN
Section 160- Right of persons other than retiring directors	A new proviso is inserted thereby removing the criteria for deposit for Independent director and director recommended by Nomination and

to stand for directorship	Remuneration Committee or BOD
Section 161- Appointment of Additional director, Alternate director and Nominee director	Restriction imposed on a person if he holding directorship in same company from appointment as an alternate director. All companies may fill up casual vacancy in board meeting which should be subsequently approve in immediately next General Meeting
Section 165 Number of directorships.	Directorship in dormant company shall not be included in the limit of directorship
Section 180- Restrictions on powers of board	Now securities premium also included in calculation of maximum limit on borrowing
Section 184- Disclosure of interest by directors	Omitted minimum penalty in case of failure of directors to disclose interest Exempted body corporate where ant director or 2 or more directors hold not more than 2% of the paid up share capital
Section 188- Related Party Transactions	Restriction on voting by relatives in the general meeting shall not apply to a company in which 90% or more members in numbers are relatives of promoters or related parties Now transaction is voidable at the option of the board or shareholders as the ratification is allowed by both board or shareholder as the case may be
Section 379 Application of Act to Foreign Companies	In Section 379 of the principal Act shall be renumbered as sub-section (2) thereof and before sub-section (2) as so renumbered and sub-section(1) got inserted
Section 384 Debentures, annual return, registration of charges, books of account and their inspection	Now even provisions of Section 135 shall apply to Foreign Company
Section 441- Compounding of certain offences	To enable the Tribunal to compound offences punishable with fine only as well as offences punishable with fine or imprisonment The provision has now been brought in line with section 621A of the 1956 Act.
Section 446A- Factors for determining level of punishment	This Section is newly inserted under the Companies Amendment Act, 2017. Factors to be determined – <ul style="list-style-type: none"> (a) Size of the Company; (b) Nature of business carried on by the Company; (c) Injury to Public Interest; (d) Nature of the default; and (e) Repetition of the default
Section 446B- Lesser penalties for One Person Companies or small companies	This is newly inserted Section which provides relief to the One Person Company and Small Company in failure to comply specific sections as mentioned under the Companies Amendment Act, 2017

Section 447 – Punishment for Fraud	Limit for determining amount of fraud has been inserted. Punishment for fraud will be determined based on the nature of Public Interest involved or not
---	--

DISCLAIMER: The entire contents of this document have been prepared on the basis of relevant provisions stated in the Companies (Amendment) Act, 2017 and Companies Act, 2013. It is based on the analysis of the facts and our understanding and interpretation of applicable laws as on date. The information is not a professional advice and is subject to change without notice. In no event we shall be liable for any direct, indirect, special or incidental damage resulting from, arising out of or in connection with the use of the information content in this document.