

## Comparison of The Companies (Amendment) Bill, 2016 with proposed amendments

The Companies (Amendment) Bill, 2016 was introduced in Lok Sabha on March 16, 2016.<sup>1</sup> The Bill seeks to amend the Companies Act, 2013 to change provisions related to: (i) forward dealing and insider trading, (ii) managerial remuneration, (iii) number of layers of subsidiaries in a company, (iv) memorandum of association of a company, and (v) independent directors. The Standing Committee on Finance examined the Bill and submitted its report on December 7, 2016.<sup>2</sup> In April 2017, the government circulated certain amendments to the Bill.<sup>3</sup> The following table compares the provisions of the 2013 Act with the 2016 Bill, the Standing Committee’s recommendations (2016) and the 2017 amendments that were circulated.

**Table 1: Comparison of the Companies Act, 2013, the Companies (Amendment) Bill 2016, Standing Committee recommendations and 2017 amendments circulated**

The Companies Act, 2013	The Companies (Amendment) Bill 2016	Standing Committee’s recommendations (December 2016)	Amendments circulated (April 2017)
<b>Cap on layers of subsidiary companies [Section 2(87)]</b>			
<ul style="list-style-type: none"> <li>Permits the central government to impose a cap on layers of subsidiaries a company can have.</li> </ul>	<ul style="list-style-type: none"> <li>Removes the restrictions on number of layers of subsidiaries of a company.</li> </ul>	<ul style="list-style-type: none"> <li>No recommendation.</li> </ul>	<ul style="list-style-type: none"> <li>Restores the provision in the 2013 Act.</li> <li>Permits the central government to impose a cap on layers of subsidiaries of a company.</li> </ul>
<b>Cap on investments through layers of companies [Section 186]</b>			
<ul style="list-style-type: none"> <li>Investments in a company cannot be made through more than two layers of investment companies.</li> </ul>	<ul style="list-style-type: none"> <li>Removes the restrictions on number of layers of investment companies.</li> </ul>	<ul style="list-style-type: none"> <li>No recommendation.</li> </ul>	<ul style="list-style-type: none"> <li>Restores the provision in the 2013 Act.</li> <li>Prohibits investments in a company through more than two layers of investment companies.</li> </ul>
<b>Objects of the company [Section 4]</b>			
<ul style="list-style-type: none"> <li>Memorandum must define the <i>specific</i> objects for which the company is being incorporated, and other related matters.</li> </ul>	<ul style="list-style-type: none"> <li>Memorandum may contain <i>general</i> objects which state that the company may engage in any lawful act or activity or business.</li> <li>If the memorandum contains specific objects, it cannot pursue anything outside those objects.</li> </ul>	<ul style="list-style-type: none"> <li>The amendment may lead to the creation of bogus entities. Status quo should be restored.</li> </ul>	<ul style="list-style-type: none"> <li>Recommendations accepted.</li> <li>Requires the Memorandum to define the specific objects for which the company is being incorporated.</li> </ul>
<b>Filing of Annual Returns for small companies [Section 92]</b>			
<ul style="list-style-type: none"> <li>Permits the annual return for a One Person Company or a small company to be signed by the company secretary or the Director.</li> </ul>	<ul style="list-style-type: none"> <li>Additionally, permits the central government to prescribe an abridged form of annual returns for a One Person Company or a small company.</li> </ul>	<ul style="list-style-type: none"> <li>A simple form of annual return may be prescribed for small companies, one person companies and private companies (less than an annual sales turnover of say, Rs 100 crore).</li> <li>This may apply to other forms of companies as well, to avoid repetitive information.</li> </ul>	<ul style="list-style-type: none"> <li>Recommendations accepted.</li> <li>Extends the power of the central government to prescribe abridged form of annual returns for other types of companies, in addition to One Person Company or a small company.</li> </ul>

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**Annual financial statement [Section 129]**

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| <ul style="list-style-type: none"><li>▪ A company should attach, along with its financial statement, a separate financial statement of its subsidiaries as prescribed.</li></ul> | <ul style="list-style-type: none"><li>▪ No change proposed.</li></ul> | <ul style="list-style-type: none"><li>▪ If a company files consolidated financial statements, it should be exempted from the requirement of filing individual financial statement of subsidiary companies.</li><li>▪ This would facilitate ease of doing business.</li></ul> | <ul style="list-style-type: none"><li>▪ Recommendations not accepted.</li><li>▪ Requires a company to attach a separate financial statement of its associate companies, in addition to that of its subsidiaries.</li></ul> |
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**Financial statement of foreign subsidiary [Section 137]**

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| <ul style="list-style-type: none"><li>▪ Every company is required to file a copy of its financial statement with the Registrar, along with accounts of subsidiaries incorporated in foreign countries.</li></ul> | <ul style="list-style-type: none"><li>▪ If the accounts of foreign subsidiaries are not required to be audited under the local law, companies need to make a special declaration stating the same.</li><li>▪ This applies only for public listed companies.</li></ul> | <ul style="list-style-type: none"><li>▪ Such a provision should be applicable to all companies, and not just to listed public companies.</li></ul> | <ul style="list-style-type: none"><li>▪ Recommendations accepted.</li></ul> |
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**Fee for late filing [Sections 89, 92, 117, 121, 137, 157, 403]**

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| <ul style="list-style-type: none"><li>▪ A fee needs to be paid for failure to file documents, specified in the Act, within 270 days from the prescribed date.</li><li>▪ An additional fee will be levied for any delay beyond 270 days. Further, the company will be liable for penal action.</li></ul> | <ul style="list-style-type: none"><li>▪ Seeks to provide clarity that these provisions are applicable to documents filed under only six sections of the Act.</li><li>▪ These include: (i) section 89 (filing of declaration of beneficial interest), (ii) section 92 (filing of Annual Return), (iii) section 117 (filing of resolutions and agreements), (iv) section 121 (Annual General Meeting report for listed companies), (v) section 137 (filing of financial statements) and (vi) section 157 (company to inform identification numbers of directors to Registrar of Companies).</li></ul> | <ul style="list-style-type: none"><li>▪ The fees levied may not ensure timely compliance by companies in filing documents, and may turn into a revenue-mobilising proposal for the Ministry.</li><li>▪ The compliance requirements may be simplified by providing a reasonable period for filing of documents.</li></ul> | <ul style="list-style-type: none"><li>▪ Recommendations partially accepted.</li><li>▪ Removes the time limits for filing of documents under the Act. Such limits will now be prescribed, instead of being specified in the Act.</li><li>▪ For non-filing of documents under section 92 (filing of Annual Return) and section 137 (filing of financial statements), a minimum fine amount of Rs 100/day has been specified. Further, the company shall be liable for penal action.</li><li>▪ If a company defaults on submitting the documents for two or more times, the fee levied on the company may be doubled.</li></ul> |
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**Definition of 'relative' [Section 141]**

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| <ul style="list-style-type: none"><li>▪ The Act prohibits a person from becoming an auditor to the company if his relative (i) holds security or interest in the company, (ii) is indebted to the company above a certain amount.</li></ul> | <ul style="list-style-type: none"><li>▪ The Bill defines the term relative as: 'the spouse of a person; and includes a parent, sibling or child, financially dependent on such person, or who consults such person in taking decisions in relation to his investments'.</li></ul> | <ul style="list-style-type: none"><li>▪ The words "or who consults such person in taking decisions in relation to his investments", should be removed as they make the intended definition too broad and open-ended.</li></ul> | <ul style="list-style-type: none"><li>▪ Recommendations not accepted.</li><li>▪ Deletes the definition of 'relative'.</li></ul> |
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**Definition of a related party in relation to a company [Section 2(76) (viii)]**

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| <ul style="list-style-type: none"><li>▪ A 'related party', in relation to a company, includes:<br/>(i) a holding, subsidiary or an associate company of such company; or<br/>(ii) a subsidiary of a holding company to which it is also a subsidiary.</li></ul> | <ul style="list-style-type: none"><li>▪ Adds another category to the definition:<br/>(i) an investing company or the venture of a company.</li></ul> | <ul style="list-style-type: none"><li>▪ Endorsed the amendment.</li></ul> | <ul style="list-style-type: none"><li>▪ Provides further clarity to the 2016 amendment.</li><li>▪ Defines an 'investing company or the venture of a company' as one whose investment in the company would make that company its associate company.</li></ul> |
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**Calculation of profits to provide dividends [Section 123]**

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| <ul style="list-style-type: none"><li>▪ A company should declare or pay dividends only out of the profits of the company.</li></ul> | <ul style="list-style-type: none"><li>▪ No change proposed.</li></ul> | <ul style="list-style-type: none"><li>▪ No recommendation.</li></ul> | <ul style="list-style-type: none"><li>▪ Adds a proviso which, in computing profits, excludes: (i) any unrealised or notional gains, or (ii) revaluation of assets and any change in carrying amount of an asset or liability.</li></ul> |
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**Loans to directors of companies [Section 185]**

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| <ul style="list-style-type: none"><li>▪ A company is not allowed to advance any loan to its directors or to any person in whom the director is interested.</li></ul> | <ul style="list-style-type: none"><li>▪ Allows companies to advance a loan to any person a director is interested in, if the company passes a special resolution to this effect.</li><li>▪ If loans extended are used against certain conditions (such as for purposes other than principal business activities), then: (i) a fine may be levied on the company and its directors, and (ii) directors may also be imprisoned.</li></ul> | <ul style="list-style-type: none"><li>▪ No recommendation.</li></ul> | <ul style="list-style-type: none"><li>▪ If loans extended are used against certain conditions, in addition to the company and directors, every defaulting officer in the company may also be imprisoned or fined.</li></ul> |
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**Punishment for defaulting officer in relation to acceptance of deposit from the public [Section 76A]**

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| <ul style="list-style-type: none"><li>▪ If a company accepts deposits from a person in violation of the Act, or if it fails to repay the deposit within a specified time, all of its defaulting officers will be punished either with imprisonment up to seven years or with fine between Rs 25 lakh to Rs two crore, or both.</li></ul> | <ul style="list-style-type: none"><li>▪ No change proposed.</li></ul> | <ul style="list-style-type: none"><li>▪ No recommendation.</li></ul> | <ul style="list-style-type: none"><li>▪ Modifies the punishment for the defaulting officer, to provide for both, imprisonment, up to seven years, and fine.</li></ul> |
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**National Companies Law Appellate Tribunal [Section 410]**

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| <ul style="list-style-type: none"><li>▪ National Companies Law Appellate Tribunal (NCLAT) to hear appeals against National Companies Law Tribunal (NCLT).</li></ul> | <ul style="list-style-type: none"><li>▪ No provision.</li></ul> | <ul style="list-style-type: none"><li>▪ No recommendation.</li></ul> | <ul style="list-style-type: none"><li>▪ NCLAT to hear appeals against: (i) NCLT, and (ii) National Financial Reporting Authority.</li></ul> |
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**Powers to enforce provisions related to insider trading and forward dealing [Section 458]**

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| <ul style="list-style-type: none"><li>▪ Prohibits insider trading and forward dealing by companies.</li><li>▪ Securities and Exchange Board of India (SEBI) enforces provisions related to insider trading and forward dealing in relation to the Act.</li></ul> | <ul style="list-style-type: none"><li>▪ Deletes provisions that prohibit insider trading and forward dealing. [They are regulated under the SEBI (Prohibition of Insider Trading) Regulations, 2015.]</li></ul> | <ul style="list-style-type: none"><li>▪ Harmonise provisions of the Act with SEBI's regulations.</li></ul> | <ul style="list-style-type: none"><li>▪ Recommendations accepted.</li><li>▪ Deletes the provision that provides power to SEBI to enforce the insider trading and forward dealing provisions of the Act.</li></ul> |
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Sources: The Companies Act, 2013, The Companies (Amendment) Bill 2016; 37<sup>th</sup> Report of the Standing Committee on Finance; Notice of Amendments – The Companies (Amendment) Bill 2016, April 5, 2017; PRS.

<sup>1</sup> The Companies (Amendment) Bill, 2016, <http://www.prsindia.org/uploads/media/Companies.%202016/Companies%20bill.%202016.pdf>.

<sup>2</sup> “37<sup>th</sup> Report: The Companies (Amendment) Bill, 2016”, Standing Committee on Finance, December 7, 2016, [http://www.prsindia.org/uploads/media/Companies.%202016/SCR-%20Companies%20\(A\)%20Bill.%202016.pdf](http://www.prsindia.org/uploads/media/Companies.%202016/SCR-%20Companies%20(A)%20Bill.%202016.pdf).

<sup>3</sup> Notice of Amendments, The Companies (Amendment) Bill, 2016, Lok Sabha, April 5, 2017, <http://www.prsindia.org/uploads/media/Companies.%202016/Notice%20of%20Amendments.%20Apr%205.%202017.pdf>.

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