

## Positive Amendments as per the Companies Amendment Bill 2017 related to the profession



*Following is an update on positive amendments as per the Companies Amendment Bill 2017 related to the profession as passed by the Rajya Sabha on 19<sup>th</sup> December, 2017 and by the Lok Sabha on 27<sup>th</sup> July, 2017*

The Companies Act, 2013 was notified on 29<sup>th</sup> August, 2013. It had introduced significant changes and, inter alia, provides for disclosure to stakeholders and a provision regarding accountability of directors, auditors and key managerial persons. It also provides for investors' protection. It provides for corporate governance too. In view of difficulties in smooth implementation of the Companies Act 2013, the Companies (Amendment) Bill, 2015 was introduced in the Lok Sabha. It was passed by both the Houses. But, at the time of its passage, Hon'ble Members of the Rajya Sabha had requested the Government for some more amendments in order to address the difficulties that the companies were facing.

So, keeping in view this aspect, the Government constituted a Companies Law Committee, chaired by the Secretary, Ministry of Corporate Affairs, with a view to examining the need for making further amendments. An extensive consultation was conducted by this Committee. ICAI was part of the consultative process adopted by the Companies Law Committee constituted by the Government of India for proposing these major amendments to the Companies Act, 2013. Also, ICAI represented before the Hon'ble Parliamentary Standing Committee on Finance on the issues in the Companies Act, 2013.

(Contributed by Corporate Laws & Corporate Governance Committee of the ICAI. The comments can be sent to [clcg@icai.in](mailto:clcg@icai.in))

Accordingly, the Government of India constituted The Companies Law Committee in June 2015 for making recommendations on the issues arising out of implementation of the Companies Act 2013. The Committee submitted its Report to the Government on 1<sup>st</sup> February 2016. Further, the Companies (Amendment) Bill, 2016 had been referred to the Hon'ble Parliamentary Standing Committee on Finance on 12<sup>th</sup> April, 2016.

The Hon'ble Parliamentary Standing Committee on Finance submitted its report to the Parliament in December, 2016.

On the basis of the Hon'ble Parliamentary Standing Committee Report, apart from amendments in 87 sections and 13 sub-sections proposed earlier, amendments in six more sections have been moved leading to a total amendments of 107, i.e., 93 Sections and 14 sub-sections.

The amendments in the Companies (Amendment) Bill, 2017 are guided by the following objectives:-

- (i) addressing difficulties in implementation owing to undue stringency of compliance requirements,
- (ii) facilitating ease of doing business for companies, including start-ups, in order to promote growth with employment,
- (iii) harmonisation with accounting standards, and other financial/economic legislations,
- (iv) rectifying omissions and inconsistencies in the Act, and

- (v) carrying out amendments in provisions relating to qualification and selection of members of NCLT and NCLAT in accordance with Supreme Court directions.

There are several positive developments particularly on Accounts and Audit & Auditors which have been incorporated in the Companies (Amendment) Bill, 2017 and passed by both the Houses of the Parliament.

Some of the positive amendments for the profession are:

1. Provisions with respect to ratification of appointment of auditor in Section 139(1) have been omitted.
2. Annual General Meeting of an unlisted company can be held at any place in India- Section 96.
3. Unrealised 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 while computing profits for declaring dividend- Section 123.
4. Auditor's report on SFS and CFS (Section 129(3), 129(4) as well as 143(2) and 143(3)).
5. Enabling provisions for opportunity of being heard in Section 130 for auditor/ Chartered Accountant of the Company.
6. Applicability of provisions of Section 130 for the re-opening of accounts has been restricted to eight years.
7. Fines for auditor default linked with audit fees with minimum amount in Section 140(3).
8. Right of access by the auditor of a holding company to the accounts and records of the associate company, whose accounts are required to be consolidated.
9. Auditors are now required to report on Internal Financial Control with reference to financial statements only as per Section 143(3)(i).
10. Section 147 (2)- Punishment for contravention by auditors- Maximum fine for contravention of section 139, 143, 144 or 145 has been linked to audit fees or ₹5 lakhs whichever is less. Minimum fine for contravention by the **auditor knowingly or wilfully** has been reduced from ₹1 lakhs to ₹50000 and maximum fine has also been linked to audit fees.
11. Section 147 (3)- Limiting the liability of auditor to 'shareholder or creditor'.
12. Section 447- Punishment for Fraud- Punishment u/s 447 would be attracted if any person is guilty of fraud involving an amount of at least ten lakh rupees or one percent. of the turnover of the

company, whichever is lower.

13. Section 165- Number of directorships in dormant companies shall not be counted in the limit of 20 directorships.

**Details are enumerated below:**

1. **Provisions with respect to ratification of appointment of auditor by the shareholder annually in Section 139(1) have been omitted.**

As of now, a company is required to appoint an auditor for 5 years in AGM and the company is required to place the matter relating to such appointment for ratification by members in each AGM.

As per the amendments, Auditor's appointment need not be ratified by the shareholders at every AGM.

2. **Annual General Meeting of an unlisted company can be held at any place in India- Section 96.**

As of now, a company is required to hold its Annual General Meeting at its Registered Office.

As per the amendments, Annual General Meeting of an unlisted company may be held at any place in India if consent is given in writing or by electronic mode by all the members in advance.

3. **Unrealised 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 while computing profits for declaring dividend- Section 123.**

In computing profits for declaring dividend, any amount representing unrealised 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.

4. **Auditor's report on SFS and CFS (Section 129(3), 129(4) as well as 143(2) and 143(3)).**

Consolidated Financial Statements shall be prepared as Standalone Financial Statements and are to be prepared and in accordance with applicable accounting standards.

As per the amendments, while preparing the consolidated financial statement of the company, now, financial statements of a company shall contain financial statements of all its subsidiaries and associate companies.

Also, a statement containing salient features of the associate companies are to be attached with

the financial statements of the companies which was earlier required for subsidiaries.

**5. Enabling provisions for opportunity of being heard in Section 130 for auditor/Chartered Accountant of the Company.**

As of now, there is no provision in the section for serving notice to the auditor/chartered accountant in case of reopening of accounts.

An amendment in the section has been brought enabling the Court/Tribunal to give notice to any other party/person concerned.

**6. Applicability of provisions of Section 130 for the re-opening of accounts could be restricted to eight years.**

As of now, there is no mention of the period in the section for the reopening of accounts which would mean that companies have to maintain their accounts even beyond a reasonable time.

As per the amendments

- Enabling provisions have been provided for opportunity of being heard in Section 130 for auditor/Chartered Accountant of the Company.
- Applicability of provisions of Section 130 for the re-opening of accounts restricted to eight years unless an order has been given by the Central Government for longer period.

**7. Fines for auditor default linked with audit fees with minimum amount in Section 140(3).**

As per the provision now, if the auditor does not file resignation within a period of thirty days from the date of resignation, he shall be punishable with fine; minimum- Rupees fifty thousand and maximum Rupees five lakhs.

As per the amendments, Fines for auditor default linked with audit fees with minimum amount.

**8. Right of access by the auditor of a holding company to the accounts and records of the associate company, whose accounts are required to be consolidated.**

As of now the auditor of a holding company has a right to access the books of accounts of subsidiary companies in connection to the consolidation of accounts and not to Associates.

As per the amendments, this right has been extended to associates also.

**9. Auditors are now required to report on Internal Financial Control with reference to financial statements only as per Section 143(3)(i).**

The auditors of all the companies shall report on the adequacy of internal financial control systems and its operating effectiveness.

As per the amendments, the auditors are required to report on Internal Financial Control with reference to financial statements.

**10. Section 147 (2)- Punishment for contravention by auditors.**

As per the amendments:

Maximum fine for contravention of section 139, 143, 144 or 145 has been linked to audit fees or ₹5 lakhs whichever is less.

Minimum fine for contravention by the **auditor knowingly or wilfully** has been reduced from ₹1 lakhs to ₹50000 and maximum fine has also been linked to audit fees.

**11. Section 147 (3)- Limiting the liability of auditor to 'shareholder or creditor'.**

As of now, the auditor is liable to refund the remuneration and pay the damages to "any other person" which is too wide.

As per the amendments, in case of conviction, limiting the liability of auditor to 'shareholder or creditor' by substituting the words with "or to members or creditors of the company".

**12. Section 447- Punishment for Fraud.**

As of now, the provisions have a potential of being misused and may also have a negative impact on attracting professionals in the post of directors etc.

As per the amendments, punishment u/s 447 would be attracted if any person is guilty of fraud involving an amount of at least ten lakh rupees or one percent. of the turnover of the company, whichever is lower.

If the fraud involves an amount less than that and does not involve public interest, then there is no minimum penalty prescribed. Any person guilty of such fraud shall be punishable with imprisonment for a term which may extend to five years or with fine which may extend to twenty lakh rupees or with both.

**13. Number of directorships in dormant companies shall not be counted in the limit of 20 directorships- Section 165.**

As of now, directorship in any company of a director is counted for the limit of 20 directorships. As per the amendments, Number of directorships in dormant companies shall not be counted in the limit of 20 directorships.

The Institute of Chartered Accountants of India (ICAI) will continue its collaborative efforts with the government to strengthen the regulatory framework. ■