



# The Companies Act 2013

*Enlightening Nation*

## E-newsletter

DECEMBER, 2017

### *About the E-newsletter*

Dear Users,

To keep you updated about the latest notifications, circulars & orders issued during the month, thecompaniesact2013.com present herewith its monthly e-newsletter. This is the issue of the January month comprising contemporary articles & monthly amendments.

The notion is to render all the updates in a compiled format and serve a better pavement for easy accessibility.



### CONTENTS

ARTICLE

NOTIFICATIONS

WEBSITE UPDATES



[www.thecompaniesact2013.com](http://www.thecompaniesact2013.com)



## ARTICLE

# *Companies (Amendment) Bill 2017*

**Background to the Companies (Amendment) Bill, 2017:** The process of drafting the Companies (Amendment) Bill started with the formation of Companies Law Committee on June 4, 2015. The Companies Law Committee submitted its 138-page detailed report to the Government on February 1, 2016. Based on the Report, the Companies (Amendment) Bill, 2016 was drafted and introduced in Lok Sabha in March 2016. However, after detailed deliberations, the Companies (Amendment) Bill, 2016 was then referred to the Standing Committee. Based on the recommendations of the Standing Committee (Report dated December 1, 2016), the Amendment Bill was further amended. The Companies (Amendment) Bill, 2017 was passed in Lok Sabha on July 27, 2017. Now, on December 19, 2017, the Companies (Amendment) Bill, 2017 was passed by voice vote in Rajya Sabha.

**Key Highlights & it's impact on India Inc.:** The provisions in the Amendment Bill will have an impact on the group company structure and compliance procedures, as the definitions relating to 'holding company', 'subsidiary company', 'associate company' are undergoing a change.

At the same time, the said bill will also have an impact on the compliance procedures and approval mechanism of Related Party Transactions, as the scope of related parties will be significantly enhanced.

The provisions relating to issue of shares on private placement basis are also being amended. This amendment will have an impact on both – private companies and public companies. The Bill intends to introduce a completely new provision in the Companies Act, 2013 w.r.t. the maintenance of the "Register of significant beneficial owners in a company". Based on the operational and compliance issues faced by the corporate, the Amendment Bill suggests changes to the provisions relating to board meetings and shareholders 'meetings'.

The Bill also provides for clarity in applicability and role of Resident Director and Independent Director. 'Pecuniary relationship' in relation to the independent directors has been further elaborated in the Bill. The entire section relating to 'Loans to Directors' under the Companies Act, 2013 is being substituted by way of the Amendment Bill. The Government has introduced certain checks and balances by way of approval process and for enabling 'loans to directors', in certain cases.

Interestingly, the provisions relating to Managerial Remuneration are being liberalized in the Bill. The requirement of Central Government approval is being replaced by the requirement of approval of the shareholders, secured creditors and non-convertible debenture holders, as the case maybe. The Bill also mandates the requirement that the Statutory Auditor of the company to report in its Auditors Report on: (i) Compliance of the provisions of managerial remuneration and (ii) Whether remuneration paid to any director is in excess of the prescribed limits.

And various of amendment has taken place in this bill , as per market and corporate requirement . Sole purpose of this amendment is “bringing uniform practice , coordination with corporate regulator , and , restrain to being more shell company . The amendment seeks to strengthen corporate governance standards, initiate strict action against defaulting companies and help improve ease of doing business in the country.



## NOTIFICATIONS

### **A. G.S.R. 1480(E) Notification – Companies (Filing of Documents and Forms in Extensible Business Reporting Language), Second Amendment, Rules, 2017 Dated 04.12.2017**

In exercise of the powers conferred by sub-sections (1) and (2) of section 469 read with section 398 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Rules, 2015, namely:—

1. **Short title and commencement** 1. These rules may be called the Companies (Filing of Documents and Forms in Extensible Business Reporting Language), Second Amendment, Rules, 2017.  
(2) They shall come into force from the date of their publication in the Official Gazette.

### **B. GSR (E) Notification Companies (cost records and audit) Amendment Rules, 2017 Dated 07.12.2017**

In exercise of the powers conferred by sub-sections (1) and (2) of section 469 and section 149 of the Companies Act, 2013 (18 of 2013) (hereinafter referred as the Act), the central Government hereby makes the following rules further to amend the companies (cost records and audit) Rules, 2014, namely:

1. These rules may be called the Companies (cost records and audit) Amendment Rules, 2017.
2. In the companies (cost records and audit) Rules, 2014 (hereinafter referred to as the principal rules), in rule 2, after clause (f), the following clause shall be inserted and shall be deemed to have been inserted with effect from the 1st day of April, 2016, namely:-  
(fa) "Indian Accounting Standards" means Indian Accounting Standards as referred to in Companies (Indian Accounting Standards) Rules, 2015.

**C. General Circular no 15/2017 Companies (Cost Records and Audit) Amendment Rules, 2017 Dated 20.12.2017**

The Ministry of Corporate Affairs has received several representations about extension of the last date for filing of Form CRA-4 without additional fees on account of Companies (Cost Records and Audit) Amendment Rules, 2017 and other reasons. The matter has been examined and it has been decided to extend the last date for filing of Form CRA4, for the financial years starting on or after 1st April, 2016, without additional fees till 31st December, 2017.

**D. General Circular no 16/2017 Condonation of Delay Scheme, 2018 Dated 29.12.2017**

Whereas, companies registered under the Companies Act, 2013 (or its predecessor Act) are inter-alia required to file their Annual Financial statements and Annual Returns with the Registrar of Companies and non-filing of such reports is an offence under the said Act.

Whereas, section 164(2) of the Act read with section 167 of the Companies Act, 2013 [the Act], which provisions were commenced with effect from 01.04.2014, provide for disqualification of a director on account of default by a company in filing an annual return or a financial statement for a continuous period of three years.

Whereas, Rule 14 of the Companies (Appointment and Qualification of Directors) Rules, 2014 further prescribes that every director shall inform to the company concerned about his disqualification, if any, under section 764(2), form DIR-8.

Whereas, consequent upon notification of provisions of section 164(2), Ministry of Corporate Affairs (MCA) had launched a Company Law Settlement Scheme 2014 providing an opportunity to the defaulting companies to clear their defaults within the time period specified therein and following the due process as notified.

Whereas MCA in September 2017, identified 3,09,614 directors associated with the companies that had failed to file financial statements or annual returns in the MCA21 online registry for a continuous period of three financial years 2013-14 to 2015-16 in terms of provisions of section 164(2) r/w 167(1)(a) of the Act and they were barred from accessing the online registry and a list of such directors was published on the website of MCA.

Whereas, as a result of above action, there have been a spate of representations from industry, defaulting companies and their directors seeking an opportunity for the defaulting companies to become compliant and normalize operations.

Whereas, certain affected persons have also filed writ petitions before various High Courts seeking relief from the disqualification.

Whereas, with a view to giving an opportunity for the non-compliant, defaulting companies to rectify the default, in exercise of its powers conferred under sections 403, 459 and 460 of the Companies Act, 2013, the Central Government has decided to introduce a Scheme namely "Condonation of Delay Scheme 2018" [CODS-2018] as follows.

1. The scheme shall come into force with effect from 01.01.2018 and shall remain in force up to 31.03.2018
2.
  - i. **Definitions** - In this scheme, unless the context otherwise requires, - means the Companies Act, 2013 and Companies Act, 1956 (where ever applicable);
  - ii. **'overdue documents'** means the financial statements or the annual returns or other associated documents, as applicable, in the case of a defaulting company and refer to documents mentioned in paragraph 5 of the scheme.
  - iii. **"Company"** means a company as defined in clause of 20 of section 2 of the Companies Act, 2013;
  - iv. **"Defaulting company"** means a company which has not filed its financial statements or annual returns as required under the Companies Act, 1956 or Companies Act, 2013, as the case may be, and the Rules made there under for a continuous period of three years.
  - v. **"Designated authority"** means the Registrar of Companies having jurisdiction over the registered office of the company.
3. **Applicability:** - This scheme is applicable to all defaulting companies (other than the companies which have been struck off/ whose names have been removed from the register of companies under section 248(5) of the Act). A defaulting company is permitted to file its overdue documents which were due for filing till 30.06.2017 in accordance with the provisions of this Scheme.
4. Procedure to be followed for the purposes of the scheme:-
  - i) In the case of defaulting companies whose names have not been removed from register of companies, -The DINs of the concerned disqualified directors de-activated at present, shall be temporarily activated during the validity of the scheme to enable them to file the overdue documents.
  - ii) The defaulting company shall file the overdue documents in the respective prescribed forms paying the statutory filing fee and additional fee payable as per section 403 of the Act read with Companies (Registration Offices and fee) Rules, 2014 for filing these overdue documents
  - iii) The defaulting company after filing documents under this scheme, shall seek condonation of delay by filing form e-CODS attached to this scheme online on the MCA21 portal.. The fee for filing application eform CODS is Rs.30,000/- (Rs. Thirty Thousand only).
  - iv) The DINs of the Directors associated with the defaulting companies that have not filed their overdue documents and the eform CODS, and these are not taken on record in the MCA21 registry and are still found to be disqualified on the conclusion of the scheme in terms of section 164(2)r/w 167(1)(a) of the Act shall be liable to be deactivated on expiry of the scheme period
  - v) In the event of defaulting companies whose names have been removed from the register of companies under section 248 of the Act and which have filed applications for revival under section 252 of the Act up to the date of this scheme, the Director's DIN

shall be re-activated only NCLT order of revival subject to the company having filing of all overdue documents.

5. Scheme not to apply for certain documents - This scheme shall not apply to the filing of documents other than the following overdue documents:
  - i) Form Number 208/MGT-7- Form for filing company having share capital.
  - ii) Form 21A/MGT-7- Particulars of Annual return Annual return by a for the company not having share capital.
  - iii) Form 23AC, 23ACA, 23AC-XBRL, 23ACA-XBRL, AOC-4, AOC-4(CFS), AOC (XBRL) and AOC-4(non-XBRL) - Forms for filing Balance Sheet/Financial Statement and profit and loss account.
  - iv) Form 66 - Form for submission of Compliance Certificate with the Register.
  - v) Form 238/ADT-1- Form for intimation for Appointment of Auditors.
6. The Registrar concerned shall withdraw the prosecution(s) pending if any before the concerned Court(s) for all documents filed under the scheme. However, this scheme is without prejudice to action under section L67(2) of the Act or civil and criminal liabilities, if any, of such disqualified directors during the period they remained disqualified .
7. At the conclusion of the Scheme, the Registrar shall take all necessary actions under the Companies Act, 1.956 / 2013 against the companies who have not availed themselves of this Scheme and continue to be in default in filing the overdue documents.
8. The e-Form Cods 2018 would be available from 20.02.2018 or an alternate date, which will be intimated by the ministry on <http://www.mca.gov.in> The stakeholder should complete the necessary procedural requirements and file overdue documents without waiting for the availability of the e-Cods form.

### **LATEST UPDATES ON [thecompaneisact2013.com](http://www.thecompaneisact2013.com)**

- [G.S.R. 1480\(E\) Notification – Companies \(Filing of Documents and Forms in Extensible Business Reporting Language\), Second Amendment, Rules, 2017 Dated 04.12.2017](#)
- [GSR \(E\) Notification Companies \(cost records and audit\) Amendment Rules, 2017 Dated 07.12.2017](#)
- [General Circular no 16/2017 Condonation of Delay Scheme, 2018 Dated 29.12.2017](#)

An Initiative by [www.thecompaniesact2013.com](http://www.thecompaniesact2013.com)

In Association with:

**Arms & Associates LLP**

**Practicing Company Secretaries**

**24 ka 1 Jyoti Nagar, Jaipur**

**Ph.No. 0141-2740924, 5119323**

## **DISCLAIMER**

The e-newsletter of thecompaniesact2013.com is designed to provide information of a general nature and is not intended as a substitute for professional consultation and advice in a particular matter. The opinions and interpretations expressed within are those of the author only and may not reflect those of other identified parties. Thecompaniesact2013.com does not warrant the accuracy and completeness of this newsletter, nor endorse or make any representations about its content. In no event will thecompaniesact2013.com be liable for any damages whatsoever arising out of the use of or reliance on the contents of this newsletter.