



The Companies Act 2013

Enlightening Nation

E-newsletter

JANUARY, 2018

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.



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IMPACT OF COMPANIES AMENDMENT ACT, 2017

The Companies (Amendment) Act, 2017 ('the Amendment') was notified by the Government on 3rd January, 2018 after getting the Consent of President. **The Companies (Amendment) Act, 2017** has brought about many changes and new provisions in the Companies Act, 2013. This was a Comprehensive approach to ward off practical difficulties, give more clarity to the provisions and serve the intended purposes more prolifically. The Amendment Act primarily aims to simplify the provisions of the Act, remove unnecessary procedures and do away with unnecessary requirements under the façade of disclosures and/or compliance requirements. Enactment of the Companies (Amendment) Act, 2017, will ensure further ease of doing business in India.

Some Of The Aspects Of The Amendment Act And Impacts Thereof :

▪ **Managerial Remuneration:**

Section 197 of the Act has been amended to keep outside the purview of the Central Government's approval payment of remuneration exceeding the applicable limits set out by that section in respect of Managing Director, Whole Time Director, Manager (i.e., 5%/10%) or total overall remuneration (i.e., 11%) or other Directors (i.e., 1%/3%) provided special resolution is passed to this effect.

The amendment to this section will certainly help companies in smooth sailing. Therefore, the Central Government is handling over the baton to the members of the company attaching, conceivably, some conditions.

▪ **Definition Of Independent Director:**

The Amendment made specific changes in the definition of Independent Director given in section 149(6) of the Act. While amending the definition of Independent director by extending its reach given the conceivable areas, the Amendment quietly inserted a Proviso to sub-section 160 of the Act which deals with the right of persons other than retiring directors to stand for Directorship to be appointed at General Meeting and *inter alia*, calls for deposit of Rs. 1 Lakh to propose any such appointment.

▪ **Prospectus :**

Section 26 of the Act dealing with the contents of prospectus has been amended. The Amendment has created an Explanation to sub-section (2) of Section 186 - dealing with loan and investment by a Company – to establish that a company may extend loan to any person if he is an employee without the limit under that sub-section being applicable.

▪ **Annual Return :**

Section 92 of the Act before amendment called for a prescribed extract of the Annual Report to be annexed to the Director's Report. The Amendment bestows the responsibility of prescription for the contents of a prospectus on the SEBI who will act in consultation with Central Government. This is good for any listed company or whose securities to be offered through a prospectus are going to be listed. After all, the draft prospectus prepared in accordance with the Act had to go to the SEBI for verification before its issue and the SEBI may call for any change/s therein.

“Knowledge is a process of piling up facts; wisdom lies in their simplification.”

- **Martin H. Fischer**

Simplified laws and removal of obsolete laws will certainly help in “Ease of doing business” and do away with the unnecessary requirements under the façade of disclosures and/or compliance requirements.



NOTIFICATIONS

A. THE COMPANIES (AMENDMENT) ACT, 2017 vide Notification Dated 03rd January, 2018:

THE COMPANIES (AMENDMENT) Bill, 2017 received The Assent Of The Hon'ble President Of India On The 3rd January, 2018 Which Is An Act Further To Amend The Companies Act, 2013. By This Act 93 Amendments Been Carried Out In Companies Act, 2013 To Provide Relief To Stakeholders And To Provide More Clarity On Some Of The Provisions Of Companies Act, 2013.

Companies (Amendment) Act, 2017 Come Into Force On Such Date As The Central Government May, By Notification In The Official Gazette, Appoint And Different Dates May Be Appointed For Different Provisions Of This Act And Any Reference In Any Provision To The Commencement Of This Act Shall Be Construed As A Reference To The Coming Into Force Of That Provision.

B. GSR (E) Notification - Companies (Registration offices and Fees) Amendment Rules, 2018 , Dated – 20th January, 2018

On 69th Republic day of our Country, Ministry of Corporate affairs has provided us a relief in continuing the regime of “EASE OF DOING BUSINESS”. MCA has introduced a new web service “RUN” (Reserve Unique Name) for reserving ‘name of proposed company’ and for changing name of existing company w.e.f. 26th January, 2018

Under the new process, the reservation of name shall be only for 20 days instead of 60 days for new Company and existing companies will still have 60 days to change their name after name reservation.

Further, Form SPICe (INC-32), Form SPICe MoA (INC-33), Form SPICe AoA (INC-34), Form INC-3 (One Person Company- Nominee consent form), Form INC-22 (Notice of situation or change of situation of registered office), Form INC-24 (Application for approval of Central Government for change of name), Form DIR-3 (Application for allotment of Director Identification Number), Form DIR-12 (Particulars of appointment of Directors and the key managerial personnel and the changes among them) and Form GNL-1 (Applications made to Registrar of Companies) will be revised on MCA21 Company Forms Download page.

Stakeholders are advised to check the latest version of the form before filing.

C. GSR (E) Notification - companies (Appointment and Qualification of Directors) Amendment Rules, 2018, Dated – 26th January, 2018

In the companies (Appointment and Qualification of Directors) Rules, 2014 (hereinafter referred to as the principal rules) FORM DIR-3 is being substituted with new Form for the Existing Companies and various Proviso is being Substituted.

D. GSR (E) Notification – Section 1 and Section 4 Of Companies (Amendment) Act, 2017 Notified, Dated – 26th January, 2018

Section 1(2) confers power on Central Government to appoint different dates for enforcement of different provisions of the Act. Section 4 of the Companies (Amendment) Act, 2017, amends Section 4(5)(i) of the Companies Act, 2013 which relates to the name reservation by the registrar. After the notification, the period for which name is reserved by the registrar has been amended from 'sixty days' from the date of the application' to 'twenty days from the date of the approval or such other period as may be prescribed'.

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- **[THE COMPANIES \(AMENDMENT\) ACT, 2017 vide Notification Dated 03rd January, 2018:](#)**
- **[GSR \(E\) Notification - Companies \(Registration offices and Fees\) Amendment Rules, 2018 , Dated – 20th January, 2018](#)**
- **[GSR \(E\) Notification - companies \(Appointment and Qualification of Directors\) Amendment Rules, 2018, Dated – 26th January, 2018](#)**
- **[GSR \(E\) Notification – Section 1 and Section 4 Of Companies \(Amendment\) Act, 2017 Notified, Dated – 26th January, 2018](#)**

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