



**The Companies
(Amendment)
Act, 2017- A
Synopsis**

CNK & Associates LLP

www.cnkindia.com

The Companies (Amendment) Act, 2017

A Synopsis

Introduction

The Companies (Amendment) Act, 2017 (**2017 Amendment Act**) received the assent of the Hon'ble President of India on **3rd January 2018** and has also been **notified in the Official Gazette** on the same date. This Act is an amendment to the Companies Act, 2013.

The Ministry of Corporate Affairs has notified that **Section 1** (Short title and commencement) and **Section 4** (Memorandum) of the 2017 Amendment Act will **come into the force on 26th January 2018**.

The amendments under the Companies (Amendment) Act, 2017, are broadly aimed at:

- ♦ Addressing difficulties in implementation owing to stringent compliance requirements;
- ♦ Facilitating ease of doing business in order to promote growth with employment;
- ♦ Harmonisation with accounting standards, the Securities and Exchange Board of India Act, 1992 and the regulations made thereunder, and the Reserve Bank of India Act, 1934 and the regulations made thereunder;
- ♦ Rectifying omissions and inconsistencies in the Act.

Journey

16th March 2016	The Companies (Amendment) Bill, 2016 was introduced in the Lok Sabha
12th April 2016	Referred to the Standing Committee on Finance
30th November 2016	The Standing Committee adopted its report
27th July 2017	The Companies (Amendment) Bill, 2017 was passed by the Lok Sabha after incorporating a number of official amendments
3rd January 2018	Assent of the Hon'ble President of India received

Synopsis

Given below is a synopsis of key changes brought about by the 2017 Amendment Act.

Definitions

Section 2(6)- Associate Company

- ♦ There is a change in the *Explanation* of the term '*significant influence*'. Significant influence means control of at least 20% of the voting power or control or participation in business decision under an agreement. (*As per 2013 Act, it was 20 % of total share capital*)
- ♦ 'Joint Venture' is defined to mean a joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement.

▲ Definition now in line with Accounting Standards.

▲ The meaning of joint venture has also been specified in the definition of associates for the first time and hence there will be no ambiguity in determining the same – also preference shares with no voting rights are not to be counted to determine significant influence

Section 2(41) Financial Year (FY)

- ♦ In addition to a holding/subsidiary company, an associate company of a company incorporated outside India can also make an application to the National Company Law Tribunal (NCLT) for a different FY

Section 2(46)-Holding Company

- ♦ An *Explanation* has been inserted which states that the expression 'company' to include any Body Corporate

▲ Earlier, the term 'Company' used to cover only a company incorporated under the Companies Act, 2013 or under any previous company law.

▲ Now, foreign companies can also be the Holding company of a company. Even an LLP can become a Holding company of a company since LLP is a Body Corporate under the LLP Act

Section 2(49) –Definition of Interested Director

- ♦ This definition has been deleted

Though 2013 Act defined the term 'interested director', it was not used in any other sections of the 2013 Act.

Section 2(51) -Definition of Key Managerial Personnel (KMP)

- ♦ Definition of KMP includes such other officer not more than one level below the directors who is in whole time employment and designated as KMP by the Board.

▲ Scope of definition of KMP has been widened and now the Board of Directors (BoD) will have the power to elect officer not more than one level below the directors who are in whole time employment.

Section 2(57) -Definition of Net worth

- ♦ Both the debit and credit balance of Profit and Loss account are to be included while calculating net worth

<u>Particulars</u>	<u>2013 Act</u>	<u>2017 Amendment Act</u>
<u>Share Capital</u>	✓	✓
<u>Reserves & Surplus</u>	✓	✓
General Reserve	✓	✓
Share Premium	✓	✓
Amalgamation Reserve	✓	✗
Profit and Loss Account (Dr/ Cr)	✗	✓

Section 2(71) -Definition of Public Company

- ♦ The word 'and' is included in the definition clarifying that a public company must satisfy both the conditions mentioned
- ♦ Public Company, now means a company which:
is not a private company AND has minimum share capital as maybe prescribed

Section 2(76) -Definition of Related Party

- ♦ Instead of only a company, any Body Corporate which is a holding, subsidiary or an associate company of such company or a subsidiary of a holding company is considered as a related party.
- ♦ A new sub-clause has been inserted to include any 'investing company or the venturer of the company'.

Section 2(85) -Definition of Small Company

- ♦ The maximum limit up to which the Central Government (CG) can increase cap of paid up capital is increased from Rs. 5 crores to Rs. 10 crores and turnover from Rs. 20 crores to Rs. 100 crores.
- ♦ Turnover should be as per the Profit And Loss Account (P&L) of the immediately preceding Financial Year. (FY)

Section 2(87) Subsidiary Company

- ♦ Amendment in sub-clause (ii) where in the word 'total share capital' is substituted by 'total voting power'

▲ Change in line with AS 21 - Consolidated Financial Statements

▲ A company will be treated as subsidiary in case the holding company exercises or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiary companies. This would remove practical difficulties faced by companies as holding status would be based on ownership of the company (i.e. equity holding only)

Section 2(91) -Definition of Turnover

- ♦ It has been modified to mean gross amount of revenue recognised in Profit & Loss account from sale, supply or distribution of goods or on account of services rendered or both
- ♦ Earlier it was *'aggregate value of realisation of amount from sale, supply or distribution of goods or on account of services rendered or both'*

Formation of companies

Section 3A-Members Members severally liable in certain cases.

- ♦ This section states that at any time if
 - ✓ Number of members of a company is reduced,
Below 7 - in the case of a public company
Below 2 -in the case of a private company, and
 - ✓ The company carries on business for more than 6 months

every person who is a member of the company during the time that it so carries on business after those 6 months and is cognizant of the fact that it is in default will be severally liable for the payment of the whole debts of the company contracted during that time, and may be severally sued.

New Section has been inserted to include several liability of members in certain cases

Incorporation Process

Section 4(5)(i)-Reservation of company name

- ♦ Validity period is reduced to 20 days (from 60 days) in case of new company
- ♦ Validity period for change of name of existing company continues to be 60 days

Section 7(1)-Subscribers to MoA

- ♦ Only self- declaration by each subscriber and first director *instead of affidavit* is required

Section 12(1), 12(4)-Registered office and change thereof

- ♦ A Company is required to have a registered office within 30 days of incorporation (*earlier it was 15 days*)
- ♦ Notice of change of situation of registered office should be given to the Registrar of Companies (**RoC**) within 30 days (*currently 15 days*)

Issue of Securities – Prospectus, etc.

Section 26(1)-Matters to be stated in prospectus

- ♦ Instead of detailed contents only such information as specified by SEBI to be included

Section 35(2)-Civil liability for misstatements in prospectus

- ♦ Director, promoter, etc. **relieved from any civil liability if such person has relied on a misleading statement made by an expert** and he had reasonable ground to believe and did up to the time of the prospectus believe that the person making the statement was competent to make it and that the person has given his consent and not withdrawn the same.

Section 42 -Offer / invitation for subscription of securities on private placement

- ♦ **Entire Section has been substituted.**
- ♦ Major amendments are-
 - ✓ Return of allotment is to be filed within 15 days (*earlier 30 days.*)
 - ✓ Private Placement offer letter should not contain any right of renunciation.
 - ✓ Utilisation of the money has been linked with filing of return with ROC.
 - ✓ Penalty amount has been restricted to Rs. 2 crores (*earlier entire amount raised*)
 - ✓ Preferential allotment will also have to follow the provisions for Rights Issue (*currently included in Rules, now brought in main Section*)

Restriction on the use of proceeds of private placement till the time allotment is done and return is filed with the RoC is for safeguarding against round tripping of share application money without there being actual allotment of shares

Prohibition on Issue of Shares at discount

Section 53(2)-Issue of shares at discount

- ♦ Any share issued by a company at a discount will be void. (*earlier discounted price.*)
- ♦ Clause 2A has been inserted to permit conversion of loans into equity at less than the par value

▲ Usage of the word 'discount' brings more clarity
▲ Insertion of clause 2A would benefit companies going into debt restructuring plans as per RBI guidelines since now shares can be issued to lenders at less than par value

Section 54 (1) (c) issue of sweat equity shares- omitted

Now a company can issue sweat equity shares any time, the criteria of 1 year after commencement of business is removed.

Acceptance of Deposits

Section 73-Prohibition on acceptance of deposits from public

- ♦ Deposit Repayment Reserve Account to include 20% (*earlier 15 %*) of deposits, maturing during following FY deposited on or before the 30th April each year with a scheduled bank in a separate account.
- ♦ Requirement of providing deposit insurance has been deleted i.e. Section 73(2) (d)
- ♦ Companies, who had defaulted in repayment of deposits, can now accept deposits after a period of 5 years from the date of making good the default.

Section 74-Repayment of deposits, etc. accepted before the commencement of the 2013 Act

- ♦ Such deposits are required to be repaid within 3 years (*earlier 1year*) from such commencement or on or before expiry of the period for which the deposits were accepted (*earlier date on which such payments were due*), whichever is earlier:
- ♦ Renewal of any such deposits will be done in accordance with the provisions of Chapter V and the rules made thereunder

Section 76A-Punishment for contravention of Section 73

- ♦ Amendment restricts the fine payable to Rs 1 crore or twice the amount of deposit whichever is less
- ♦ Every officer in default is also punishable with imprisonment up to 7 years **and** (*earlier or*) fine not less than Rs.25 lakhs and up to Rs. 2 crores

With insertion of 'and', an offence under Section 73 now becomes non-compoundable

Registration of Charges and Satisfaction

Section 77- Duty to register charges

- ♦ This section will not apply to such charges as may be prescribed in consultation with the RBI

Section 78-Application for registration of Charges

- ♦ A person in whose favour the charge has been created can file the charge on expiry of 30 days from creation of charge where company fails to do so. (*earlier 300 days*)

Section 82-Reporting for satisfaction of Charge

- ♦ Amendment provides company an option to make application to RoC to provide time up to 300 days to file form for intimation of Satisfaction of Charge with additional fees (*earlier after 30 days*)

Beneficial Interest in any share

Section 89(6), 89(7)-Declaration in respect of beneficial interest in any share

- ♦ Now declaration can be filed any time on payment of additional fees
- ♦ Currently application is needed for condonation of delay by RoC for delays in filing such return beyond 270 days

Section 90-Investigation of significant beneficial ownership of shares in certain cases

- ♦ Existing Section has been substituted with more detailed provisions
- ♦ Declaration is to be given by every individual acting alone or jointly with other persons including a Trust and persons resident outside India who holds beneficial interest of not less than 25 % in shares of a company or right to exercise significant influence or control [as per Section 2(27)]
- ♦ Company has to maintain a register for such persons
- ♦ Company should also give notice to any such person (up to 3 years)
- ♦ Fine will be imposed on company and officers for not maintaining such register

Annual Return

Section 92-Annual Return (AR)

- ♦ AR need not include details of indebtedness of the company and FII's names, addresses, countries of incorporation, registration and percentage of shareholding held by them
- ♦ Amendment omits requirements w.r.t extracts of annual return to form part of Board's Report – copy to be available on website
- ♦ Provision is there for abridged form of Return for OPC and Small Companies
- ♦ It can be filed anytime on payment of additional fees (provision for application to RoC for condonation of delay beyond 270 days removed)
- ♦ If AR is not filed within time limits, fine from Rs. 50,000 to 5 lakhs

- ♦ For non-filing, every officer in default also punishable with imprisonment (up to 6 months) OR fine (Rs. 50,000 to 5 lakhs) OR BOTH
- ♦ For non-filing of AR for 3 consecutive years – directors become disqualified.

Section 93 - Disclosures to Registrar - Omitted

- ♦ The requirement that every listed company to file a return with the RoC with respect to change in number of shares held by promoters and top ten shareholders of such company is omitted.

Section 94- Place of keeping and inspection of registers, returns, etc.

- ♦ The registers or copies of return may also be kept at any other place in India in which more than 1/10th of the total number of members as entered in the register of members reside, if approved by a special resolution passed at a general meeting of the company.

General Meetings of members

Section 96- Annual General Meeting (AGM)

- ♦ AGM of 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.

AGM of unlisted companies can be held at the registered office of the company or any other place also

Section 100- Extraordinary General Meeting (EGM)

- ♦ Wholly Owned Subsidiaries (WoS) of companies incorporated outside India can hold EGM outside India.
- ♦ Other companies to hold EGM in India.

Section 101- Notice of meeting

- ♦ An AGM/General meeting may be called at a shorter notice after consent in writing or electronic mode is given by 95% of members entitled to vote.
- ♦ Where any member of a company is entitled to vote only on some resolution or resolutions to be moved at a meeting and not on the others, those members will be taken into account for the purposes of this sub-section in respect of the former resolution or resolutions and not in respect of the latter.

Section 110-Postal Ballot

- ♦ Permission has been granted to company to transact an item at a general meeting also (currently mandatory required to be transacted through postal ballot)

Declaration of Dividends

Section 123-Declaration of Dividend

- ♦ More clarity on calculation of amounts that can be distributed as dividend
- ♦ Proviso inserted as: '*in computing profits any amount representing unrealized gains, notional gains and revaluation of assets and any changes in carrying amount of an asset or liability at fair values shall be excluded*'

This proviso will require companies following Ind-AS to bifurcate profits to exclude profits arising from the above – in case of dividend declaration from Reserves it can become a complex calculation

- ♦ A company can declare interim dividend during any FY or at any time during the period from closure of FY till holding of the AGM out of the surplus in the Profit and Loss account or out of profits of the FY for which such interim dividend is declared or out of profits generated in the FY till the quarter preceding the date of declaration of the interim dividend

The amendment also corrects an inconsistency which was earlier prevalent due to use of the word “and” instead of “or”: i.e. , to allow declaration of interim dividend for a FY from the profits of the said year or from brought forward surplus in the Profit and Loss account

Re-opening of Financial Statements (FS)

Section 130-Reopening of FS on Court or NCLT Order

- ♦ No order should be made in respect of re-opening of books of account relating to a period earlier than 8 FY immediately preceding the current FY.
- ♦ However where a direction has been issued by the CG for keeping of books of account for a period longer than 8 years, the books of account may be ordered to be re-opened within such longer period.

Financial Statements

Section 134- FS, Board's Report (BR), etc.

- ♦ Chief Executive Officer (**CEO**) can sign FS irrespective of whether he is a director or not.
- ♦ BR to include the web address where AR has been placed (*earlier requirement of giving extract of AR is done away with*)
- ♦ BoD's responsibility for carrying the performance evaluation of BoD, Directors and committee has been omitted. To mention the fact that evaluation has been made only for listed companies. There has been an alignment of provisions of Sections 134 (3)(p), 178(2) and Schedule IV with respect to performance evaluation of directors.
- ♦ Disclosures provided in the FS are not to be reproduced in BR again
- ♦ CG may prescribe abridged BR for OPCs and Small Companies.

Corporate Social Responsibility (CSR)

Section 135-CSR amendments

- ♦ Eligibility criteria for incurring expenditure towards CSR to be calculated based on figures of immediately preceding FY (*earlier any FY*).
- ♦ Amendments in composition of CSR Committee whereby if a company is not required to appoint an independent director, then it shall have 2 or more directors in the committee
- ♦ CG empowered to prescribe sums which shall not be included for calculating 'net profits' u/s 135
- ♦ Areas or subjects in Schedule VII in which CSR activities could be taken up to be modified
- ♦ CSR provisions is made applicable even to Foreign Companies (Section 384)

In case of loss in immediately preceding year, no CSR spending will be necessary

Section 136-Right of member to copies of FS

Changes made with respect to preparation of consolidated financial statements (CFS)

- ♦ Every listed company (*earlier every company*) having a subsidiary or subsidiaries should place separate audited accounts in respect of each of subsidiary on its website.
- ♦ Where such foreign subsidiary is statutorily required to prepare CFS under any law of the country of its incorporation, it is sufficient if CFS of such foreign subsidiary is placed on the website of the listed company;
- ♦ Where the foreign subsidiary is not required to get its FS audited under any law of the country of its incorporation and which does not get such FS audited, the holding Indian listed company may place the unaudited FS on its website and where such FS is in a language other than English, a translated copy of the FS in English should also be placed on the website.

Section 137-Copy of FS to be filed with the registrar

- ♦ Where accounts of foreign subsidiary are not required to be audited, then the holding Indian company should file unaudited FS along with a declaration to this effect and where such FS is in a language other than English, along with a translated copy of the FS in English.

Provisions related to Auditors

Section 139-Appointment of Auditors

- ♦ Provision related to ratification of appointment of auditors by members at every AGM is removed

Section 140-Removal, resignation of auditor and giving of special notice

- ♦ The auditor will be punishable with fine of Rs. 50,000 or its remuneration (*earlier Rs. 50,000*), whichever is less if the auditor has not filed within 30 days from the resignation date a

statement in the prescribed form with the company and the Registrar, indicating the reasons and other facts as may be relevant with regard to his resignation.

Section 141-Eligibility, qualifications and disqualifications of Auditors

- ♦ A person who, **directly or indirectly**, renders any service referred to in Section 144 (auditor not to render certain service) to the company or its holding company or its subsidiary company will not be eligible for appointment as Auditor.

Currently the restriction is only on any person, whose subsidiary, associate company or any other form of entity is engaged as on the date of appointment in consulting and specialized services as provided in Section 144

Auditors' Reporting

Section 143-Powers and duties of Auditors and Auditing Standards

- ♦ Auditor of holding company will also have right of access to the records of all its associated companies along with subsidiaries.
- ♦ Auditor's Report to include whether Internal Financial Controls (**IFC**) with reference to FS are in place and not in respect of IFC system of the company
- ♦ Section 143 to be applicable to 'cost accountants' instead of 'cost accountant in practice'.
- ♦ Provisions related to punishment with imprisonment AND fines for an auditor increased substantially – maximum 1 year and fine up to 8 times the remuneration

Currently the clause on reporting for IFC is very broad – the amendment makes reporting for IFC specific only with reference to preparation of FS

Section 147- Punishment for contravention

- ♦ If any of the provisions of Sections 139 to 146 (both inclusive) are contravened, the company will be punishable with fine which shall not be less than Rs. 25,000 or 4 times the remuneration of the auditor, whichever is less (*earlier Rs. 5 lakh*) and every officer of the company who is in default will be punishable with imprisonment for a term which may extend to 1 year or with fine which shall not be less than Rs. 10,000 but which may extend to Rs. 1 lakh or with both.
- ♦ If an auditor of a company contravenes any of the provisions of Section 139, Section 143, Section 144 or Section 145, the auditor will be punishable with fine which will not be less than Rs. 50,000 (*earlier Rs. 25,000*) but which may extend to Rs. 25 lakh (*earlier Rs. 5 lakh*)
- ♦ A new proviso has been included after sub-section 5 which states that in case of criminal liability of an audit firm, in respect of liability other than fine, the concerned partner or partners, who acted in a fraudulent manner or abetted or colluded in any fraud will only be liable

Appointment of Directors, etc.

Section 149-Company to have Board of Directors

- ♦ Period of 182 days for determining residency of a director is to be computed with reference to Financial Year (FY) instead of Calendar Year and in case of newly incorporated companies, the requirement is to apply proportionately
- ♦ Independent Directors (ID) can accept remuneration or have transaction not exceeding 10% of his total income (*currently it was prohibited*)
- ♦ Restrictions on pecuniary relationship entered into by a relative of the ID has been specified
- ♦ Appointment of ID whose relative is an employee during the 3 FYs immediately preceding the FY is to be considered

Section 152- Appointment of Directors, etc.

- ♦ In addition to DIN other identification has also been prescribed

Section 160 - Right of persons other than retiring directors to stand for directorship

- ♦ The requirement of deposit of amount of Rs. 1 lakh will not apply in case of appointment of an independent director or a director recommended by the Nomination and Remuneration Committee of the company.

Section 164- Disqualifications for appointment of Director

- ♦ Disqualification for appointment of director w.r.t. non-filing of FS or AR or failure to repay deposits **shall not apply for 6 months from date of his appointment**
- ♦ A director would be disqualified if he/she has been convicted by a court for any offence, on the order of the Tribunal and convicted in the matter of related party transaction (RPT), even if an appeal or petition has been filed against the order or conviction or disqualification

Section 165-Number of Directorships

- ♦ Directorships in dormant companies is to be excluded from the limit of 20 directorships

Section 167-Vacation of office of director

- ♦ In case director incurs disqualifications, he shall vacate office in all companies other than the company which is in default

Section 168- Resignation of Director

- ♦ Requirement for forwarding copy of resignation in e-form DIR 11 has been made optional

Board Meetings

Section 173-Meetings of Board

- ◆ Directors can attend through VC even on restricted items if there is physical quorum

Audit Committee

Section 177-Audit Committee (AC)

- ◆ Every listed **public** company to constitute AC instead of every listed company. (*earlier private companies with listed debt also covered*)
- ◆ RPT other than those prescribed under Section 188, if not approved by AC will require approval of BoD
- ◆ Transaction not exceeding Rs. 1 crore entered into by a director or officer of the company without AC approval and ratification within 3 months, shall be voidable at the option of the AC
- ◆ RPT between holding company and its WoS that do not required BoD's approval under Section 188, would not require AC's approval

This brings relief to those Private Companies who have their debt instruments listed on stock exchanges

Loan to Directors, etc.

Section 185-Loan to Directors

- ◆ **Entire Section has been substituted**
- ◆ Major amendments are-
 - ✓ Complete restriction on providing loan, guarantee or security in connection with loan to any director, director of the holding company or any partner or relative of any such director or any firm in which any such director or relative in a partner.
 - ✓ Company allowed to give loan or guarantee or provide security to any person in whom any of the director is interested subject to passing of **special resolution and utilisation of loans** by the borrowing company **for its principal business activities**

This change makes it easier for lending between group companies with common directors across the group

Section 186-Loan and investment by company

- ◆ Giving of loans to employees is excluded from the ambit of the provisions of the Section 186.
- ◆ Shareholders' approval will not be required where a loan or guarantee is given or where a security has been provided by a company to its WoS or a JV, or acquisition is made by a holding company, by way of subscription, purchase or otherwise of, the securities of its WoS

- ♦ The 2017 Amendment Act also clarifies when the company will be deemed to be principally engaged in the business of acquisition of shares, debentures or other securities. (specifies the 50 : 50 test)
- ♦ Definition of Investment company has been amended. It states that a company would be deemed to be principally engaged in the business of acquisition of shares, debentures or other securities, if its–
 - ✓ assets in the form of investment in shares, debentures or other securities constitute not less than 50% of its total assets, or
 - ✓ its income derived from investment business constitutes not less than 50% as a proportion of its gross income.

[Related Party Transactions](#)

Section 188-Related Party Transactions (RPT)

- ♦ Restriction on the eligibility of a related party (**RP**) to vote on a **RPT** (in which they are interested) not to be applicable in cases wherein 90% or more members, in number, are relatives of promoters or are RP
- ♦ Non-ratification of transaction shall be voidable at the option of not only the Board but also at the option of the shareholders

Amendment brings clarity since currently though ratification is allowed both by Board or Shareholders but transaction was only voidable at the option of the Board

Section 194- Prohibition on forward dealings in securities of company by director or key managerial personnel-Omitted

Section 195- Prohibition on insider trading of securities-Omitted

[Appointment of Managing Director etc.](#)

Section 196-Appointment of Managing Director (MD), Whole-time director (WTD) or Manager

- ♦ A person beyond the age of 70 years can be appointed as MD or WTD or manager even when such appointment has not been approved by special resolution provided that the resolution for such appointment is passed with votes cast in favor of the motion exceed the votes, cast against the motion and the CG is satisfied that such appointment is most beneficial to the company.
- ♦ Appointments to be approved by CG required in case the appointment is not in accordance with the matters specified in Part I of Schedule V

Managerial Remuneration

Section 197-Overall maximum managerial remuneration (MR) and MR in case of absence or inadequacy of profits

- ♦ CG approval is not required at the time of the payment of MR exceeding 11% of the net profits if resolution is passed in general meeting
- ♦ MR in excess of individual limits can be paid if special resolution has been passed for payment in excess of prescribed limits
- ♦ Prior approval (i.e. before member's approval) of bank or public financial institution or non-convertible debenture holder or secured creditor has to be obtained in case of any default
- ♦ No prior approval of the CG in case of absence or inadequate profits is required.
- ♦ Excess MR has to be refunded by the director to the company within 2 years.
- ♦ No CG approval is required for waiver of the recovery of any sum refundable to company by the director. Only a special resolution has to be passed within 2 years from the date the sum becomes refundable.
- ♦ No CG approval is required in cases where Schedule V is applicable on grounds of no profits or inadequate profits
- ♦ Auditors Report has to include a statement as to whether the remuneration paid by the company is accordance with the provisions of Section 197
- ♦ All existing applications to the CG will abate and the company has to get the members' approval within 1 year of the Amendment Act coming into force.

There is a major simplification in managerial remuneration provisions – the process of approvals from CG is almost done away with if shareholders approval is obtained

Computation of profit for Managerial Remuneration

Section 198- Calculation of Net Profit

- ♦ While computing net profits only Investment companies shall give credit to profits by way of premium on shares or debentures which are issued or sold by the company
- ♦ Credit is not available for:
 - ✓ “Any amount representing unrealised gains, notional gains or revaluation of assets”

Foreign Companies

Section 379- Application of the Act to Foreign companies (FC)

- ♦ Section 380 (Documents, etc. to be delivered to Registrar by FC), Section 381 (Accounts of FC) , Section 382 (Display of name etc. of FC), Section 383(Service on FC), Section 384 (Debentures, AR, registration of charges, books of accounts and their inspection), Section 385 (Fee for registration of documents),Section 386 (Interpretation), Section 392(Punishment of

contravention) and Section 393 (Company's failure to comply with provisions of Chapter XXII-Companies incorporated outside India-not to affect validity of contracts etc.) will be applicable to all FCs

- ♦ CG may exempt any FC from compliance with any of the above Sections.

Fraud

Section 447-Punishment for fraud

- ♦ Frauds involving an amount of at least Rs. 10 lakh or 1% of the turnover of the company, whichever is lower would be punishable under this Section
- ♦ Fraud less than the above limit and not involving public interest will be punishable with imprisonment for a term which may extend to 5 years or with fine which may extend to Rs. 20 lakh or with both.

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Our Offices in India

Ahmedabad

'Hrishikesh',
2nd Floor, Vasantbaug Society,
Opp. Water Tank, GulbaiTekra
Ahmedabad- 380 006
Tel. No. +91 79 2630 6530

Bengaluru

96, 7th Cross,
Domlur,
Bengaluru 560 071
Tel. No.+91 80 2535 1353

Chennai

Kochu Bhavan
Ground Floor, Old No 62/1, New No 57,
McNichols Road, Chetpet
Chennai 600031
Tel No. +91 44 4384 9695

Mumbai

Mistry Bhavan, 3rd Floor,
Dinshaw Vachha Road, Churchgate
Mumbai 400020
Tel No. +91 22 6623 0600

Mumbai (Suburban Office)

501/502, Narain Chambers,
M.G. Road, Vile Parle (East)
Mumbai 400 057
Tel No. +91 22 6457 7600/01/02

New Delhi

Suite 1101,
KLJ Towers,NSP
New Delhi 110 034
Tel No.+91 11 2735 7350/7030

Pune

4, Kumar Panorama, 1st Floor
45/18 Shankerseth Road
Pune 411 037
Tel No: 91 20 2645 7251/52

Vadodara

C-201/202, Shree Siddhi Vinayak Complex,
Faramji Road, Alkapuri
Baroda - 390 005
Tel. No. +91 265 234 3483

Our Overseas Office

Dubai

Suite#17.06 Dubai World Trade Centre
ShaikhZayed Road, Dubai, P.O.Box.454442
Tel. No. +971 04 355 9533