

# **Critical Issues In Companies (Amendment) Act, 2017**

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**Company Law Lecture Series at Thane Chapter  
of ICSI**

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# Associate Company

Section 2(6) of Cos. Act, 2013

*(not notified yet)*

# Amended provision:

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**Associate Company** in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a Joint Venture Company.

*Explanation.—For the purpose of this clause:*

*(a) the expression ‘significant influence’ means control of at least 20% of **total voting power**, or control of or participation in business decisions under an agreement;*

*(b) the expression ‘Joint Venture’ means a joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement.*

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# Holding Company

Section 2(46) of Companies Act, 2013

*(effective from Feb. 9, 2018)*

# Amended provision:

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Holding Company in relation to one or more other companies, means a company of which such companies are subsidiary companies.

**Explanation — For the purposes of this clause, the expression ‘company’ includes any body corporate.**

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# Key Managerial Personnel

Section 2(51) of Cos. Act, 2013

*(effective from Feb. 9, 2018)*

# Amended provision:

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**Key Managerial Personnel** in relation to a company, means—

- i. Chief Executive Officer or Managing Director or Manager;
- ii. Company Secretary;
- iii. Whole-time Director;
- iv. Chief Financial Officer;
- v. **Such other officer, not more than one level below the directors who is in whole-time employment, designated as KMP by Board; and**
- vi. such other officer as may be prescribed;

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# Related Party

Section 2(76) of Cos. Act, 2013

*(effective from Feb. 9, 2018)*



# Amended provision:

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‘Related Party’, with reference to a company, means—

(viii) any **body corporate** which is—

(A) a holding, subsidiary or an associate company of such company;

(B) A Subsidiary of a Holding Co. to which it is also a subsidiary; or

**(C) An Investing Co. or the venturer of the Co.**

**Explanation – For the purpose of this clause, ‘the investing company or the venturer of a company’ means a body corporate whose investment in the company would result in the company becoming an associate company of the body corporate.**

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# Issue of shares on private placement basis

Section 42 of Companies Act, 2013

*(not yet notified)*

# Highlights of amended provisions:

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- Title of Section Vs Content of the Section,
  - Title of the Section: Issue of *shares* on private placement basis.
- Reference of Sec. 26 of Cos. Act, 2013 – deleted,
- ‘Identified persons’ – certain exclusions,
- No right of renunciation for identified person,
- *‘Private Placement’ means any offer or invitation to subscribe or issue of securities to a select group of persons by a Co. (other than by way of public offer) through private placement offer-cum-application, which satisfies the conditions specified in Sec. 42.*

# ... Highlights of amended provisions:

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- Modes of receiving money – Cheque or Demand Draft or other banking channel & not by cash,
- No fresh offer or invitation under Sec. 42 shall be made unless the allotments w.r.t. any offer or invitation made earlier have been completed or that offer or invitation has been withdrawn or abandoned by the Co.,
- Irrespective of penal provisions, any private placement issue not made in compliance of the provisions of the Sec. 42(2) of the Act shall be deemed to be a ‘public offer’. All the provisions of Cos. Act, 2013, SCRA & SEBI Act shall be applicable.

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# Prohibition on issue of shares at discount

Section 53 of Companies Act, 2013

*(effective from Feb. 9, 2018)*

# Amendment by Cos. (Amendment) Act

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*Notwithstanding anything contained in sub-sections (1) and (2), a Co. may issue shares at a discount to its creditors when its debt is converted into shares in pursuance of any statutory resolution plan or debt restructuring scheme in accordance with any guidelines or directions or regulations specified by RBI under RBI Act, 1934 or Banking (Regulation) Act, 1949.*

## **Important points:**

- ❑ *Applicability to Shares,*
- ❑ *Applicability to issue of shares or Conversion into shares,*
- ❑ *In accordance with RBI Guidelines or Regulations.*

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## Further issue of share capital

Section 62 of Companies Act, 2013

*(effective from Feb. 9, 2018)*

# 1<sup>st</sup> Highlight of the Amendment

16

The notice (*referred to in Sec. 62(1)(a)(i) of the Act*) shall be dispatched through Registered Post or Speed Post or through electronic mode or **courier or any other mode having proof of delivery** to all the existing shareholders at least 3 days before the opening of the issue.

Now 5 options to send the Notice  
Earlier, it was 3 options – Registered Post or Speed Post or through electronic mode



# Impact on Private Companies

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*Provided that notwithstanding anything contained in this sub-clause and sub-section (2) of Sec. 62, in case 90% of the members of a Private Co. have given their consent in writing or in electronic mode, the periods lesser than those specified in the said sub-clause or sub-section shall apply.*

**MCA Notification No. GSR 464(E), dated 5-6-2015**

# 2<sup>nd</sup> Highlight of the Amendment

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## **Section 62(1)(c) of Cos. Act, 2013:**

*(c) to any persons, if it is authorised by a special resolution, whether or not those persons include the persons referred to in clause (a) or clause (b), either for cash or for a consideration other than cash, if the price of such shares is determined by the valuation report of a registered valuer, subject to the compliance with the applicable provisions of Chapter III and any other conditions as may be prescribed.*

## **Chapter III – Prospectus and Allotment of Securities (Part I – Public Offer, Part II – Private Placement)**

# Register of significant beneficial owners in a company

*Section 90 of Companies Act, 2013*

*(complete substitution 'Investigation of beneficial ownership of shares in certain cases')*

*(not yet notified)*

# Highlights of the amendments

Every individual, who acting alone or together, or through one or more persons or trust, including a trust and persons resident outside India, holds beneficial interests, of not less than 25% or such other percentage as may be prescribed, in shares of a company or the right to exercise, or the actual exercising of significant influence or control as defined in clause (27) of section 2, over the company ('Significant Beneficial Owner'), shall make a declaration to the Co., specifying the nature of his interest and other particulars

# Highlights of the amendments

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- Exemption by CG to certain class of Cos.,
- Co. to maintain register and records,
- Inspection of Register by any member on payment of fees,
- *Extract of Registers – ?*
- Co. to file Return of SBO or any changes therein with the ROC

# Co. knows or has reasonable cause to believe – ?!

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A Co. shall give notice, in prescribed manner, to any person (whether or not a member of Co.) whom the Co. knows or has reasonable cause to believe:

- a) To be a SBO of the Co.;
- b) To be having knowledge of the identity of a SBO or another person likely to have such knowledge; or
- c) To have been a SBO of the company at any time during the 3 years immediately preceding the date on which the notice is issued, and who is not registered as a SBO with the company as required u/s 90.

# Failure to give Info. OR Info. received is unsatisfactory – Tribunal

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The Co. shall,—

- a) Where that person fails to give the company the information required by the notice within the time specified therein; or
- b) Where the information given is not satisfactory,

apply to the Tribunal within a period of 15 days of the expiry of the period specified in the notice, **for an order directing that the shares in question be subject to restrictions with regard to transfer of interest, suspension of all rights attached to the shares and such other matters as may be prescribed.**

# Tribunal procedure – Sec. 90 of CA, 2013

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- **Sub-sec.(8) of Sec. 90:** *On any application made under sub-section (7), the Tribunal may, after giving an opportunity of being heard to the parties concerned, make such order restricting the rights attached with the shares within a period of 60 days of receipt of application or such other period as may be prescribed.*
- **Sub-sec.(8) of Sec. 90:** *The Co. or the person aggrieved by the order of the Tribunal may make an application to the Tribunal for relaxation or lifting of the restrictions placed under sub-section (8).*



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# Annual Return

Section 92 of Companies Act, 2013

*(not yet notified)*

# Annual Return

**Earlier provision:** An extract of the Annual Return in such form as may be prescribed [i.e. MGT – 9] shall form part of the Board's report.

*Amended provision: Every company shall place a copy of the Annual Return on the website of the company, if any, and the web-link of such annual return shall be disclosed in the Board's Report.*

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# Annual General Meeting

Section 96 of Companies Act, 2013

*(not yet notified)*

# Amended provisions

Every AGM shall be called during business hours, that is, between 9 a.m. and 6 p.m. on any day that is not a National Holiday and shall be held either at the registered office of the Co. or at some other place within the city, town or village in which the registered office of the Co. is situate:

***Provided that AGM of an unlisted Co. may be held at any place in India if consent is given in writing or by electronic mode by all the members in advance:***

Provided further that the Central Government may exempt any company from the provisions of this sub-section subject to such conditions as it may impose.

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# Extra-ordinary General Meeting

Section 100 of Companies Act, 2013

*(effective from Feb. 9, 2018)*

# Amended provision

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The Board may, whenever it deems fit, call an extraordinary general meeting of the company:

*Provided that an extraordinary general meeting of the company, other than of the wholly owned subsidiary of a company incorporated outside India, shall be held at a place within India.*

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# Notice of the meeting

Section 101 of Companies Act, 2013

*(effective from Feb. 9, 2018)*

# Amended provisions

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Co.'s General meeting may be called by giving not less than clear 21 days' notice either in writing or through electronic mode in such manner as may be prescribed:

*In the case of an AGM, by not less than 95% of the members entitled to vote thereat;*

*In the case of any other general meeting, by members of the Company:*

- *Co. has a Share Capital: holding majority in number of members entitled to vote and who represent not less than 95% of such part of the paid-up share capital of the company as gives a right to vote at the meeting; or*
- *Company has no Share Capital: Having not less than 95% of the total voting power exercisable at that meeting:*

*Provided further that 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 shall 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.*



# Right of member to copies of audited financial statement

Section 136 of Companies Act, 2013

*(effective from Feb. 9, 2018)*

# Amended provisions

A copy of Financial Statements, including Consolidated FS, if any, Auditor's Report and every other document required by law to be annexed or attached to the Financial Statements, which are to be laid before a Co. in its general meeting, shall be sent to every member of the Co., to every trustee for the debenture-holder of any debentures issued by the Co., and to all persons other than such member or trustee, being the person so entitled, not less than 21 days before the date of the meeting:

**Provided that if the copies of the documents are sent less than 21 days before the date of the meeting, they shall, notwithstanding that fact, be deemed to have been duly sent if it is so agreed by members—**

- a) **If the company has a share capital, holding majority in number entitled to vote and who represent not less than 95% of such part of the paid-up share capital of the company as gives a right to vote at the meeting; or**
- a) **If the company has no share capital, having not less than 95% of the total voting power exercisable at the meeting**

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# Postal Ballot

Section 110 of Companies Act, 2013

*(effective from Feb. 9, 2018)*

# Amended provision

Notwithstanding anything contained in this Act, a company:

- (a) *shall*, in respect of such items of business as the Central Govt. may, by notification, declare to be transacted only by means of postal ballot; and
- (b) *may*, in respect of any item of business, other than ordinary business and any business in respect of which directors or auditors have a right to be heard at any meeting, transact by means of postal ballot, in such manner as may be prescribed, instead of transacting such business at a general meeting:

**Provided that any item of business required to be transacted by means of Postal Ballot under clause (a), may be transacted at a general meeting by a Co. which is required to provide the facility to members to vote by electronic means u/s 108, in the manner provided in that section.**

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# Appointment of Auditors

Section 139 of Companies Act, 2013

*(not yet notified)*

# Amended provisions – Sec. 139(1)

38

Subject to the provisions of this Chapter, every company shall, at the first AGM, appoint an individual or a firm as an auditor who shall hold office from the conclusion of that meeting till the conclusion of its sixth AGM and thereafter till the conclusion of every sixth meeting and the manner and procedure of selection of auditors by the members of the company at such meeting shall be such as may be prescribed:

~~**Provided that the company shall place the matter relating to such appointment for ratification by members at every annual general meeting:**~~

# 39 Disqualifications for appointment of director

Section 164 of Companies Act, 2013

*(not yet notified)*

# Amended provisions

Sec. 164(2) of Cos. Act, 2013:

No person who is or has been a director of a company which—

- a) Has not filed financial statements or annual returns for any continuous period of three financial years; or
- b) Has failed to repay the deposits accepted by it or pay interest thereon or to redeem any debentures on the due date or pay interest due thereon or pay any dividend declared and such failure to pay or redeem continues for one year or more, shall be eligible to be re-appointed as a director of that company or appointed in other company for a period of five years from the date on which the said company fails to do so:

**Provided that where a person is appointed as a director of a company which is in default of clause (a) or clause (b), he shall not incur the disqualification for a period of 6 months from the date of his appointment.**



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# Vacation of Office of director

Section 167 of Companies Act, 2013

*(not yet notified)*

# Amended provisions

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Sec. 167(1) of Companies Act, 2013:

The office of a director shall become vacant in case—

(a) he incurs any of the disqualifications specified in section 164:

**Provided that where he incurs disqualification under sub-section (2) of section 164, the office of the director shall become vacant in all the companies, other than the company which is in default under that sub-section;**

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# Resignation of Director

Section 168 of Companies Act, 2013

*(not yet effective)*

# Audit Committee

Section 177 of Companies Act, 2013

*(not yet notified)*

# Amended provisions

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Every Audit Committee shall act in accordance with the terms of reference specified in writing by the Board which shall inter alia, include:

(iv) Approval or any subsequent modification of transactions of the company with related parties:

Provided that the Audit Committee may make omnibus approval for related party transactions proposed to be entered into by the company subject to such conditions as may be prescribed:

**Provided further that in case of transaction, other than transactions referred to in section 188, and where Audit Committee does not approve the transaction, it shall make its recommendations to the Board:**

# Amended provisions

**Provided also that in case any transaction involving any amount not exceeding Rs. 1 crore is entered into by a director or officer of the company without obtaining the approval of the Audit Committee and it is not ratified by the Audit Committee within three months from the date of the transaction, such transaction shall be voidable at the option of the Audit Committee and if the transaction is with the related party to any director or is authorised by any other director, the director concerned shall indemnify the company against any loss incurred by it:**

**Provided also that the provisions of this clause shall not apply to a transaction, other than a transaction referred to in section 188, between a holding company and its wholly owned subsidiary company.**

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# Loans to directors, etc.

Section 185 of Companies Act, 2013

*(not yet notified)*

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# Managerial Appointment

Section 196 of Companies Act, 2013

*(not yet notified).*



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# Managerial Remuneration

Section 197 of Companies Act, 2013

*(not notified yet)*

**Thank you Thane Chapter of ICSI for the wonderful opportunity!! 😊**

**Thank you Members & students for active participation!! 😊**

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