

Companies Amendment Bill, 2016 – Proposed Changes to Directors' Appointment & Resignation

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Introduction :

With an objective of addressing and resolving the 'shoe-pinching' issues in Companies Act, 2013 ('the Act'), the Government on June 4, 2015, constituted an 8-member Company Law Committee. The said Committee was headed by Secretary, Ministry of Corporate Affairs. On February 1, 2016, the Committee submitted a 138-page detailed report and suggested 100+ amendments to the Act. Based on the Company Law Committee Report, the Government prepared the Companies (Amendment) Bill, 2016 and presented the same in Lok Sabha on March 16, 2016. The Bill has suggested 87 amendments to the Companies Act, 2013. This suggestion was in addition to the already issued clarifications, circulars, notifications, amendment in Company Rules, removal of difficulty orders and the Companies Amendment Act, 2015.

This article is a compilation and analysis of the proposed amendments to the Companies Act, 2013 in relation of the appointment and resignation of directors.

Interested Director :

The Companies (Amendment) Bill, 2016 proposes to omit the definition of 'interested director' as defined in subsection (49) of Section 2 of the Act.

Section 184(2) of the Act provides nature of interests to be disclosed by directors, but does not use the phrase 'interested director'. The only reference to the term 'interested director' is there in Section 174(3), however the Explanation to that provision clarified that the meaning of the term 'interested director' would be the same as for the purposes of Section 184(2). The definition of 'interested director', though much wider, has not been used in the

Act and hence, redundant.

Resident Director :

With reference to Section 149(3) of the Act relating to the definition of 'resident director', the Companies (Amendment) Bill, 2016 proposes to bring in clarity with respect to the requirement of fulfilling the criteria of at least one director staying in India for a total period of not less than 182 days during the financial year. Companies (Amendment) Bill, 2016 proposes that in case of a newly incorporated company, the requirement of 182 days shall apply proportionately at the end of the financial year in which it is incorporated. It is noteworthy that such proposed amendment will have an impact on all companies – i.e. private and public companies.

Independent Director :

Pursuant to the existing provisions

of the Act, one of the criteria for being an independent director is that the director should have or have had no pecuniary relationship with the company, its holding company, subsidiary company or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year. Therefore, pursuant to the extant provisions, even a minor pecuniary relationship may affect the independence of directors.

Vide the Companies (Amendment) Bill, 2016, the Government proposes to introduce a threshold for determining the 'pecuniary relationship' of directors, which refers to the "pecuniary relationship, other than remuneration as such director or having a transaction not exceeding 10% of his total income or such amount as may be prescribed."

Pursuant to the proposed amendment, the independence of a director is not affected if the relative of an independent director holds security or interest in the company of face value not exceeding Rs. 50 lacs or 2% of paid-up capital of the company, its holding, subsidiary or associate company or such higher sum as may be prescribed. Pursuant to the proposed amendment vide the Companies (Amendment) Bill, 2016, the independence of a director is not affected if none of his relatives is

indebted / given a guarantee or provided any security in connection with the indebtedness of any third person / to the company, its holding, subsidiary or associate company or their promoters, or directors, in excess of such amount as may be prescribed during the two immediately preceding financial years or during the current financial year.

Identification Number of Directors :

Vide the Companies (Amendment) Bill, 2016, Section 153 of the Act, relating to 'Application for allotment of Director Identification Number', is proposed to be amended. Pursuant to the amendment, it is proposed that the Central Government may prescribe any identification number which shall be treated as 'Director Identification Number' for the purposes of the Act and in case any individual holds or acquires such identification number, the requirement of Section 153 of the Act shall not apply or apply in a restrictive manner.

Right of persons other than retiring directors to stand for directorship :

Section 160(1) of the Act relates to 'right of persons other than retiring directors to stand for directorship', which provides that a person who is not a retiring director is eligible for appointment to the office of a director at any general meeting, if he, or some member intending to propose him as a

director, has, not less than 14 days before the meeting, left a notice in writing under his hand signifying his candidature as a director along with the deposit of Rs. 1 lac.

Pursuant to the provisions of the Companies (Amendment) Bill, 2016, the provisions and requirements of deposit of amount shall not apply where the company proposes to appoint an Independent Director or a director recommended by Nomination and Remuneration Committee, if any, constituted under sub-section (1) of section 178 of the Companies Act, 2013.

Alternate Director :

Pursuant to the Companies (Amendment) Bill, 2016, the board of directors of a company may appoint a person as alternate director; however such appointment of alternate director shall be restricted to one director in the company. Therefore, pursuant to the proposed amendment, a company ought to appoint an alternate director for only one director and not more than one directors in the same company.

Example: Mr. A, Mr. B, Mrs. C and Mr. D are directors in a company. In accordance with Section 161(2) of the Act, the company appoints Mr. W as Alternate Director to Mr. A. Pursuant to the proposed amendment, Mr. W cannot be appointed as alternate director to Mr.





Directors' Resignation

B, Mrs. C and Mr. D in the same company.

Appointment of Director due to casual vacancy :

The Companies (Amendment) Bill, 2016 proposes that the provisions relating to the appointment of director due to casual vacancy, pursuant to Section 161(4) of the Act, will be applicable to private companies as well. Therefore, if the office of any director appointed by the company in a general meeting is vacated before the term of office expires in the normal course, the resulting casual vacancy may be filled by the Board of Directors at a meeting of the Board and the appointment shall be subsequently approved by members in the immediately following general meeting. The subsequent approval of the members in the immediately following general meeting is also the proposed amendment.

Number of Directorships :

Pursuant to the proposed amendment vide the Companies (Amendment) Bill, 2016, the directorship in a dormant company shall not be included in the limit reckoning the directorships of 20 companies. Pursuant to Section 455(1) of the Companies Act, 2013, where a company is registered under the Act for

a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company may make an application to the Registrar of companies for obtaining the status of a dormant company.

Director's Resignation :

Section 168 of the Act relates to 'resignation of director', according to which a director may resign from his office by giving a notice in writing to the company.

On receipt of such notice, the board of directors shall take note of the same, and the company is under obligation to intimate the same to the Registrar of Companies in the prescribed manner. The company is also under mandatory obligation to place the fact of such resignation in the Directors' Report laid in the immediately following general meeting. The provisions of Section 168 of the Act also make it mandatory for the director to forward a copy of his resignation along with detailed reasons for the resignation to the Registrar within 30 days in the prescribed manner.

Vide the Companies Amendment Bill, 2016, it is proposed to ease the process of director reporting about his resignation along with detailed reasons to the Registrar of Companies. The

Amendment Bill proposes that the director's obligation is made optional (from mandatory) with respect to submission of his resignation (by him, and not company) along with the detailed reasons for the resignation.

Conclusion :

The above amendments discussed are some of the proposed amendments in the Companies Amendment Bill, 2016. The Bill aims to bring in ease of doing business in the operation of the companies by introducing practical compliances of certain provisions of the Companies Act, 2013. The provisions relating to managerial remuneration are also proposed to be amended by introducing shareholders approval instead of Government approval. The said proposed amendments, as discussed above, are important and relevant for all directors (of private companies as well as public companies) and the company secretaries / compliance officers of the companies.

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