



Companies (Amendment) Act, 2017 received Presidential assent

16 January 2018

First Notes on

Financial reporting

Corporate law updates
Regulatory and other information
Disclosures

Sector

All
Banking and insurance
Information, communication, entertainment
Consumer and industrial markets
Infrastructure and government

Relevant to

All
Audit committee
CFO
Others

Transition

Immediately
Within the next three months
Post three months but within six months
Post six months

Forthcoming requirement

Background

The Companies Law Committee (CLC) had submitted its recommendations to the government on changes to be made to the Companies Act, 2013 (2013 Act) on 1 February 2016. Based on the recommendations of the CLC, on 16 March 2016, the government proposed the Companies (Amendment) Bill, 2016 on issues arising on account of implementation of the 2013 Act in order to amend the 2013 Act. However, the Companies (Amendment) Bill, 2016 was not approved by the Parliament in 2016. Therefore, it was presented again in 2017 as the Companies (Amendment) Bill, 2017.

On 27 July 2017, Lok Sabha passed the Companies (Amendment) Bill, 2017.

New development

After much deliberation, on 19 December 2017, Rajya Sabha passed the Companies (Amendment) Bill, 2017 and on 3 January 2018, the Companies (Amendment) Act, 2017 (Amendment Act, 2017) received the assent of the President of India.

The Amendment Act, 2017 will come into force on such date as the Central Government (CG) may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of the 2013 Act and any reference in any provision to the commencement of the 2013 Act should be construed as a reference to the coming into force of that provision.

The Amendment Act, 2017 makes significant changes to the 2013 Act which are aimed at ease of doing business, better corporate governance and enforcement of stringent penal provisions for defaulting companies.

In this issue of First Notes, we aim to provide an overview of the significant changes made to the 2013 Act by the Amendment Act, 2017.

Overview of the Amendment Act, 2017

The table below provides an overview of the changes introduced in the respective sections of the 2013 Act:

Particulars	Overview of the Amendment Act, 2017
Definitions	<p>The Amendment Act, 2017 has accepted the recommendations of the CLC and modified the definitions of the following terms:</p> <ul style="list-style-type: none"> Significant influence: In the revised definition of an 'associate company', significant influence means control of at least 20 per cent of the total voting power (earlier total share capital), or control of or participation in business decisions under an agreement. (Section 2(6))

Particulars	Overview of the Amendment Act, 2017 (cont.)
Definitions (cont.)	<ul style="list-style-type: none"> • Joint venture: Currently, the term 'joint venture' has not been specifically defined in the 2013 Act and the definition of an associate company included the term 'joint venture'. The Amendment Act, 2017 defines 'joint venture' as a 'joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement'. The definition is in accordance with Ind AS 28, <i>Investments in Associates and Joint Ventures</i>. (Section 2(6)) • Holding company: An explanation has been added to the definition which states that a holding company would include 'any body corporate'. (Section 2(46)) • Subsidiary: The term 'total share capital' (i.e. paid-up equity share capital and convertible preference share capital) would be replaced by the term 'total voting power' as the basis for deciding holding/subsidiary relationship. (Section 2(87)) • Key Managerial Personnel (KMP): The definition of a KMP would include 'an officer (not more than one level below the directors) who is in whole-time employment and designated as KMP by the BoD'. (Section 2(51)) • Financial Year (FY): In addition to a holding/subsidiary company, an associate company of a company incorporated outside India could also make an application to the National Company Law Tribunal (NCLT) for a different FY. (Section 2(41)) • Interested director: Definition of an interested director has been removed. (Section 2(49)) • Net worth: While computing net worth, the debit or credit balance of statement of profit and loss would also be added along with paid-up share capital and all reserves created out of the profits and securities premium account. (Section 2(57)) • Related party: The definition of a related party would include an investing company or its venturer. (Section 2(76)) • Small company: The maximum threshold for paid-up share capital of a small company has been increased from INR5 crore to INR10 crore and for turnover has been increased from INR20 crore to INR100 crore. (Section 2(85)) • Turnover: It would refer to gross amount of revenue recognised in the statement of profit and loss (earlier the definition referred to an aggregate value of the realisation of amount) from the sale, supply, or distribution of goods or on account of services rendered, or both, by a company during a FY. (Section 2(91)) <p><i>(Emphasis added to highlight the changes)</i></p>
Incorporation of companies	<p>Members to be severally liable in certain cases: The Amendment Act, 2017 has added a new sub-section after Section 3 (formation of company). The new sub-section provides that if at any time:</p> <ul style="list-style-type: none"> • The number of members of a company falls below the required limit (i.e. below seven in case of a public company and two in case of a private company) and • The company continues to carry on the business for more than six months <p>then every member of the company that is involved in the business during those six months and continues to carry it on post six months being aware of the default would be liable for the payment of the whole debts of the company contracted during that time and may also be sued. (Section 3A)</p> <p>Registered office of a company: The Amendment Act, 2017 clarifies that a company is allowed to have a registered office within 30 days (earlier within 15 days) from its incorporation. Additionally, notice of any change in the situation of the registered office could also be intimated to the Registrar of Companies (ROC) within 30 days from the change (earlier within 15 days). (Section 12)</p> <p>Authentication of documents: According to the Amendment Act, 2017, a document or proceeding requiring authentication by a company or contracts made by or on behalf of the company could also be signed by an employee of the company duly authorised by the Board (earlier only KMP or an officer of the company could be authorised). (Section 21)</p>
Prospectus and allotment of securities	<p>Matters to be stated in prospectus: The Amendment Act, 2017 empowers Securities and Exchange Board of India (SEBI) to prescribe the contents of a prospectus. Accordingly, a public company is not required to provide certain details in the prospectus (as given in clause (a), (b) and (d) of Section 26(1) of the 2013 Act) such as names and addresses of its registered office, dates of the opening and closing of the issue, its capital structure, and auditor's report on the company's profits/losses and assets and liabilities. (Section 26)</p>

Particulars	Overview of the Amendment Act, 2017 (cont.)
Prospectus and allotment of securities (cont.)	<p>Civil liability for misstatement in prospectus: Currently, in case a person subscribes for securities of a company or act on any statement included in the prospectus which is misleading and as a consequence, such person has sustained any loss or damage, then, following persons would, <i>inter alia</i>, be held liable:</p> <ul style="list-style-type: none"> • Director of a company at the time of issue of prospectus/consented to be named in the prospectus as a director • An expert referred under Section 26(5) of the 2013 Act (i.e. who is not engaged/interested in the formation/promotion of the company, has given his/her consent to the issue of the prospectus and has not withdrawn such consent before the delivery of a copy of the prospectus to the ROC for registration. Additionally, a statement to that effect has been included in the prospectus). <p>However, a person would not be held liable if he/she proves that:</p> <ul style="list-style-type: none"> • He/she withdrew his/her consent to become a director before the issue of prospectus or • The prospectus was issued without his/her knowledge; reasonable public notice was issued on becoming aware of the issue. <p>The Amendment Act, 2017 adds a new provision which states that a person would not be held liable with respect to misleading statement purported to be made by an expert or contained in what purports to be a copy of or an extract from a report or valuation of an expert, subject to the following:</p> <ul style="list-style-type: none"> • The person had reasonable ground to believe that the person (expert) making the statement was competent to make it and • The said person (expert) had given the consent required by Section 26(5) to the issue of the prospectus and had not withdrawn that consent before delivery of a copy of the prospectus for registration or, to the defendant's knowledge, before allotment thereunder. (Section 35)
Private placement	<p>Issue of shares on private placement: The Amendment Act, 2017 simplifies the private placement process and specifies that private placement could be made only to a select group of persons identified by the Board of Directors (BoD). (Section 42)</p>
Share capital and debentures	<p>Prohibition on issue of shares at discount: The Amendment Act, 2017 allows a company to issue a share 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/directions/regulations specified by the Reserve Bank of India (RBI) under the RBI Act, 1934 or the Banking (Regulation) Act, 1949. (Section 53)</p>
Acceptance of deposits by companies	<p>Prohibition on acceptance of deposits from public: The Amendment Act, 2017 changes the requirement for maintaining a deposit repayment reserve account in a scheduled bank to 20 per cent of the amount of deposits maturing during the following FY (earlier the requirement was 15 per cent of the amount of deposits maturing during the FY and the FY next following).</p> <p>Further, the requirement to provide a deposit insurance in respect of the amount of deposits accepted by the company has been dispensed with.</p> <p>Additionally, companies which have made good on a default committed in the past would be allowed to accept deposits after five years from the date of the default remediation. (Section 73)</p>
	<p>Repayment of deposits: The timeline for repayment of deposits accepted by the company before the commencement of the 2013 Act has been modified.</p> <p>Accordingly, the Amendment Act, 2017 clarifies that the amount of deposits accepted by a company before the commencement of the 2013 Act could be repaid within three years from the date of commencement of the 2013 Act (earlier the time period was one year) or before the expiry of the period for which the deposits were accepted (earlier it was the date on which such payments are due), whichever is earlier.</p> <p>Additionally, renewal of any such deposits would take place as per the provisions of Chapter V of the 2013 Act and related Rules. (Section 74)</p>
	<p>Punishment for contravention of provisions relating to acceptance of deposits: In case of contravention with the provisions of the sections relating to acceptance of deposits (Section 73 or 76), the company would be punishable with a minimum fine of INR1 crore or twice the amount of deposit accepted, whichever is lower (earlier the fine was INR1 crore). (Section 76A)</p> <p><i>(Emphasis added to highlight the change)</i></p>

Particulars	Overview of the Amendment Act, 2017 (cont.)
Management and administration	<p>Declaration of beneficial interest in any share: Section 89 of the 2013 Act currently requires that every person who holds or acquires beneficial interest in share of a company should make a declaration to the company regarding the particulars of such interest including nature of interest. The term 'beneficial interest' was not defined in the 2013 Act.</p> <p>The Amendment Act, 2017 clarifies that the 'beneficial interest in a share' would include, directly or indirectly, through any contract, arrangement or otherwise, the right or entitlement of a person alone or together with any other person to:</p> <ol style="list-style-type: none"> a) Exercise or cause to be exercised any or all of the rights attached to such share or b) Receive or participate in any dividend or other distribution in respect of such share. (Section 89 and 90) <p>Additionally, a new Section 90 (Register of significant beneficial owners in a company) has been inserted which, inter alia, prescribe that a register of beneficial owners should be maintained by a company and filed with the ROC. (Section 90)</p>
	<p>Annual return: Every company is required to prepare an annual return containing the particulars as they stood on the close of the FY. One of the particulars to be disclosed in the annual return is the indebtedness of the company. Additionally, details relating to Foreign Institutional Investors (FII) such as their names, countries of incorporation, percentage of shareholding, etc. have also been omitted.</p> <p>The Amendment Act, 2017 clarifies that a company is not required to state its indebtedness in the annual return. Every company should place a copy of the annual return on its website with web link to be disclosed in the board's report.</p> <p>Additionally, the CG may prescribe an abridged form of annual return for one person company, small company and other class of classes of companies as may be prescribed. (Section 92)</p>
	<p>Return in case of change in promoters' stake: Section 93 that required filing of return in case of change in promoters' stake by a listed company has been omitted. (Section 93)</p> <p>Annual General Meeting (AGM): The Amendment Act, 2017 has permitted an unlisted company to hold its AGM at any place in India provided consent has been given by all the members in writing or by electronic mode in advance.</p> <p>For other companies, AGM is required to be held at the registered office of the company or some other place where the registered office is situated. (Section 96)</p>
	<p>Extraordinary General Meeting (EGM): Currently, the 2013 Act does not specify a place where an EGM of a company (other than by requisition) should be held. The Amendment Act, 2017 clarifies that an EGM of a company (other than its wholly-owned subsidiary incorporated outside India) should be held at a place within India. (Section 100)</p>
	<p>Postal ballot: The Amendment Act, 2017 clarifies that any item of business required to be transacted by means of a postal ballot would be allowed to be transacted through electronic voting at the general meeting. (Section 110)</p>
Declaration and payment of dividend	<p>Computation of profits: The Amendment Act, 2017 clarifies that while computing profits of the company for declaration and payment of dividend, any amount representing unrealised gains, notional gains or revaluation of assets and any changes in carrying amount of an asset or of a liability on measurement of the asset or the liability at fair values should be excluded.</p> <p>In case of inadequacy/absence of the profits, companies proposing to declare dividend, can declare it out of the accumulated profits earned by it in PYs and transferred by it to the free reserves (earlier the 2013 Act made a mention of 'reserves').</p> <p>Further, interim dividend could be declared out of the profits generated by the company in a FY till the quarter preceding the date of its declaration and can be declared at any time till the date of the AGM. (Section 123)</p>
Accounts of companies	<p>Consolidated Financial Statement (CFS): Following changes have been made with respect to preparation of CFS by a company:</p> <ul style="list-style-type: none"> • Only a listed company with a subsidiary(ies) should place separate audited accounts in respect of each of its subsidiary on its website (earlier the requirement was for all companies).

Particulars	Overview of the Amendment Act, 2017 (cont.)
Accounts of companies (cont.)	<ul style="list-style-type: none"> For foreign subsidiary(ies) of the Indian holding company, separate audited accounts of such foreign subsidiary(ies) is not required to be placed on its website. Instead, the holding company should place CFS of the foreign subsidiary(ies) as per the laws of the country in which they have been incorporated on its website. In case the foreign subsidiary is not required to get its financial statements audited under the laws of the country of its incorporation, then the holding company can place such unaudited financial statements on its website (along with a translated copy of the financial statements (in case they are in language other than English)). Every company is required to provide a copy of separate audited/unaudited financial statements as prepared in respect of each of its subsidiary to any member who asks for it. (Section 136)
	<p>Copy of financial statement to be filed with the ROC: Currently under the 2013 Act, every company with a subsidiary(ies) is required to file with ROC accounts of its foreign subsidiary(ies).</p> <p>The Amendment Act, 2017 clarifies that if the accounts of foreign subsidiary(ies) are not required to be audited, then Indian holding company should file unaudited financial statements. (Section 137)</p>
	<p>Re-opening of accounts: The Amendment Act, 2017 clarifies that re-opening of accounts would be limited to eight FYs. However, the CG could direct for re-opening of accounts for a period longer than eight FYs. (Section 130)</p>
	<p>Constitution of NFRA: According to the Amendment Act, 2017, a person aggrieved by the orders of National Financial Reporting Authority (NFRA) can refer an appeal before the Appellate Tribunal (earlier Appellate Authority) in the manner as may be prescribed. (Section 132)¹</p>
	<p>Financial statement, board's report, etc.: The Amendment Act, 2017 clarifies that the disclosures made in the financial statements are to be referred in the board's report in order to avoid duplications. (Section 134)</p>
	<p>CSR: Following changes have been made to the provisions relating to Corporate Social Responsibility (CSR):</p> <ul style="list-style-type: none"> For determining the threshold of the specified net worth, turnover, or net profit to constitute a CSR committee, the words 'any FY' have been replaced by the words 'immediately preceding FY'. Composition of the CSR committee for 'companies not required to appoint independent directors' has been changed to 'two or more directors'. An explanation has been inserted which provides powers to the Ministry of Corporate Affairs (MCA) to prescribe any exclusions from the net profit calculated in accordance with the provisions of Section 198 of the 2013 Act. Section 135(3)(a) has been modified to refer to 'in areas or subjects specified in Schedule VII to the 2013 Act' within which CSR activities could be undertaken by a eligible company. Now companies have a discretion to spend the CSR amount in the areas other than their local area of business or industry. (Section 135)
Audit and auditors	<p>Appointment and resignation of an auditor: The requirement relating to ratification of auditors by the members of the company at every AGM has been removed by the Amendment Act, 2017. (Section 139)</p> <p>If an auditor fails to file within a period of 30 days from the date of his/her resignation a statement, indicating the reasons and other facts as may be relevant with regard to his resignation, then such an auditor would be punishable with a minimum fine of INR50,000 or his/her remuneration, whichever is lower (earlier minimum fine was only INR50,000). (Section 140)</p>
	<p>Disqualification of an auditor: The Amendment Act, 2017 clarifies that any person who provides directly or indirectly any service as given in Section 144* of the 2013 Act to the company, its holding company or to its subsidiary is ineligible to be appointed as an auditor of the company. (Section 141)</p> <p>(*Services under Section 144 includes:</p> <ul style="list-style-type: none"> Accounting and book keeping services

¹Section 132 of the 2013 Act has not yet been notified by the MCA.

Particulars	Overview of the Amendment Act, 2017 (cont.)
Audit and auditors (cont.)	<ul style="list-style-type: none"> • <i>Internal audit</i> • <i>Actuarial services</i> • <i>Investment advisory and investment banking service</i> • <i>Rendering of outsourced financial services</i> • <i>Management services and</i> • <i>Any other kind of services.)</i> <p>Powers and duties of auditors and auditing standards: The Amendment Act, 2017 clarifies that an auditor of a holding company would have a right of access to the records of all its associates in addition to its subsidiaries for the purpose of consolidation of its financial statements with that of its subsidiaries and associates.</p> <p>Additionally, the Amendment Act, 2017 clarifies that an auditor would report on Internal Financial Control (IFC) with regard to financial statements. Earlier the 2013 Act did not clarify that IFC would be with regard to financial statements. (Section 143)</p>
Appointment and qualifications of directors	<p>Resident director: The requirement for a director to be resident in India would be met if he stays in India for a total period of 182 days or more during the FY (earlier the 2013 Act referred to previous calendar year and now changed to FY).</p> <p>However, in case of a newly incorporated company the above requirement would apply proportionately at the end of the FY in which a company has been incorporated. (Section 149)</p> <p>Independent director: Following changes have been introduced with respect to provisions of an independent director:</p> <ul style="list-style-type: none"> • Pecuniary relationship will not include the remuneration received by an independent director and any amount from a transaction which does not exceed 10 per cent of his/her total income (or such amount as may be prescribed). • Section 149(6)(d) has been amended with respect to the scope of restriction on a 'pecuniary relationship or transaction' entered by a relative and has been made more specific by clearly categorising the types of transactions. For example, holding of any security of/interest in the company, indebted to the company, etc. • Currently, an individual is restricted from being appointed as an independent director in case he/she or his/her relative is a KMP or an employee of the company or its holding, subsidiary or associate company during any of the preceding three FYs. As per the Amendment Act, 2017, this restriction would not apply if a relative of an independent director is employed during the preceding three FYs. (Section 149) <p>Application for allotment of Director Identification Number (DIN): Currently, every individual intending to be appointed as a director is required to make an application to the CG for allotment of DIN.</p> <p>Now the Amendment Act, 2017 provides that the CG may prescribe 'any identification number' which should be treated as DIN and in case an individual holds or acquires such a number, then no application is required to be made by him/her. (Section 153)</p> <p>Right of persons other than retiring directors to stand for directorship: Currently, a person other than a retiring director is eligible for appointment as a director at any general meeting provided such a person has given a notice of his candidature and deposited the prescribed amount with the company. This amount would be refunded on his/her appointment as a director or if he/she gets 25 per cent of total valid votes.</p> <p>Now the Amendment Act, 2017 clarifies that deposit of an amount is not required in case of appointment of:</p> <ul style="list-style-type: none"> • An independent director • Director recommended by the Nomination and Remuneration Committee (NRC) or • Director recommended by the BoD of the company (in case company is not required to constitute NRC). (Section 160) <p>Appointment of an additional director, alternate director and nominee director: Currently under the 2013 Act, a person holding alternate directorship for any other director in the company is prohibited from appointment as an alternate director in the absence of another director.</p> <p>The Amendment Act, 2017 clarifies that in addition to the above mentioned person, a person</p>

Particulars	Overview of the Amendment Act, 2017 (cont.)
Appointment and qualifications of directors (cont.)	<p>holding directorship in the same company is also prohibited to be appointed as an alternate director during the absence of another director. (Section 161)</p> <p>Casual vacancy: If the office of any director appointed by the company in general meeting is vacated before the term of office expires in the normal course, the resulting casual vacancy could be filled by the BoD at its meeting. This provision has been made applicable to every company provided such an appointment gets approval in the immediate next general meeting (earlier this provision was applicable only to a public company). (Section 161)</p> <p>Disqualifications for appointment of a director: Currently, a director of a company which has defaulted on certain requirements is not eligible to be reappointed as a director of that company or appointed in another company for a period of five years from the date of the failure. Those defaults are as follows:</p> <ul style="list-style-type: none"> • Not filed financial statements or annual returns for any continuous period of three FYs or • 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 for a continuous period of one year. <p>The Amendment Act, 2017 has provided that in case a person has been appointed as a director of the company which has defaulted on above grounds, then such a director should not incur the disqualification for a period of six months from the date of his/her appointment.</p> <p>Additionally, 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 Transactions (RPTs), even if an appeal or petition has been filed against the order of conviction or disqualification. (Section 164)</p>
	<p>Number of directorships: Currently, no person is permitted to hold office as a director including alternate directorship, in more than 20 companies at the same time and of which the maximum number of public companies in which a person can be appointed as a director could be up to 10.</p> <p>The Amendment Act, 2017 clarifies that the directorship in a dormant company should be excluded while determining the threshold of 20 companies. (Section 165)</p>
	<p>Vacation of office: Section 167 of the 2013 Act specifically provides that the office of a director should become vacant in case he/she incurs disqualifications specified in Section 164 of the 2013 Act or becomes disqualified by an order of a court or the Tribunal.</p> <p>However, the Amendment Act, 2017 clarifies that in case a director gets disqualified on grounds of Section 164(2) of the 2013 Act (i.e. non-filing of financial statements or failure to repay dues), then the office of the director would become vacant in all the companies other than the company which is in default under Section 164(2).</p> <p>Additionally, the Amendment Act, 2017 has provided a relaxation and provided that a director would not be required to vacate his/her office in respect of disqualification by an order of a court or the Tribunal or conviction for any offence in the following events:</p> <ol style="list-style-type: none"> a) For 30 days from the date of conviction or order of disqualification b) Where an appeal or petition is preferred within 30 days as aforesaid against the conviction resulting in sentence or order, until expiry of seven days from the date on which such appeal or petition is disposed of or c) Where any further appeal or petition is preferred against order or sentence within seven days, until such further appeal or petition is disposed of. <p>Earlier the 2013 Act was stringent and required that the office should be vacated by the director even if he/she has filed an appeal against the order of such court. (Section 167)</p>
	<p>Resignation of a director: The Amendment Act, 2017 clarifies that a director is not mandatorily required to forward a copy of his/her resignation along with detailed reasons to the ROC (earlier under the 2013 Act, a director was mandatorily required to submit the details of his/her resignation to the ROC). (Section 168)</p>
Meetings of board and its powers	<p>Meetings of board: Currently, the CG has been empowered to specify matters which should not be dealt in a meeting through video conferencing or other audio visual means.</p> <p>The Amendment Act, 2017 clarifies that in case the quorum for a meeting is met through physical presence of directors, then any other director may participate through video conferencing or other audio visual means and discuss the matters specified by the CG. (Section 173)</p>

Particulars	Overview of the Amendment Act, 2017 (cont.)
Meetings of board and its powers (cont.)	<p>Audit Committee: According to the Amendment Act, 2017, the BoD of every listed public company (earlier the 2013 Act referred to every listed company) and such other class or classes of companies, as may be prescribed should constitute an audit committee.</p> <p>Further, the Amendment Act, 2017 clarifies that the existing requirement for the audit committee to pre-approve all RPTs subject to the approval of the BoD or shareholders as required by Section 188 would continue. For transactions that are not covered under Section 188, the audit committee could give recommendations to the BoD, in case it does not approve the transaction.</p> <p>Additionally, a transaction (involving an amount up to INR1 crore) is voidable at the option of the audit committee if it has been entered without its approval and has not been ratified subsequently by it.</p> <p>RPTs between a holding company and its wholly-owned subsidiary that do not require board's approval under Section 188, would not require approval of the audit committee. (Section 177)</p> <p><i>(Emphasis added to highlight the change)</i></p>
	<p>Nomination and Remuneration Committee (NRC): Following changes have been made to the provisions relating to NRC:</p> <ul style="list-style-type: none"> • Every listed public company (earlier the 2013 Act referred to every listed company) and a company covered under Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014 is required to constitute a NRC. • NRC is required to specify the methodology for the effective evaluation of the performance of the individual directors, committees of the board and the board as a whole which should be carried out by the board, by the NRC or by an independent external agency and should review its implementation and compliance. • Additionally, companies could place their remuneration policy on their website, if any, and should disclose only the salient features of the policy, the changes, if any along with the web address of the policy in the board's report. (Section 178) <p><i>(Emphasis added to highlight the change)</i></p>
	<p>Loan to directors, etc.: The Amendment Act, 2017 allows companies to give a loan to any person in whom the director is interested, subject to prior approval by a special resolution in a general meeting and loans should be utilised by the borrowing company for its principal business activities.</p> <p>Additionally, revised definition of 'any person in whom the director is interested' has also been specified in the Amendment Act, 2017. (Section 185)</p>
	<p>Loan and investment by company: Currently, under the 2013 Act, a company could give loan/guarantee or provide any security in connection with the loan to any person/other body corporate that exceeds 60 per cent of its paid-up share capital, free reserves and securities premium account or 100 per cent of its free reserves and securities premium account, whichever is more, only if a special resolution is passed.</p> <p>The Amendment Act, 2017 clarifies that a company is allowed to give loan to its employees in excess of the specified limits (i.e. 60 per cent of its paid-up share capital, free reserves and securities premium account or 100 per cent of its free reserves and securities premium account, whichever is higher) without passing a special resolution.</p> <p>Additionally, definition of an investment company has been modified to provide that a company would be deemed to be principally engaged in the business of acquisition of shares, debentures or other securities, if its:</p> <ol style="list-style-type: none"> a) Assets in the form of investment in shares, debentures or other securities constitute not less than 50 per cent of its total assets, or b) Its income derived from investment business constitutes not less than 50 per cent as a proportion of its gross income. (Section 186)
	<p>RPTs: Currently, no member of the company (except private company) is allowed to vote on a resolution to approve any contract or arrangement which could be entered into by the company, if such member is a related party.</p> <p>The Amendment Act, 2017 clarifies that this restriction will not be applicable to a company in which 90 per cent or more members are relatives of promoters or are related parties. (Section 188)</p>

Particulars	Overview of the Amendment Act, 2017 (cont.)
Meetings of board and its powers (cont.)	<p>Prohibition on forward dealing and insider trading: The provisions relating to forward dealing and insider trading have been omitted from the 2013 Act. (Section 194, 195)</p>
Appointment and remuneration of managerial personnel	<p>Managerial Remuneration (MR): Currently, total MR payable by a public company should not exceed 11 per cent of the net profits of the company for that FY. The limits could be exceeded with the approval of the shareholders and CG, subject to Schedule V of the 2013 Act.</p> <p>The Amendment Act, 2017 clarifies the following with respect to payment of MR:</p> <ul style="list-style-type: none"> • The company in a general meeting may authorise the payment of remuneration exceeding 11 per cent of the net profits of the company, subject to Schedule V. The requirement for a government approval has been removed. (First proviso to Section 197(1)) • Approval of the shareholders by a special resolution would be required to pay MR in excess of the maximum amount of remuneration prescribed when there are one or more than Managing Director (MD), Whole-Time Director (WTD) or manager in the company. (Second proviso to Section 197(1)) • In case of no profits or inadequate profits, a company should not pay to its directors, (including any MD or WTD or manager) by way of remuneration any sum (exclusive of any fees payable to directors) except in accordance with the provisions of Schedule V. (The provision of approval of central government approval for payment in excess of Schedule V has been omitted). (Section 197(3)) • In case any director draws or receives remuneration in excess of the specified threshold, then he/she should refund the amount within two years or such lesser period as may be allowed by the company (earlier the 2013 Act did not specify the time period within which sums should be refunded). (Section 197(9)) • Company is not allowed to waive the recovery of any sum refundable unless approved by the special resolution within two years from the date the sum becomes refundable (earlier the 2013 Act referred to unless permitted by the CG). (Section 197(10)) • Additionally, in case a company has defaulted in payment of dues to any bank/public financial institution/non-convertible debenture holders/secured creditor, then prior approval of such bank/public financial institution/non-convertible debenture holders/secured creditor should be obtained before obtaining the approval in the general meeting. (New provision) • Further, an auditor would be required to make a statement as to whether the remuneration paid by the company to its directors is in accordance with the prescribed provisions. (Section 197(16)) <p><i>(Emphasis added to highlight the change)</i></p>
	<p>Calculation of profits: The Amendment Act, 2017 clarifies that while calculating net profits of the company for the purpose of determining MR payable, any amount representing unrealised gains, notional gains or revaluation of assets have to be excluded from net profits.</p> <p>Further, the Amendment Act, 2017 clarifies that any amount representing profits by way of premium on shares or debentures of the company, which are issued or sold by an investment company should not be excluded from the net profits. (Section 198)</p>
Inspection, inquiry and investigation	<p>Inspection, inquiry and investigation: Currently, the CG could appoint one or more inspectors to investigate and report on matters relating to the company, and its membership for the purpose of determining the true persons who are or have been:</p> <ol style="list-style-type: none"> a) Financially interested in the success or failure, whether real or apparent, of the company, or b) Able to control or to materially influence the policy of the company. <p>The Amendment Act, 2017 clarifies that an inspector could also be appointed for determining the true persons who have or had beneficial interest in the shares of a company or who are or have been beneficial owners or significant beneficial owner of a company. (Section 216)</p>
Companies incorporated outside India	<p>Foreign company: Currently, a foreign company in which not less than 50 per cent of the paid-up share capital (whether equity or preference or partly equity and partly preference) is held by one or more citizens of India or one or more companies/bodies corporate incorporated in India, whether singly or in the aggregate, such a company is required to comply with the provisions of the 2013 Act prescribed for the business carried on by it in India, as if it were a company incorporated in India.</p>

Particulars	Overview of the Amendment Act, 2017 (cont.)
Companies incorporated outside India (cont.)	<p>The Amendment Act, 2017 clarifies that Sections 380 to 386 (provisions relating to documents to be submitted by foreign company, accounts of foreign company, etc.) and Section 392 (punishment for contravention) and Section 393 (company's failure to comply with provisions of chapter applicable to foreign company not to affect validity of contracts, etc.) would be applicable to all foreign companies.</p> <p>However, the CG may exempt any class of foreign companies from compliance with any of the provisions of Sections 380 to 386 and Sections 392 and 393 of the 2013 Act. (Section 379)</p>
Miscellaneous	<p>Punishment for fraud: Currently, under the 2013 Act, any person who is found to be guilty of fraud is punishable with imprisonment for a minimum period of six months and maximum term of 10 years and with fine which should not be less than the amount involved in the fraud but which could extend to three times the amount involved in the fraud.</p> <p>In case of fraud which involves public interest, minimum term of imprisonment is three years.</p> <p>The Amendment Act, 2017 clarifies that frauds which involve an amount of INR10 lakh or more or one per cent of the turnover of the company, whichever is lower, would be considered punishable under Section 447.</p> <p>Further, frauds below these limits which do not involve public interest would be punishable with an imprisonment for a term which could extend to five years or with fine which may extend to INR20 lakh or with both. (Section 447)</p>

(Source: KPMG in India's analysis, 2018 based on the amendments made by the Companies (Amendment) Act, 2017)

Our comments

The Amendment Act, 2017 has revisited certain requirements of the 2013 Act and amended a number of sections of the 2013 Act. Companies should carefully take note of the changes introduced and align their processes wherever required.

Some of the key changes brought in by the Amendment Act, 2017 are as follows:

- **Alignment of definitions:** Some of the fundamental definitions in the 2013 Act were inconsistent with the AS/Ind AS and had effect on number of provisions of the 2013 Act. Some of the important changes to definitions are as follows:
 - *Subsidiary:* The definition of subsidiary in the 2013 Act referred to 'total share capital' i.e. aggregate of the paid-up equity share capital and the convertible preference share capital. Now, the Amendment Act, 2017 has changed the reference to 'total voting power'. In many case, the total voting power would be with reference to equity share capital. However, if dividend in respect of a class of preference shares has not been paid for a period of two years or more, then such class of preference shareholders would also have right to vote on the resolutions placed before the company.
 - *Associate:* Similar to subsidiary, the definition of associate now does not have reference to 'total share capital' but to 'total voting power and the definition has been aligned with AS/Ind AS.
 - *Joint Venture:* The 2013 Act did not define the term 'joint venture' and made reference to joint venture as an inclusive part in the definition of the term 'associate company'. The Amendment Act, 2017 continues to refer joint venture within the term associate company but also defines joint venture in line with Ind AS 28. However, Ind AS 28 further defines the terms 'joint arrangement' and 'joint control' which are associated with the definition of joint venture. While the Amendment Act, 2017 does not include these definitions, we believe that the intent of the law has been to align the definition of joint venture with Ind AS and therefore, the two associated definitions of joint control and joint arrangement could be read harmoniously with Ind AS.
 - *Holding company:* The amendment has also been made in the definition of a holding company and now includes body corporates within its definition. This change addresses the concern as to whether foreign companies meet the definition of holding companies under the 2013 Act. Thus, several multinational companies will have to report their parent as 'holding company'. This may impact matters such as RPTs.
- **Calculation of net profits for managerial remuneration and interim dividend:** The Amendment Act, 2017 excludes from net profits 'any amount representing unrealised gains, notional gains or revaluation of assets'. This exclusion will have a significant impact on the companies following Ind AS. Ind AS requires certain adjustments e.g. fair value gains or losses on financial instruments measured at Fair Value Through Profit or Loss (FVTPL) in the statement of profit and loss. There could also be adjustment in the 'Other Comprehensive Income' due fair value gains or losses on investments classified as 'Fair Value through Other Comprehensive Income' (FVOCI). The adjustments due to financial instruments at FVOCI do not get recycle through the statement of profit and loss. Therefore, it is not clear whether the fair value losses on financial instrument at FVTPL could be included in the computation of net profits in the year they are realised and also how the impact of fair value changes on financial

instruments at FVOCI would be taken into account in the computation of net profits. Additionally, it is important to note that all notional losses and unrealised losses would be included in the computation of net profits of managerial remuneration and interim dividend calculation.

- **Only listed companies to place separate accounts of subsidiaries:** Currently, fourth proviso to Section 136(1) of the 2013 Act requires that every company with a subsidiary(ies) should place separate audited accounts in respect of each of its subsidiaries on its website.

The Amendment Act, 2017 exempts unlisted companies from the requirement of uploading financial statements of all subsidiaries on the website of the holding company. This change is in line with the recommendation of the CLC.

Additionally, a listed company with a foreign subsidiary(ies) has also been provided some relief. If the foreign subsidiary of the Indian holding company is required to prepare consolidated financial statements as per the laws of the country of its incorporation, then such a holding company should place those consolidated financial statements of its foreign subsidiary on its website. Additionally, if the foreign subsidiary is not required to get its financial statements audited, then the holding company may place such unaudited financial statements on its website along with a declaration to that effect.

- **Copy of financial statements to be filed with the ROC:** All Indian companies would have to continue to file the separate financial statements of their foreign subsidiaries with ROC. However, the Amendment Act, 2017 now allows to file unaudited financial statements of foreign subsidiaries if the law of the incorporation of the foreign subsidiaries does not have a requirement for audit.
- **Transactions outside the scope of pecuniary relationship for an independent director:** The Amendment Act, 2017 specifically excludes the amount of remuneration received by an independent director and any transaction up to 10 per cent of his/her total income from the definition of pecuniary relationship.

The change is very significant and expands the scope of transactions that an independent director could enter into. However, such transactions should still be monitored by the companies in order to ensure the independence of an independent director at all times.

Additionally, the Amendment Act, 2017 has modified the scope of restriction on a 'pecuniary relationship or transaction' entered by a relative by clearly categorising them into types of transactions. These restrictions are in relation to holding of a security or interest, indebtedness, providing guarantee or security in connection with the indebtedness of any third person to the company, its holding, subsidiary or associate company. Additionally, the restrictions also scope in any other pecuniary transaction or relationship. The Amendment Act, 2017 aims to provide certain relief by specifying thresholds upto which these restrictions would not apply.

- **Loans allowed to be given to any person in whom director is interested:** Currently, Section 185 of the 2013 Act specifically prohibits a company from providing any loan/guarantee/security to its directors or to any other person in whom the director is interested.

However, the Amendment Act, 2017 allows a company to give loans/ guarantee/security to any person in whom any of its director is interested when two conditions are fulfilled. One, a special resolution has been passed and two, the loan is to be utilised by the borrowing company for its principal business activities.

This is another significant change made by the Amendment Act, 2017 as it is expected to provide significant relief to the companies as it would expand the avenues for more fund raising among the group companies.

On the other hand, it would also put onerous responsibility on the management to clearly distinguish the transactions entered into with persons in whom its directors are interested.

- **Vacation of office by a director is not required if a company defaulted in filing financial statements/annual return or repayment of dues:** The Amendment Act, 2017 through a proviso clarified that in case a director gets disqualified on grounds of Section 164(2) of the 2013 Act (i.e. non-filing of financial statements/annual return or failure to repay dues by the company), then the office of the director would not become vacant for the company which is in default under Section 164(2) but he/she will have to vacate office in all other companies where he/she is a director.

It appears that the intent of this proviso may be to ensure that the director of a company under such default (of not filing financial statements/annual return or repayment of dues) would continue to remain liable for the affairs of the defaulting company and the office of such director would not become vacant on grounds of such disqualification.

- **Government approval not required for managerial remuneration in excess of specified limits:** Currently, total managerial remuneration payable by a public company should not exceed 11 per cent of the net profits of the company for that FY computed in the specified manner. However, a company with the approval of the shareholders and the CG could authorise the payment of remuneration in excess of the specified limit.

The Amendment Act, 2017 removed the requirement of a government approval for payment of the managerial

Our comments (cont.)

remuneration in excess of the specified limits. This would ease the procedure with regard to payment of managerial remuneration by companies.

- **Relaxation to defaulting companies for accepting deposits:** Section 73 of the 2013 Act specifies conditions to be fulfilled by companies for accepting deposits from its members. One of the conditions requires that the company should not commit any default in the repayment of deposit (or interest thereon) accepted before or after commencement of the 2013 Act. Therefore, a company that has defaulted on the repayment of deposits or interest thereon could not accept any deposits in future.

The Amendment Act, 2017 clarifies that companies which have made good on a default committed in the past would be allowed to accept deposits after five years from the date of the default remediation.

- **Exemption from voting in RPTs:** The relief from the stringent requirements of Section 188 of the 2013 Act to cases where 90 per cent or more members are relatives of promoters or are related parties, would help joint venture companies and closely held public companies.
- **No disclosure duplications:** There are numerous disclosure requirements in the board's report, financial statements, CSR policy, remuneration policy, etc. The clarification provided by the Amendment Act, 2017 regarding disclosures made in the financial statements to be referred in the board's report is expected to reduce the duplications involved in presentation of the both the reports.
- **Multiple private placements possible:** This is likely to boost investments by private equity and other institutional investors in Indian companies.
- **Annual ratification not required for appointment of an auditor:** Currently under the 2013 Act, appointment/continuance of an auditor is subject to annual ratification by the shareholders at the AGM.

The Amendment Act, 2017 has removed this requirement. Therefore, companies are not required to get the appointment/continuance of an auditor ratified by the shareholders on an annual basis once the auditors have been appointed for five years.

- **Auditor's IFC reporting vs directors' IFC reporting:** For auditors the Amendment Act, 2017 clarifies that IFC is with respect to the financial statements while for directors the responsibility remains unchanged as required by Section 135(5)(e) i.e. both in reference to financial statements and adequacy and effectiveness of IFC in general.

The bottom line

The amendments made by the Amendment Act, 2017 are aimed at providing ease of doing business in India. Therefore, companies should take note of the changes made to the 2013 Act as effective implementation of it would help them reap the benefits of such changes.

These amendments will come into force on such date as the CG may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of the 2013 Act and any reference in any provision to the commencement of the 2013 Act should be construed as a reference to the coming into force of that provision.



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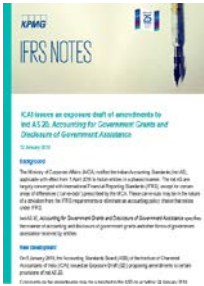
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ICAI issues an exposure draft of amendments to Ind AS 20, Accounting for Government Grants and Disclosure of Government Assistance

12 January 2018

Ind AS 20, *Accounting for Government Grants and Disclosure of Government Assistance* specifies the manner of accounting and disclosure of government grants and other forms of government assistance received by entities.

On 5 January 2018, the Accounting Standards Board (ASB) of the Institute of Chartered Accountants of India (ICAI) issued an Exposure Draft (ED) proposing amendments to certain provisions of Ind AS 20.

Comments on the amendments may be submitted to the ASB on or before 24 January 2018.

This issue of IFRS Notes provides an overview of the amendments proposed to Ind AS 20.

Missed an issue of Accounting and Auditing Update or First Notes



Issue no. 17 – December 2017

The topics covered in this issue are:

- Ind AS 115 - Impact on technology sector
- Reaping the potential benefits of data and analytics in audit
- Interaction between derecognition and business model assessment for NBFCs
- Private companies – Relaxations under the Companies Act, 2013
- Decommissioning costs
- Regulatory updates.



QRB issued its report on audit quality review of top listed and public interest entities in India

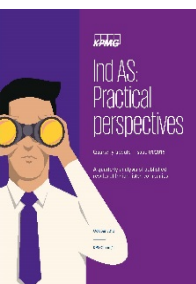
13 December 2017

On 10 November 2017, the QRB issued the 'Report on Audit Quality Review' (2016-17) (the QRB report). The report comprise of key findings of 74 reviews which were completed by the QRB till June 2017. Out of these 74 reviews, 69 reviews pertained to the financial statements for the year ended 31 March 2014 and 5 reviews pertained to the financial statements for the year ended 31 March 2015.

The findings in the report relate to compliance with the requirements prescribed under:

- Standards on Auditing (SA)
- Accounting Standards (AS) and
- Other relevant laws and regulations including Schedule III to the Companies Act, 2013.

This issue of First Notes provides an overview of the observations of the QRB with respect to AS and Schedule III to the 2013 Act as provided in the report.



Ind AS - Practical perspectives

KPMG in India's Ind AS - Practical perspectives through aims to put a finger on the pulse of India Inc's adoption of Ind AS and capture emerging trends and practices.

Our impact assessment is based on Nifty 50 companies which would be the first group of companies to report Ind AS results. The Nifty 50 companies have released their financial results for the year ended 31 March 2017.

Out of the companies comprising Nifty 50 index, eight companies are banks, two are Non-Banking Financial Companies (NBFCs) and two companies follow a different date of transition to Ind AS. Therefore, our analysis would comprise the remaining 38 companies.

This can be accessed on KPMG in India website - '[Ind AS- Practical perspectives' webpage](#)

Feedback/queries can be sent to aaupdate@kpmg.com

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