



## MCA notified certain provisions of the Companies (Amendment) Act, 2017 and modified certain rules under the Companies Act, 2013

2 August 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

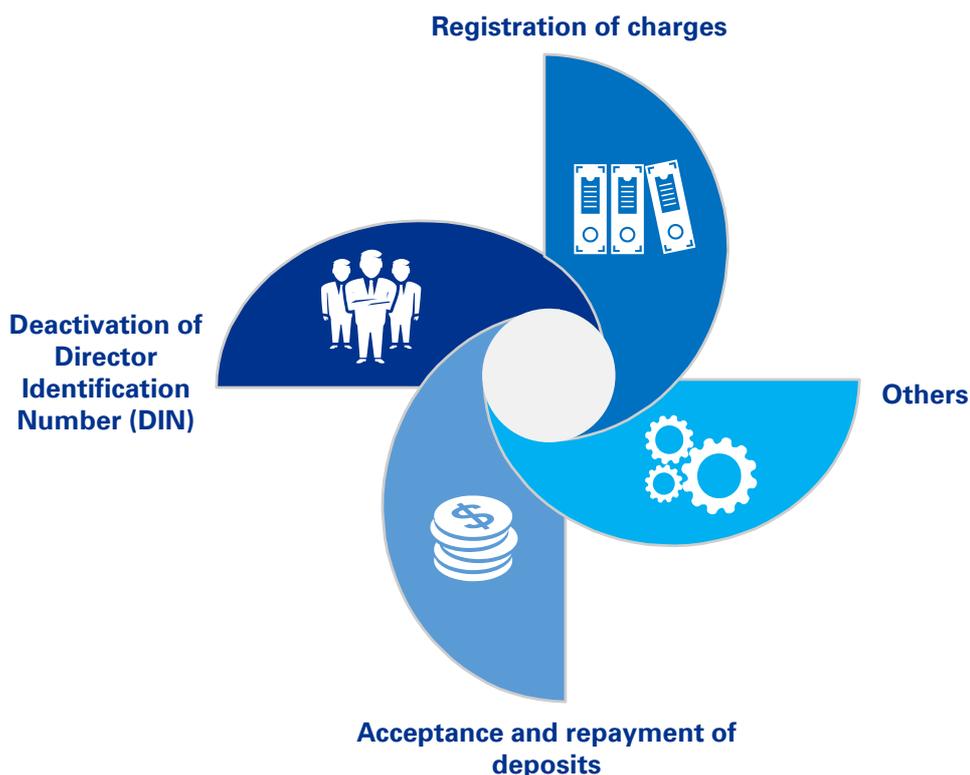
### Introduction

On 3 January 2018, the Companies (Amendment) Act, 2017 (Amendment Act, 2017) received the assent of the President of India. The various provisions of the Amendment Act, 2017 would come into force on the date of their notification in the official gazette by the Central Government (CG). Different dates could be appointed for different provisions of the Amendment Act, 2017.

Recently, MCA through its notifications dated 5 July 2018 and 27 July 2018 notified certain sections of the Amendment Act, 2017. Additionally, MCA issued amendments to certain rules under the Companies Act, 2013 (2013 Act). Certain provisions of the Amendment Act, 2017 are effective from 5 July 2018, while others are effective from 10 July 2018, 27 July 2018 and 15 August 2018 respectively.

This issue of First Notes aims to provide an overview of the recently notified sections of the Amendment Act, 2017 and the amendments issued to the rules under the 2013 Act.

The key amendments notified relate to the following provisions:



## Overview of the amendments

### Amendments effective from 5 July 2018

Section	Overview of the amendments
<b>Registration of charges</b>  (Section 82 <sup>1</sup> and Registration of Charges Rules)	<p>Currently, every company creating a charge (within or outside India) on its property, or assets, or any of its undertakings, whether tangible or otherwise (situated within or outside India), is required to register the particulars of the charge with the Registrar of Companies (ROC) within 30 days of its creation. However, the ROC, on an application by the company, could allow registration of the charge to be made within a period of 300 days of such creation.</p> <p>Also, in case of payment or satisfaction of charge, the company would be required to intimate to the ROC <b>within 30 days from the date of such payment/satisfaction</b>.</p> <p><b>Amendments</b></p> <p>The Amendment Act, 2017 provides that, on an application by the company or the charge holder, intimation of payment/satisfaction of charge could be made within a period of <b>300 days from the date of such payment/satisfaction</b>. Therefore, the Amendment Act, 2017 has extended the timeline for intimation of payment/satisfaction of a charge (from 30 days to 300 days) and aligned it with the timeline provided for registration of a charge.</p> <p>Similar amendment has been made to Rule 8 of the Companies (Registration of Charges) Rules, 2014 (Registration of Charges Rules)<sup>2</sup>.</p> <p><i>(Emphasis added to highlight the change)</i></p>

### Amendments effective from 10 July 2018

Rules	Overview of the amendments
<b>Deactivation of DIN</b>  (Rule 11 and 12A of the Directors' Rules)	<p>Currently, Rule 11 of the Companies (Appointment and Qualifications of Directors) Rules, 2014 (Directors' Rules) provides certain events, where DIN of a director could get cancelled or deactivated by the CG or a regional director. These events, <i>inter alia</i>, include the following:</p> <ul style="list-style-type: none"> <li>• DIN was obtained in a wrongful manner or by fraudulent means</li> <li>• Death of the concerned individual</li> <li>• Concerned individual has been declared as a person of unsound mind by a competent court.</li> </ul> <p><b>Amendments</b></p> <p>The MCA has issued the Companies (Appointment and Qualifications of Directors) Fourth Amendment Rules, 2018 and amended the Directors' Rules.</p> <p>As per the amendment, DIN of an individual who does not intimate his/her particulars in e-form DIR-3-KYC (KYC of directors) within stipulated time would be deactivated by the CG or a regional director. Such a DIN would be re-activated only after e-form DIR-3-KYC has been filed along with the prescribed fee.</p> <p>Additionally, a new sub-rule 12A has been inserted in the Directors' Rules which requires every individual who has been allotted a DIN as on 31 March of a FY to submit e-form DIR-3-KYC to the CG on or before 30 April of immediate next FY. However, individuals who have already been allotted DIN as at 31 March 2018 are required to submit e-form DIR-3 KYC on or before 31 August 2018.</p> <p>The amended Rules have also issued revised Form No. DIR-3-KYC.</p>

<sup>1</sup>Amendment to Section 82 is effective from 5 July 2018.

<sup>2</sup>Amendment to the Registration of Charges Rules has been made effective from the date of its publication in the official gazette i.e. 6 July 2018.

## Amendments effective from 27 July 2018

Section	Overview of the amendments
<b>Incorporation of a company</b>  (Section 7 and Incorporation Rules)	<p>While making an application for registration of a company, certain documents and information are required to be filed with the ROC within whose jurisdiction the registered office of a company is proposed to be situated. These documents, <i>inter alia</i>, include <b>a declaration</b> (earlier 'an affidavit' was required) from each of the subscribers to the memorandum and from persons named as the first directors, if any, in the articles, affirming the following:</p> <ul style="list-style-type: none"> <li>• He/she is not convicted of any offence in connection with the promotion, formation or management of any company, or that he/she has not been found guilty of any fraud or misfeasance or of any breach of duty to any company under the 2013 Act or any previous company law during the preceding five years and</li> <li>• All the documents filed with the ROC for registration of the company contain information that is correct and complete and true to the best of his/her knowledge and belief.</li> </ul> <p>Related amendment has also been made in Rule 15 of the Companies (Incorporation) Rules, 2014 (Incorporation Rules).</p> <p><i>(Emphasis added to highlight the change)</i></p>
<b>Registered office of a company</b>  (Section 12)	<p>A company is required to establish its registered office <b>within 30 days</b> of its incorporation and at all times thereafter (earlier 'on and from the 15th day of its incorporation' was mentioned).</p> <p>Additionally, a notice of every change of the situation of the registered office (after the date of incorporation of the company) is required to be given to the ROC <b>within 30 days</b> of the change (earlier notice was required within 15 days of the change).</p> <p><i>(Emphasis added to highlight the change)</i></p>

## Amendments effective from 15 August 2018

Section	Overview of the amendments
<b>Prohibition on acceptance of deposits from public</b>  (Section 73 and Deposit Rules)	<p>Currently, Section 73(2) of the 2013 Act permits a company to accept deposits from its members and public, subject to specified conditions.</p> <p>One of the condition requires a company to deposit an amount, <b>not less than 15 per cent of the amount of its deposits maturing during a Financial Year (FY) and the FY next following</b>, in a scheduled bank (in a separate bank account) to be called as 'deposit repayment reserve account'.</p> <p><b>Amendments</b></p> <p>The Amendment Act, 2017 changes the requirement for maintaining a deposit repayment reserve account in a scheduled bank to <b>20 per cent of the amount of deposits maturing during the following FY</b>.</p> <p>Further, the requirement to provide a deposit insurance in respect of the amount of deposits accepted by the company has been removed.</p> <p>Similar amendments have been incorporated in Rule 5, 13 and 14 of the Companies (Acceptance of Deposit) Rules, 2014 (Deposit Rules).</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. As per the amendment to the Deposit Rules, a certificate of the statutory auditor of the company would be required to be attached in Form DPT-1 (circular or circular in the form of advertisement inviting deposits). The certificate should state the fact that the company had made good the default and a period of five years has lapsed since the date of the default remediation.</p> <p>Following revised forms have also been issued by the amended Rules:</p> <ul style="list-style-type: none"> <li>• <i>Form DPT-1</i>: Circular or circular in the form of advertisement inviting deposits</li> <li>• <i>Form DPT-3</i>: Return of Deposits.</li> </ul> <p><i>(Emphasis added to highlight the change)</i></p>

## Amendments effective from 15 August 2018 (cont.)

Section	Overview of the amendments
<b>Repayment of deposits</b>  (Section 74(1)(b))	<p>Currently, in case a company has accepted deposits before the commencement of the 2013 Act, then any amount of such deposits or part thereof or any interest due thereon (which remains unpaid on the commencement of the 2013 Act or becomes due at any time thereafter) should be repaid <b>within one year from such commencement or from the date on which such payments are due</b>, whichever is earlier. (Section 74(1)(b))</p> <p>However, Rule 19 of the Deposit Rules provided that in case a company had accepted or invited public deposits under the relevant provisions of the Companies Act, 1956 and the related rules and has been repaying such deposits and interest thereon in accordance with such provisions, the company is not required to repay such deposits within one year. Such a company would need to comply with other requirements of the 2013 Act and continue to repay such deposits and interest thereon on due dates for the remaining period of such deposits.</p> <p><b>Amendments</b></p> <p>The Amendment Act, 2017 has modified the timeline for repayment of deposits accepted by the company before the commencement of the 2013 Act and aligned the Deposit Rules with that of the 2013 Act.</p> <p>As per the amendment, deposits accepted by the company before the commencement of the 2013 Act should be repaid <b>within three years</b> from the date of commencement of the 2013 Act or on or <b>before expiry of the period for which the deposits were accepted</b>, whichever is earlier.</p> <p>However, renewal of any such deposits should be done in accordance with the provisions of acceptance of deposits under the 2013 Act (i.e. Chapter V of the 2013 Act) and the Deposit Rules.</p> <p><i>(Emphasis added to highlight the change)</i></p>
<b>Others</b>	<p>The Amendment Act, 2017 has also amended certain provisions relating to the following:</p> <ul style="list-style-type: none"> <li>• <b>Companies capable of being registered under Chapter XXI of the 2013 Act (Section 366):</b> As per the amendment, a company<sup>3</sup> with less than seven members should register as a private company. Similar amendment has also been made to Rule 3 of the Companies (Authorised to Register) Rules, 2014.</li> <li>• <b>Obligations of companies registered under Chapter XXI of the 2013 Act (Section 374):</b> As per the amendment, a Limited Liability Partnership (LLP) should be deemed to have been dissolved under the LLP Act, 2008 (without any further act or deed) on registration as a company.</li> </ul>

## Matters to be included in the board's report

The MCA through its notification dated 31 July 2018 has issued the Companies (Accounts) Amendment Rules, 2018<sup>4</sup> and amended the provisions relating to matters to be included in the board's report.

As per the amendments, the board's report of every company (except one person company or small company) should also include the following:

- A disclosure, as to whether maintenance of cost records as specified by the CG (under Section 148(1) of the 2013 Act), is required by the company and accordingly, such accounts and records are made and maintained.
- A statement that the company has complied with provisions relating to the constitution of Internal Complaints Committee under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

Additionally, a new sub-rule has been added which specifies the matters to be included in the board's report of a one person company and a small company.

<sup>3</sup>Company includes 'any partnership firm, limited liability partnership, cooperative society, society or any other business entity formed under any other law for the time being in force which applies for registration under Part I of Chapter XXI of the 2013 Act (Companies authorised to register under the 2013 Act)'.

<sup>4</sup>The amendments to the Rules will come into force from the date of their publication in the official gazette.

## Our comments

The recent notification of the Amendment Act, 2017 aims to align the provisions of the 2013 Act with that of the rules and provide more clarity.

### Acceptance and repayment of deposits

A key change introduced by the Amendment Act, 2017 relates to the acceptance and repayment of deposit norms.

Currently, 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 the future.

The Amendment Act, 2017 clarifies that companies which have made good the default committed in the past would be allowed to accept deposits after five years from the date of the default remediation. Therefore, a company would be required to attach in Form DPT-1, a certificate from its statutory auditor of the fact that the company had remedied its default and a period of five years has lapsed since the date of the default remediation.

Additionally, the requirement relating to deposit insurance has been dispensed with under the 2013 Act as well as under the Deposit Rules.

### Registration of charge

The Amendment Act, 2017 has provided additional relief to companies/charge holders who have not intimated details relating to payment/satisfaction of charge created on assets/property/undertaking of the company/charge holder. Now such an intimation can also be made within 300 days from the date of payment/satisfaction on an application to the ROC.

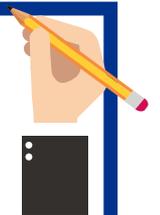
### Sections not yet notified

With the recent notification, the Amendment Act, 2017 is largely effective as out of 93 sections, MCA has notified 84 sections till 27 July 2018. Following are some of the key sections which are still pending to be notified:

- Issue of shares on private placement basis
- Financial statements, board's report, etc.
- Corporate Social Responsibility (CSR)
- Managerial remuneration
- Calculation of profits
- Inspection, inquiry and investigation.

### The bottom line

Companies should carefully consider the amended provisions and should assess whether any change in their processes would be required.



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The website provides information and resources to help board and audit committee members, executives, management, stakeholders and government representatives gain insight and access to thought leadership publications that are based on the evolving global financial reporting framework.



### Financier Worldwide: A panel discussion on IFRS 16, Leases

4 June 2018

Recently, Financier Worldwide moderated a discussion on IFRS 16 between four experts of the Accounting Advisory Services (AAS) of the KPMG global network (Markus Kreher, Global Head of AAS, KPMG International; Sai Venkateshwaran, KPMG in India; Michelle Gibbs, KPMG in Australia; and Ruben Rog, KPMG in the Netherlands).

The insights of the discussion have been published in the form of an article in the June 2018 edition of Financier Worldwide. This issue provides the link to the article.

## Missed an issue of Accounting and Auditing Update or First Notes



Issue no. 24 – July 2018

The topics covered in this issue are:

- The changing future of financial instruments accounting
- Change in ownership interests in investees
- Construction contracts - income from surplus funds
- Regulatory updates.



### Indian Valuation Standards issued by the ICAI

1 August 2018

On 10 June 2018, the Institute of Chartered Accountants of India (ICAI) issued the preface to the Indian Valuation Standards (Ind VS), the Framework for the preparation of valuation report in accordance with the Ind VS and also eight Ind VS applicable for all valuation engagements under the 2013 Act.

Ind VS are effective from 1 July 2018 till the time valuation standards are notified by the CG. Ind VS would be applied for the valuation engagements carried out in accordance with the provisions of the 2013 Act.

This issue of First Notes provide an overview of significant aspects of Ind VS and also highlights key differences between Ind VS and Ind AS.



### Voices on Reporting – Quarterly update publication

Voices on Reporting – quarterly update publication (for the quarter ended 30 June 2018) provides summary of key updates from the Ministry of Corporate Affairs, the Securities and Exchange Board of India, the Reserve Bank of India and the Institute of Chartered Accountants of India.

Feedback/queries can be sent to [aaupdate@kpmg.com](mailto:aaupdate@kpmg.com)

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