

# Decoding Companies (Amendment) Act, 2017

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# Loan to directors

Section 185 of Cos. Act, 2013

*(effective from May 7, 2018)*

# Amended provision:

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Sec. 185 of Act has been completely substituted by Cos. (Amendment) Act, 2017.

The revised Sec. is divided in 4 sub-Sec., highlights are as follows:

- (i) Complete restriction on loans, guarantees & securities to certain parties,
- (ii) Permits granting of loans, guarantees & securities to certain parties, subject to riders,
- (iii) Loans, guarantees & securities to certain parties completely exempted from compliance of the Sec.,
- (iv) Penal provisions under Sec. 185 of the Act.

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# Loan & investment by company

Section 186 of Cos. Act, 2013

*(effective from May 7, 2018)*

# Amended provision:

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Certain provisions relating to loan & investment by Co. (u/s 186 of the Act) have been amended.

- (i) Term ‘persons’ for the purpose of Sec. sub-Sec. (2) of Sec. 186 of the Act excludes ‘employees’. Therefore, loans given as a part of the condition of service or pursuant to a scheme approved by all employees of the company are not covered in Sect. 186;
- (ii) Amendment Act provides for certain exemptions and non-applicability of the provisions to certain transactions.

# Audit Committee

Section 177 of Cos. Act, 2013

*(effective from May 7, 2018)*

# Amended provision:

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- (i) RPTs, other than those covered u/s 188, if A/C does not approve of transaction it can make recommendation to BoD,
- (ii) Provisions relating to ratification of RPTs included, subject to riders,
- (iii) In case the transaction is not approved, it shall be voidable at the option of A/C and certain conditions prescribed,
- (iv) Requirement of obtaining A/C approval for RPTs is waived off for certain transaction (i.e. other than a transaction referred to u/s 188) between Holding Co. and WOS.

## 8 Borrowing powers of Public Co. / BoD

Section 180 of Cos. Act, 2013

Borrowing powers of BoD of Public Co. (without obtaining the approval of shareholders u/s 180(1)(c) of the Act) have been enhanced from paid-up share capital and free reserves to paid-up share capital, free reserves and securities premium A/c.

*(effective from Feb. 9, 2018)*



## Section 188 of Cos. Act, 2013

Approval of shareholders for RPTs u/s 188 of Act by ordinary resolution is not applicable to:

A company in which 90% or more members, in number, are relatives of promoters or are related parties.

*(effective from Feb. 9, 2018)*

## Managerial remuneration & limits thereon

### Section 197 of Cos. Act, 2013

Approval of Central Government u/s 197 has been completely eliminated and the approval of 'stakeholders' (i.e. shareholders, banks / public financial institutions / non-convertible debenture holders / secured creditors) has been introduced.

*(Not notified)*

## Companies capable of being registered

Section 366 of Cos. Act, 2013

U/s 366 of the Act, any partnership firm, LLP, co-operative society or any other business entity (with 7 or more members, now 2 members or more members) may be converted into company limited by shares, guarantee or unlimited company under the Act.

*(Not notified)*

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## Fee for filing, etc.

Section 403 of Cos. Act, 2013

*(Partly notified)*

# Amended provision:

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*Annual Filing (Financial Statements / Annual Return) – Where any document / e-Form is required to be submitted, filed, registered within prescribed time period, without prejudice to any other legal action or liability under the Act, it may be submitted, filed, registered, as the case may be, after expiry of the period (as prescribed), on payment of such additional fee, which shall not be less than Rs. 100/- per day. Different amounts may be prescribed for different classes of cos.*

# Amended provision:

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*Where the document / e-Form (other than annual filing) is not submitted, filed, registered within prescribed period, it may, without prejudice to any other legal action or liability under this Act, be submitted, filed, registered as the case may be, on payment of such additional fee as may be prescribed. Different fees may be prescribed for different classes of companies.*

# Associate Company

## Section 2(6) of Cos. Act, 2013

*‘Significant Control’ means at least 20% of total voting power (earlier ‘total share capital’)*

*(effective from May 7, 2018)*

# Holding Company

## Section 2(46) of Companies Act, 2013

*Holding Co. now includes 'Body Corporates' i.e. company incorporated in India & LLP.*

*(effective from Feb. 9, 2018)*



# Key Managerial Personnel

## Section 2(51) of Cos. Act, 2013

*Now includes – Officer, not more than one level below the director who is in whole-time employment may be designated as KMP by the board of directors.*

*(effective from Feb. 9, 2018)*

# Net worth

## Section 2(57) of Cos. Act, 2013, Net Worth means:

- (i) Aggregate value of paid-up share capital & all reserves created out of profits, Securities Premium A/c & **Debit or Credit Bal. – P&L A/c**,
- (ii) After deducting the aggregate value of accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per Audited Balance Sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation & amalgamation.

*(effective from Feb. 9, 2018)*

# 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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# Small Company

Section 2(85) of Cos. Act, 2013

*(effective from Feb. 9, 2018)*

# Amended provision:

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- ❑ Paid-Up share capital (maximum limit) enhanced to Rs. 10 Crore (from Rs. 5 Crore)
- ❑ Turnover (maximum limit) enhanced to Rs. 20 Crore (from Rs. 100 Crore).

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# Subsidiary Company

Section 2(87) of Cos. Act, 2013

*(effective from May 7, 2018)*

# Amended provision:

24

- ❑ One of the criteria changed for determining a company as ‘subsidiary company’:
- ❑ Co. in which Holding Co. exercises controls more than  $\frac{1}{2}$  of the *total voting rights* (earlier ‘total-share capital’) either at its own or together with one or more of its subsidiary cos.



# Name reservation

## Section 4(5) of Cos. Act, 2013

ROC shall reserve the name of the Co. for 20 days only from the date of approval.

In case of change of change of name, name is reserved for 60 days from the date of approval.

*(effective from Jan. 26, 2018)*

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## Issue of share on private placement basis

Section 42 of Cos. Act, 2013

*(Not notified)*

# Amended provision:

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## **Sec. 42 has been entirely substituted. Key amendments are:**

- (i) Group of persons whom offer is to be made is to be identified by board of directors,
- (ii) Private Placement offer and application shall not carry right of renunciation,
- (iii) Requirement to file Form GNL-2 has been discontinued,
- (iv) Cos. cannot use funds till return of allotment has been filed with ROC within 15 days from the date of allotment,
- (v) Separate penalty provided for default in filing of return of allotment.

# Issue of shares at discount

Section 53 of Cos. Act, 2013:

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 RBI Guidelines.

*(effective from Feb. 9, 2018)*

# Sweat Equity Share

Section 54 of Cos. Act, 2013

Sweat equity shares can be issued within 1 year from the commencement of business of the Co.

*(effective from Feb. 9, 2018)*

# Offer letter for Rights Issue

Section 62 of Cos. Act, 2013

In addition to registered post, speed post and electronic means, the Letter of Offer can be sent through courier or any other mode having proof of delivery.

*(effective from Feb. 9, 2018)*

# Annual return

Section 92 of Cos. Act, 2013

*(certain provisions notified w.e.f. May 7, 2018)*

# Amended provision:

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- (i) Indebtedness of Co. is not required to be reported,
- (ii) Details / Particulars of Foreign Institutional Investors is not to be reported,
- (iii) Govt. to prescribe abridged form of Annual Return for OPC, Small Co. and such other class or classes of Cos. as prescribed,
- (iv) No more a requirement of providing extract of Annual Return is to the Board's Report,
- (v) Annual Return to be uploaded on website of Co. & web-link to be provided in Board's Report.



# Place of keeping registers, returns

Section 94 of Cos. Act, 2013

Requirement of filing proposed special resolution in advance with ROC has been deleted.

*(Not notified)*

## Venue – AGM of unlisted Co.

Section 96 of Cos. Act, 2013

AGM of an unlisted company may be held at any place in India subject to prior consent of all the members of the company in writing or by electronic mode.

*(Not notified)*

## Venue – EGM of WOS

Section 100 of Cos. Act, 2013

EGM of a Co. shall be held at any place in India, however EGM of Wholly Owned Subsidiary incorporated outside India may be held outside India.

*(effective from Feb. 9, 2018)*

# General meeting on shorter notice

Section 101 of Cos. Act, 2013

The requirement for conducting a general meeting on shorter notice (i.e. less than 21 days) is amended. Shorter notice consent can be provided in writing or electronic mode.

*(effective from Feb. 9, 2018)*

# Resolution by Postal ballot

Section 110 of Cos. Act, 2013

In case of matters required to be mandatorily conducted through Postal Ballot, the same may be transacted at a General Meeting – subject to the condition that the facility of e-voting is provided.

*(effective from Feb. 9, 2018)*

# Consolidation

Section 129 of Cos. Act, 2013

Financial Statements of Associate Co. shall also be consolidated with Financial St. of Co.

*(effective from May 7, 2018)*

# NFRA Constitution

Section 132 of Cos. Act, 2013

Appeals against order of National Financial Reporting Authority shall be examined by NCLAT.

*(effective from Mar. 21, 2018)*

# Board's Report

Section 134 of Cos. Act, 2013

*(Not notified)*



# Amended provision:

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- (i) CEO shall sign the Boards' Report, whether or not appointed as a director of the company,
- (ii) Provisions relating to extract of Annual Return (in Form MGT-9) omitted, web-link of Annual Return to be provided,
- (iii) Salient points of CSR Policy, Remuneration Policy may be included in the Report and web-link of these Policies to be provided in the Report,
- (iv) Govt. may prescribe an abridged Board's Report, for OPC or Small Company.

## Section 135 of Cos. Act, 2013

*(Not notified)*

# Amended provision:

43

- (i) For determining applicability or requirement to constitute CSR Committee – the net worth, turnover or net profit of immediately *preceding* FY shall be considered,
- (ii) If Co. is not required to appoint Independent Director then, CSR Committee shall be constituted of 2 or more directors.

## Copies of audited Fin. Statements

Section 136 of Cos. Act, 2013

The criterias for sending financial statements less than 21 days before the date of General Meeting has been amended.

*(effective from Feb. 9, 2018)*

# Auditor's appointment

Section 139 of Cos. Act, 2013

The provisions relating to ratification of auditor's appointment (at every AGM) has been eliminated.

*(effective from May 7, 2018)*

# Right of Auditor

Section 143 of Cos. Act, 2013

Statutory Auditor of Holding Co. has a right to access the records of Associate Companies also.

*(effective from Feb. 9, 2018)*

# Companies to have Board of Directors

Section 149 of Cos. Act, 2013

*(effective from May 7, 2018)*

# Amended provision:

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- (i) Provisions relating to ‘resident director’ have been changed. According to the amended provisions, a person who has stayed in India for a minimum period of 182 days in previous FY shall be considered as ‘resident’;
- (ii) In case of newly incorporated companies, the requirement of 182 days (for resident director) shall apply proportionately;
- (iii) Change in eligibility criteria for independent directors.



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## Right of a person to stand for directorship

Section 160 of Cos. Act, 2013

*(effective from Feb. 9, 2018)*

# Amended provision:

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In case of company appointing:

- (i) Independent director,
- (ii) Director recommended by NRC or
- (iii) Director recommended by the board (where NRC constitution is not applicable)

the requirement to deposit amount of Rs. 1 lac shall not apply.

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## Appointment of Alternate Director

Section 161 of Cos. Act, 2013

*(effective from Feb. 9, 2018)*

# Amended provision:

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- (i) A person holding directorship in the Co. in any capacity cannot be an alternate director in the same Co.,
- (i) The provisions of appointment of casual vacancy of director are now applicable to private companies.

However, the director appointed by casual vacancy by the board of directors shall be subsequently be approved by the members in the general meeting.

# Disqualifications of director

Section 164 of Cos. Act, 2013

In case of disqualification of director u/s 164(2) of the Act, where a person is appointed as a director of a company which is in default, shall not incur the disqualification for a period of 6 months from the date of his appointment.

*(effective from May 7, 2018)*

## No. of directorships

Section 165 of Cos. Act, 2013

Dormant Co. (whether private or public) to be excluded from reckoning limit of directorships.

*(effective from Feb. 9, 2018)*

## Vacation of office of director

Section 167 of Cos. Act, 2013:

If an office of a director becomes vacant, wherein he incurs any disqualification u/s 164 of the Act, then the office of the director shall become vacant in all the companies, other than the company which is in default.

*(effective from May 7, 2018)*

## Resigning director's intimation

Section 168 of Cos. Act, 2013

The director who has resigned *may* forward a copy of his resignation along with detailed reasons for resignation.

*(effective from May 7, 2018)*



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## Participation in Board meeting through electronic mode

Section 173 of Cos. Act, 2013

*(effective from May 7, 2018)*

# Amended provision:

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**Directors may attend the meeting by video conferencing or audio visual means for all business agenda items, subject to presence of quorum in-person: for**

- (i) Approval of annual financial statements,
- (ii) Approval of Board's report,
- (iii) Approval of prospectus,
- (iv) Audit Committee Meetings for consideration of Financial Statement including Consolidated Financial Statement and
- (v) Approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover.

## Amendments having an impact on working of Chartered Accountants

- ✓ As an Accountant,
- ✓ As an Auditor,
- ✓ As a Consultant

# Q & As

**Thank you ICAI for the wonderful opportunity!! ☺**

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

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