

**Significant changes in the Companies Act 2013  
Through the Companies Amendment Act 2017.**



# CENTRAL GOVERNMENT APPROVAL

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- Except for non compliance of the requirement of Part I of Schedule V - **CONDITIONS TO BE FULFILLED FOR THE APPOINTMENT OF A MANAGING OR WHOLE-TIME DIRECTOR OR A MANAGER** – Central Government approval is dispensed with – Shareholders approval by an Ordinary or Special Resolution alone is required.
- Appointment to the managerial personnel position – a director who has completed 70 years – under special circumstances.

# EXTRA ORDINARY RIGHTS OF SHAREHOLDERS

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A company may, by special resolution, specify any lesser number of companies in which a director of the company may act as directors.

# DISCLOSURES

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- By every director – in Form MBP 1.
- on appointment, at the first board meeting he participates.
- at the first board meeting of every financial year.
- any change in the interest in between .

# WHAT TO DISCLOSE

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## **Directorship in:**

- Company/ies
- Body Corporate/s

## **Shareholding more or less than 2% in**

- Company/ies
- Body Corporate/s

## **Partner in:**

- Firms

## **Any other interest in:**

- Other association of Individuals.

# DISCLOSURE – INDEPENDENT DIRECTOR

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- Every independent director shall at the first meeting of the Board in which he participates as a director give a declaration that he meets the criteria of independence as provided under Section 149(6) of the Act.
- Every independent director shall in every financial year give a declaration that he meets the criteria of independence as provided under Section 149(6) of the Act
- Every independent director shall give a declaration whenever there is any change in the circumstances which may affect his status as an independent director, as provided under Section 149 (6).

# DISCLOSURE – BOARD'S REPORT

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- Adequate Internal Financial controls, in case of listed Company.
- Proper systems to Ensure compliance With all applicable Laws.
- Particulars of employees – interpretation differs.
- Significant changes by the Companies Amendment Act 2017.

# DISQUALIFICATION – EXTRA CAUTION

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- Has not filed financial statements or annual returns for any continuous period of three financial years;
- Convicted of the offence dealing with related party transactions under section 188 at any time during the last preceding five years;
- If a person has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of seven years or more, - not be eligible to be appointed as a director in any company.



# APPEAL OR PETITION – DISQUALIFICATION CONTINUES

**Disqualification referred to in clauses (d),(e) and (g) of Section 164(1) shall continue to apply even if the appeal or petition has been filed against the order of conviction or disqualification.**

# RESIGNATION

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- Approval of the Board not required – noting alone is needed at the board meeting.
- Intimation by the outgoing director advisable.
- Resignation – reasons to be stated – caution to be exercised.

# SECRETARIAL STANDARDS

- According to Section 118 of the Act compliance of Secretarial Standards 1 and 2 dealing with Board meeting and general meeting respectively are mandatory.
- Non compliance - company shall be liable to a penalty of twenty-five thousand rupees and every officer of the company who is in default shall be liable to a penalty of five thousand rupees.

# VIDEO CONFERENCING

It is not the company's sole prerogative to decide whether video conferencing facility should be provided or not. Companies cannot deny the director's right of participation in Board meeting via video conferencing.

Directors have the right to attend board meetings either in person through video conferencing except on those matters which are not permitted through video conferencing. The Amendment Act 2017 has relaxed this restriction, by permitting the directors **to participate** through video conferencing even on prohibited items provided the physically present directors constitute valid quorum.

# LOANS ETC., TO DIRECTORS

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## **Changes effected by Companies Amendment Act 2017.**

Loans etc., to directors of the lending company or its holding company, partner or relative of such director, firm in which such director is a director or partner is prohibited.

With the approval of members in general meeting by Special resolution, loan etc., to private company in which director of the lending company is a director or member, to body corporate in which director of the lending company either singly or with more than one holds not less than 25% in the voting capital of the body corporate, to a body corporate whose board is accustomed to act according to the directions or instructions of the director of the lending company is **permitted**.

# EXEMPTED

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- To Wholly owned subsidiary
- In the ordinary course of its business and interest is charged.
- To managing director or whole time director as part of the conditions of service extended by the company to all its employees; or pursuant to any scheme approved by the members by a special resolution.
- If the borrower is subsidiary only then loan to them is not exempted. However, giving guarantee or providing security is exempted.

# INTERCORPORATE LOANS AND INVESTMENTS.

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- (2) Explanation.—For the purposes of this sub-section, the word "person" does not include any individual who is in the employment of the company.
- (3)Where the aggregate of the loans and investment so far made, the amount for which guarantee or security so far provided to or in all other bodies corporate along with the investment, loan, guarantee or security made or given by the Board, exceed the limits specified under sub-section (2), no investment or loan shall be made or guarantee shall be given or security shall be provided unless previously authorised by a special resolution passed in a general meeting:
- Provided that where a loan or guarantee is given or where a security has been provided by a company to its wholly owned subsidiary company or a joint venture company, or acquisition is made by a holding company, by way of subscription, purchase or otherwise of, the securities of its wholly owned subsidiary company, the requirement of this sub-section shall not apply:
- Provided further that the company shall disclose the details of such loans or guarantee or security or acquisition in the financial statement as provided under sub-section (4).”
- 11. ) Nothing contained in this section, except sub-section (1), shall apply— (a) to any loan made, any guarantee given or any security provided or any investment made by a banking company, or an insurance company, or a housing finance company in the ordinary course of its business, or a company established with the object of and engaged in the business of financing industrial enterprises, or of providing infrastructural facilities; (b) to any investment— (i) made by an investment company; (ii) made in shares allotted in pursuance of clause (a) of sub-section (1) of section 62 or in shares allotted in pursuance of rights issues made by a body corporate; (iii) made, in respect of investment or lending activities, by a non-banking financial company registered under Chapter III-B of the Reserve Bank of India Act, 1934 and whose principal business is acquisition of securities.
- Explanation:.....and a company will be deemed to be principally engaged in the business of acquisition of shares, debentures or other securities, if its assets in the form of investment in shares, debentures or other securities constitute not less than fifty per cent. of its total assets, or if its income derived from investment business constitutes not less than 50%. as a proportion o

## **SECTION 93 -RETURN TO BE FILED WITH REGISTRAR IN CASE PROMOTERS' STAKE CHANGES**

**The requirement by a listed company to intimate change in the number of shares held by promoters and top 10 shareholders in Form No. MGT.10 dispensed with.**



# INVESTIGATION OF BENEFICIAL OWNERSHIP OF SHARES IN CERTAIN CASES – SECTION 90

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## WHO SHALL AND WHEN SHALL FILE A DECLARATION AND CONSEQUENCE IF NOT FILED

Every individual, who **acting** alone or together, or **through one or more persons** or trust, including a trust and persons resident outside India, holds beneficial interests

Of not less than 25% or such other percentage as may be prescribed, in shares of a company or the right to exercise, or the actual exercising of significant influence or control as defined in clause (27) of section 2, over the company. (He is referred to as **significant beneficial owner**.)

shall make a declaration to the company

If any person fails to make a declaration he shall be punishable with fine which shall not be less than one lakh rupees but which may extend to ten lakh rupees and where the failure is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the failure continues.

If any person wilfully furnishes any false or incorrect information or suppresses any material information of which he is aware in the declaration made under this section, he shall be liable to action under section 447.

# BENEFICIAL INTEREST MEANS

18

- For the purposes of section 89 and section 90, beneficial interest in a share includes, directly or indirectly, through any contract, arrangement or otherwise, the right or entitlement of a person alone or together with any other person to—
  - (i) exercise or cause to be exercised any or all of the rights attached to such share; or
  - (ii) receive or participate in any dividend or other distribution in respect of such share.

# HOLDING/SUBSIDIARY

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- subsidiary company" or "subsidiary", in relation to any other company (that is to say the holding company), means a company in which the holding company—
  - (i) controls the composition of the Board of Directors; or
  - (ii) exercises or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiary companies.
- The expression "company" includes any body corporate;

# KEY MANAGERIAL PERSONNEL

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- **Such other officer, not more than one level below the directors who is in whole-time employment, designated as key managerial personnel by the Board IS ADDED TO THE DEFINITION.**
- Managing Director, Whole time director, Chief Executive Officer, Manager, Chief Financial Officer and Company Secretary are – KMP prior to amendment.

# ISSUE OF SHARES AT DISCOUNT

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- **A company may issue shares at a discount to its creditors when its debt is converted into shares in pursuance of any statutory resolution plan or debt restructuring scheme in accordance with any guidelines or directions or regulations specified by the Reserve Bank of India under the Reserve Bank of India Act, 1934 or the Banking (Regulation) Act, 1949."**

# ISSUE OF SWEAT EQUITY SHARES

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- A Company can issue sweat equity shares on incorporation itself.
- The earlier requirement of one year should elapse since the date on which the company had commenced business is omitted.

# PUBLIC DEPOSITS

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- **Compulsory insurance facility is removed.**
- **The requirement to maintain deposit repayment reserve account - Instead of a percentage of the deposits maturing during the following two years, it has been reduced to following financial year only but the quantum has been increased to 20% and the time within which the amount to be deposited is also prescribed. (before thirtieth April of each year.)**

# DELAY IN FILING PERIODICAL RETURNS

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Delay in filing will cost more –  
Rs.100/- per day of default.



# ANNAUL GENERAL MEETING

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- Annual general meeting of an unlisted company may be held at any place in India if consent is given in writing or by electronic mode by all the members in advance.

# EXTRA ORDINARY GENERAL MEETING

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

# GENERAL MEETING - SHORTER NOTICE

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- In the case of an **annual general meeting**, by not less than 95% of the members entitled to vote thereat.
- In the case of any other **general meeting** if the company has a share capital, majority in number of members entitled to vote and who represents not less than 95% of such part of the paid-up share capital of the company as gives a right to vote at the meeting

# REOPENING OF BOOKS

**Reopening of books beyond a period of eight financial years immediately preceding the current financial year is not permitted unless there is a direction from the Central Government.**

# SIGNING OF FINANCIAL STATEMENTS

By the **chairperson** of the company where he is authorised by the Board or by two directors **out of which one shall be managing director, if any, and the Chief Executive Officer**, the Chief Financial Officer and the company secretary of the company, wherever they are appointed.

# CORPORATE SOCIAL RESPONSIBILITY

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Every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during immediately preceding financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director

# AUDITORS APPOINTMENT

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RATIFICATION AT EVERY ANNUAL GENERAL MEETING DURING THE TENURE OF FIVE YEARS IS DISPENSED WITH.

# CANDIDATURE FOR THE OFFICE OF DIRECTORS AT THE GENERAL MEETING.

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**Deposit of Rs. 1 lakh along with the nomination shall not apply in case of:**

- ✓ **Appointment of an independent director or**
- ✓ **A director recommended by the Nomination and Remuneration Committee, if any, constituted under Section 178(1) or**
- ✓ **A director recommended by the Board of Directors of the Company, in the case of a company not required to constitute Nomination and Remuneration Committee.**



# DIRECTORS APPOINTMENT

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- A person who is a director of the company cannot act as an alternate to another director in the same company.
- Casual vacancy filling up will apply to all companies.
- Directors appointed in casual vacancy require shareholders approval in the immediate general meeting.

# AUDIT COMMITTEE AND NOMINATION AND REMUNERATION COMMITTEE

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The Board of Directors of every listed **public** company besides other classes of companies prescribed alone is required to constitute the Audit committee and Nomination and Remuneration Committee.

# APPOINTMENT OF MANAGERIAL PERSONNEL – COMPLETED 70 YEARS.

35

- **Appointment of managerial personnel**  
**Where the age exceeds 70 requires special resolution approval. If special resolution approval could not be obtained but if the number of votes cast in favour of the resolution is more than against then with the C.G approval the appointment can be made.**

# MANAGERIAL REMUNERATION

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- **If any director draws or receives, directly or indirectly, by way of remuneration any such sums in excess of the limit prescribed by this section or without approval required under this section, he shall refund such sums to the company, within two years or such lesser period as may be allowed by the company, and until such sum is refunded, hold it in trust for the company.**
- **The company shall not waive the recovery of any sum refundable to it unless approved by the company by special resolution within two years from the date the sum becomes refundable**
- **Provided that where the company has defaulted in payment of dues to any bank or public financial institution or non-convertible debenture holders or any other secured creditor, the prior approval of the bank or public financial institution concerned or the non-convertible debenture holders or other secured creditor, as the case may be, shall be obtained by the company before obtaining approval of such waiver.**

# DUTY OF AUDITORS TO REPORT

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- The auditor of the company shall, in his report under section 143, make a statement as to whether the remuneration paid by the company to its directors is in accordance with the provisions of this section, whether remuneration paid to any director is in excess of the limit laid down under this section and give such other details as may be prescribed.

# PENDING APPLICATIONS:

- On and from the commencement of the Companies (Amendment) Act, 2017, any application made to the Central Government under the provisions of this section [as it stood before such commencement], which is pending with that Government shall abate, and the company shall, within one year of such commencement, obtain the approval in accordance with the provisions of this section, as so amended.“

# EXEMPTIONS

**THANK YOU**