

# **Newsletter for February, 2016** **By Amita Desai & Co.**



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**Mumbai Off :**

404 | Flyover Apt | Andheri Flyover,  
Opp Telli Galli | Next to HUB Town  
Andheri (East)| Mumbai - 400 069 | India

Landline : +91-22- 2684-5920/21

Fax : +91-22- 6678-7499

Mobile : +91-982-017-7691

**Hyderabad Off :**

My Home Hub, 4th Floor, C Block, Madhupur,  
Hi-Tech City, Hyderabad, AP 500 081

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## MCA UPDATES:

### A. NOTICE INVITING SUGGESTIONS ON COMPANY LAW COMMITTEE REPORT.

- Ministry of Corporate Affairs (MCA) constituted a Company Law Committee (CLC) on 4<sup>th</sup> June, 2015 to make recommendations on issue arising from implementation of the Companies Act, 2013.
- CLC submitted its report to Government on **1<sup>st</sup> February, 2016.**
- Several recommendations are proposed which may result in **changes in 78 sections and more than 100 changes in the Act and the Rules made thereunder.**
- The Report is available on the following link.  
[http://www.mca.gov.in/Ministry/pdf/Report\\_Companies\\_Law\\_Committee\\_01022016.pdf](http://www.mca.gov.in/Ministry/pdf/Report_Companies_Law_Committee_01022016.pdf) .
- The link of the above Notice is as under:  
[http://www.mca.gov.in/Ministry/pdf/Webnotice\\_CLC\\_comments\\_02022016.pdf](http://www.mca.gov.in/Ministry/pdf/Webnotice_CLC_comments_02022016.pdf)

**B. AMENDMENTS IN CHARTERED ACCOUNTANTS PROCEDURES OF MEETINGS OF QUALITY REVIEW BOARD AND TERMS AND CONDITIONS OF SERVICE AND ALLOWANCE OF THE CHAIRPERSON AND MEMBERS OF BOARD RULES 2006.**

- Central Government has made following Amendments:
- Chairperson and Members nominated by Central Government to the Board shall not undertake any foreign tour without the prior approval of Central Government, whenever such a tour is proposed; the proposal should give full justification for the tour, including its purpose, necessity and the expected outcome of the tour for the consideration of Central Government.
- The link of the above Notification is as under:  
[http://www.mca.gov.in/Ministry/pdf/Amendment\\_Rules\\_08022016.pdf](http://www.mca.gov.in/Ministry/pdf/Amendment_Rules_08022016.pdf)

**C. NOTICE INVITING COMMENTS ON THE REVISED SCHEDULE III TO THE COMPANIES ACT, 2013**

- The revised draft Schedule III has been placed on the website of MCA inviting Suggestions and Comments on the draft revised Schedule III to the Companies whose financial statements are drawn up in compliance of companies (Indian Accounting Standards) Rules, 2015.
- The link of the above Notice is as under:  
[http://www.mca.gov.in/Ministry/pdf/Notice\\_Draft\\_Indian\\_Accounting\\_Standards.pdf](http://www.mca.gov.in/Ministry/pdf/Notice_Draft_Indian_Accounting_Standards.pdf)

**D. NOTICE INVITING COMMENTS ON THE DRAFT COMPANIES (AUDITOR'S REPORT) ORDER, 2016:**

- The Ministry had set-up a Committee on 16<sup>th</sup> September, 2015 to examine and recommend matter for inclusion in the statement to be attached with Auditor's Report under Section 143(11) of the Companies Act, 2013 for the financial year 2015-16 onwards.
- The link of the above Notice is as under:  
[http://www.mca.gov.in/Ministry/pdf/Notice\\_Auditors\\_report.pdf](http://www.mca.gov.in/Ministry/pdf/Notice_Auditors_report.pdf)

**E. NOTICE INVITING COMMENTS ON THE DRAFT COMPANIES (INDIAN ACCOUNTING STANDARDS) AMENDMENT RULES 2016:**

- The draft Companies (Indian Accounting Standard) Order, 2016 has been placed on the Ministry's website.
- MCA invites suggestions/comments on the above draft:
- The link of the above Notice is as under:  
[http://www.mca.gov.in/Ministry/pdf/Notice\\_Draft\\_Indian\\_Accounting\\_Standards.pdf](http://www.mca.gov.in/Ministry/pdf/Notice_Draft_Indian_Accounting_Standards.pdf)

**F. NOTICE INVITING COMMENTS ON THE DRAFT COMPANIES (AUTHORISED TO REGISTERED) AMENDMENT RULES 2016:**

- The draft Companies (Authorised to Registered) Order, 2016 has been placed on the Ministry's website.
- MCA Invites suggestions/comments on the above draft are invited.
- The links of the above Notice is as under:  
[http://www.mca.gov.in/Ministry/pdf/Notification\\_Firm\\_17022016.doc](http://www.mca.gov.in/Ministry/pdf/Notification_Firm_17022016.doc)

**G. NOTICE INVITING COMMENTS ON THE DRAFT COMPANIES (INCORPORATION) SECOND AMENDMENT RULES 2016:**

- The draft Companies (Authorised to Registered) Order, 2016 has been placed on the Ministry's website at [www.mca.gov.in](http://www.mca.gov.in)
- MCA has invited suggestions/comments on the above draft.
- The link of the above Notice is as under:  
[http://www.mca.gov.in/Ministry/pdf/Notification\\_Unlimited\\_Liability\\_Company\\_17022016.doc](http://www.mca.gov.in/Ministry/pdf/Notification_Unlimited_Liability_Company_17022016.doc)

**H. NOTICE INVITING COMMENTS ON THE DRAFT COMPANIES (COST RECORDS AND AUDIT) AMENDMENT RULES, 2016:**

- The draft Companies (Cost Records and Audit) Order, 2016 has been placed on the Ministry's website.
- MCA has invited suggestions/comments on the above draft.
- The link of the above Notice is as under:  
[http://www.mca.gov.in/Ministry/pdf/Notice\\_Draft\\_Cost\\_Records\\_Audit.pdf](http://www.mca.gov.in/Ministry/pdf/Notice_Draft_Cost_Records_Audit.pdf)

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## **RBI UPDATES**

### **A. MANDATORY FILING OF FORM ARF, FCGPR AND FCTRS ON E-BIZ PLATFORM AND DISCONTINUATION OF PHYSICAL FILING.**

- RBI vide Circular No. 40 dated 1<sup>st</sup> February 2016 issued mandatory filing of forms and discontinuation of Physical Filing from 8<sup>th</sup> February, 2016.
- With a view to promoting the ease of reporting of transactions related to Foreign Direct Investment (FDI), the Reserve Bank of India (RBI) has enabled online filing of following returns with RBI.
  - Advance Remittance Form (ARF)
  - FCGPR Form
  - FCTRS Form
- Physical filing of above mentioned forms will be discontinued from 8<sup>th</sup> February, 2016 and only online filing will be accepted.
- The link of the above Circular is as under:  
<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10248&Mode=0>

### **B. REGULATORY RELAXATIONS FOR STARTUPS.**

- RBI vide Press Release dated 2<sup>nd</sup> February, 2016 announced Regulatory Relaxations for Startups.

Following are some of the Regulatory changes for easing the cross border transactions:-

- Enabling start-up enterprises, irrespective of the sector to receive foreign venture capital investment and transfer of shares from Foreign Venture Capital Investors to other residents or non-residents;
- Permitting receipt of the consideration amount on a deferred basis;
- Enabling online submission of A2 forms for outward remittances;
- Simplifying the process for dealing with delayed reporting of (FDI).
- The link of the above Press Release is as under:  
[https://www.rbi.org.in/Scripts/BS\\_PressReleaseDisplay.aspx?prid=36126](https://www.rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=36126)

### **C. DEFERRED PAYMENT PROTOCOLS BETWEEN GOVERNMENT OF INDIA AND ERSTWHILE USSR.**

- RBI vide Circular No. 41 dated 4<sup>th</sup> February, 2016 issued Deferred Payment Protocols dated April 30<sup>th</sup>, 1981 and December 23<sup>rd</sup>, 1985 between Government of India and erstwhile USSR.
- The link of the above Circular is as follows:  
<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10259&Mode=0>

### **D. SETTLEMENT OF EXPORT/ IMPORT TRANSACTIONS IN CURRENCIES NOT HAVING A DIRECT EXCHANGE RATE.**

- RBI vide Circular No. 42 dated 4<sup>th</sup> February, 2016 issued Settlement of Export/ Import transactions in currencies not having a direct exchange rate.
- The link of the above Circular is as under:  
<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10263&Mode=0>

### **E. FOREIGN EXCHANGE MANAGEMENT (ACQUISITION AND TRANSFER OF IMMOVABLE PROPERTY OUTSIDE INDIA) REGULATIONS, 2015.**

- RBI vide Circular No. 43 dated 4<sup>th</sup> February, 2016 issued Foreign Exchange Management (Acquisition and Transfer of



Immovable Property outside India) Regulations, 2015.

- The need was felt to revise the regulations issued under the Foreign Exchange Management (Acquisition and Transfer of Immovable Property outside India) Regulations. Hence, in consultation with the Government of India, the said regulations have been repealed and replaced by the Foreign Exchange Management (Acquisition and Transfer of Immovable Property outside India) Regulations, 2015.
- The link of the above Circular is as under:  
<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10264&Mode=0>

**F. FOREIGN EXCHANGE MANAGEMENT (FOREIGN CURRENCY ACCOUNTS BY A PERSON RESIDENT IN INDIA) REGULATIONS, 2015.**

- RBI vide Circular No. 44 dated 4<sup>th</sup> February, 2016 issued Foreign Exchange Management (Foreign Currency Accounts by person resident in India) Regulations, 2015.
- The need was felt to revise to the regulations issued under the Foreign Exchange Management (Acquisition and Transfer of Immovable Property outside India) Regulations, 2000. Hence in consultation with the Government of India, the said regulations have been repealed and replaced by the Foreign Exchange Management (Foreign Currency Accounts by a person resident in India) Regulations, 2015).
- According to the regulations, “Foreign Currency Account” means an account held or maintained in currency other than the currency of India or Nepal or Bhutan.
- These regulations seek to regulate opening and maintenance of foreign currency accounts in and outside India by a person resident in India.
- A person resident in India may open, hold and maintain with an authorized dealer in India the following accounts, subject to the conditions specified in the regulations.
- The link of the above Circular is as under:  
<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10266&Mode=0>

## **G. FOREIGN EXCHANGE MANAGEMENT (EXPORT AND IMPORT OF CURRENCY) REGULATIONS, 2015.**

- RBI vide Circular No. 45 dated 4<sup>th</sup> February, 2016 issued Foreign Exchange Management (Export and Import of Currency) Regulations, 2015.
- The link of the above Circular is as under:  
<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10268&Mode=0>

## **H. FOREIGN EXCHANGE MANAGEMENT (REALISATION, REPATRIATION AND SURRENDER OF FOREIGN EXCHANGE) REGULATIONS, 2015.**

- RBI vide Circular No. 46 dated 4<sup>th</sup> February, 2016 issued Foreign Exchange Management (Realisation, Repatriation and Surrender of Foreign Exchange) Regulations, 2015.
- Foreign Exchange Management (Realisation, Repatriation and surrender of Foreign Exchange) Regulations, 2015 supersedes the Foreign Exchange Management (Realisation, Repatriation and surrender of Foreign Exchange) Regulations, 2000 and all amendments thereto.
- New regulations provides details as follows;
  - Duty of persons to realise Foreign Exchange due.
  - Manner of Repatriation.
  - Period for surrender of realised Foreign Exchange.
  - Period for surrender in certain cases.
  - Period for surrender of received/realised/unspent/unused Foreign Exchange by Resident individuals.
  - Exemption.
- The link of the above Circular is as under:  
<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10269&Mode=0>

## **I. FOREIGN EXCHANGE MANAGEMENT (POSSESSION AND RETENTION OF FOREIGN CURRENCY) REGULATIONS, 2015.**

- RBI vide Circular No. 47 dated 4<sup>th</sup> February, 2016 issued Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2015.
- Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2015 supersedes the Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2000 and all amendments thereto.
- The link of the above Circular is as under:  
<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10271&Mode=0>

## **J. DEFINITION OF "CURRENCY", 2015**

- RBI vide Circular No 48 dated 4<sup>th</sup> February, 2016 issued Circular on Definition of “Currency”.
- According to New Regulation , Debit cards, ATM cards or any other instrument which can be used to create a financial liability may be defined as “Currency”.
- The link of the above Circular is as under:  
<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10272&Mode=0>

## **K. CHANGES IN TIMEFRAME FOR ISSUE OF SHARES AND REPORTING OF FDI INVITES:**

- RBI vide Press Release dated 4<sup>th</sup> February, 2016 proposes changes in Timeframe for Issue of Shares and Reporting of FDI.
- RBI has proposed certain changes in respect of time frame for issue of shares, filing of report with the Reserve Bank.
- Members of public, including the stakeholders and experts in the area, are requested to offer their views and comments on the proposed changes.

- The link of the above Press Release is as under:  
[https://www.rbi.org.in/Scripts/BS\\_PressReleaseDisplay.aspx?prid=36158](https://www.rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=36158)

## **L. RATIONALIZATION OF FEMA REGULATIONS:**

- RBI vide Press Release dated 4<sup>th</sup> February, 2016 rationalized FEMA Regulations.
- The Reserve Bank of India, in consultation with the Government of India, has revised 9 regulations issued under the Foreign Exchange Management Act, 1999 (FEMA). Out of those 7 regulations were being issued on 4<sup>th</sup> February, 2016.
- Keeping in view the objective of promoting ease of doing business, a need was felt to consolidate the regulations and rationalize them in the light of evolving business environment and changing practices in cross-border transactions relating to external trade and payments.
- The link of the above Press Release is as under:  
[https://www.rbi.org.in/Scripts/BS\\_PressReleaseDisplay.aspx?prid=36156](https://www.rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=36156)

## **M. COMPILATION OF R-RETURNS: REPORTING UNDER FETERS:**

- RBI vide Circular No. 50 dated 11th February, 2016 issued Circular on Reporting under FETERS.
  - In order to enhance the security-level in data submission and further improve data quality, the following modifications shall be effected in the guidelines for submission of data under the FETERS from 1<sup>st</sup> fortnight of April 2016.
  - Further, in-order to streamline the reporting of the transactions relating to the Liberalised Remittance Scheme (LRS) in FETERS and On-line Return Filing System (ORFS), it has been decided that transactions relating to LRS may be reported under respective FETERS purpose codes (e.g. travel, medical treatment, purchase of immovable property, studies abroad, maintenance of close relatives etc.) instead of reporting collectively under the purpose code S0023.

- The link of the above Circular is as under:  
<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10276&Mode=0>

#### **N. REGULATORY RELAXATIONS FOR START-UPS- CLARIFICATIONS RELATING TO ACCEPTANCE OF PAYMENTS:**

- RBI vide Circular No. 51 dated 11<sup>th</sup> February, 2016 issued Circular on Clarifications relating to Acceptance of Payment under Relaxations for Startups.
- Start-up in India with an overseas subsidiary is permitted to open foreign currency account abroad to pool the foreign exchange earnings out of the exports/sales made by the concerned start-up.
- The link of the above Circular is as under:  
<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10277&Mode=0>

#### **O. REGULATORY RELAXATIONS FOR STARTUPS- CLARIFICATIONS RELATING TO ISSUE OF SHARES;**

- RBI vide Circular No. 52 dated 11<sup>th</sup> February, 2016 issued Circular on Clarifications relating to issue of shares.
- Reserve Bank of India vide Press Release dated February 2, 2016, had announced that in case of startups, certain permissible transactions under the existing regulatory framework shall be clarified.
- Accordingly, the following is clarified:
  - **Issue of shares without cash payment through sweat equity:** Reserve Bank of India vide Notification No. FEMA.344/2015 RB dated June 11, 2015 has permitted Indian companies to issue sweat equity, subject to conditions, inter-alia, that the scheme has been drawn either in terms of regulations issued under the Securities Exchange Board of India Act, 1992 in respect of listed companies or the Companies (Share Capital and Debentures) Rules
  - **Issue of shares against legitimate payment owed:** Reserve Bank of India vide Notification No. FEMA.315/2014-RB dated July 10, 2014, has permitted Indian companies to issue equity shares against any other funds payable by the investee company



## **SEBI UPDATES:**

### **A. REVIEW OF OFFER FOR SALE (OFS) OF SHARES THROUGH STOCK EXCHANGE MECHANISM:**

- SEBI vide its circular dated 15<sup>th</sup> February, 2016 modified the SEBI guidelines dated 18<sup>th</sup> July, 2012 on sale of shares through Offer for sale mechanism. The revised guidelines has streamlined the process of Offer For Sale (OFS) with an objective to encourage greater participation of all investor including retail investors and the Stock Exchanges are advised to implement the same on or before 01<sup>st</sup> March, 2016.
- As per the Circular, the seller shall notify its intention for sale of shares latest by 5 p.m. on T-1 day. Non-Retail Investors shall place their bids on T day and the Retail Investors shall bid on T+1 day. Settlements for bids received on T+1 day shall take place on T+3 days. Unsubscribed portion of the shares reserved for Retail Investors shall be allocated to non-retail bidders.
- The link of the above Circular is as under:  
[http://www.sebi.gov.in/cms/sebi\\_data/attachdocs/1455542994394.pdf](http://www.sebi.gov.in/cms/sebi_data/attachdocs/1455542994394.pdf)

### **B. TREATMENT OF UNCLAIMED REDEMPTION AND DIVIDEND AMOUNTS:**

➤ Sebi vide its circular dated 25th February, 2016 partially modified the circular dated 24th November, 2000 on treatment of unclaimed redemption. Its is divided into two parts namely, Part A- Treatment of unclaimed redemption and dividend amounts and Part B – Distribution of Mutual Fund Products.

➤ Part A- The unclaimed redemption and dividend amounts are now allowed to be invested in separate plan of Liquid

Scheme/Money Market Mutual Fund Scheme and the AMC's shall not be permitted to charge any exit load in this plan.

➤ The circular also lays down various preventive measures which ensure that Mutual Funds play a pro-active role in tracing the rightful owner of the unclaimed amounts.

➤ Part B- In partial modification of SEBI Circular dated 13<sup>th</sup> September, 2012 now Retirement Benefit schemes having tax benefits and Liquid Schemes/Money Market Mutual Fund Schemes shall form a part of simple and performing Mutual Fund Schemes.

➤ Part A of the circular shall be effective from 1<sup>st</sup> April, 2016 and Part B shall be applicable with immediate effect.

➤ The link of the above Circular is as under:

[http://www.sebi.gov.in/cms/sebi\\_data/attachdocs/1456400389824.pdf](http://www.sebi.gov.in/cms/sebi_data/attachdocs/1456400389824.pdf)





## **DIPP UPDATES:**

### **A. DEFINITION OF STARTUP:**

- Ministry of Commerce and Industry (Department of Industrial Policy And Promotion) vide its notification dated 17<sup>th</sup> February, 2016 had defined the term Startup and prescribed the procedure for its recognition and obtaining tax benefits.
- The link of the above Circular is as under:  
[http://dipp.nic.in/English/Investor/startupindia/Definition\\_Startup\\_GazetteNotification.pdf](http://dipp.nic.in/English/Investor/startupindia/Definition_Startup_GazetteNotification.pdf)

### **B. REPORT OF THE EXPERT COMMITTEE ON PRIOR PERMISSIONS AND REGULATORY MECHANISM:**

- The expert committee was constituted by Department of Industrial Policy and Promotion to examine the possibility of replacing multiple prior permissions with a pre-existing regulatory mechanism with adequate safeguards.
- The Expert Committee released its 75 Page Report on 26<sup>th</sup> February, 2015 which would create an investor friendly regulatory framework replacing multiple prior permissions with adequate safeguards for making India one of the most attractive investment decisions.
- The link of the above Circular is as follows:  
[http://dipp.nic.in/English/Investor/Ease\\_DoingBusiness/expertCommitteeReport\\_RegulatoryApprovals\\_26February2016.pdf](http://dipp.nic.in/English/Investor/Ease_DoingBusiness/expertCommitteeReport_RegulatoryApprovals_26February2016.pdf)



# ARTICLE OF THE MONTH

## ANALYSIS ON PROPOSED AMMENDMENTS IN COMPANIES ACT, 2013 RECOMMENDED BY COMPANY LAW COMMITTEE

### INTRODUCTION:-

Company Law Committee, chaired by Shri. Tapan Ray was set up on 4<sup>th</sup> June, 2015 to make recommendations to the Government on issues arising from the implementation of the Companies Act, 2013 as well as the recommendations received from the Bankruptcy Law Reforms Committee, the High Level Committee on CSR, the Law Commission and other agencies.

Report of the Company Law Committee suggesting changes in the Companies Act, 2013 (the Act), has been submitted on 1<sup>st</sup> February 2016.

### STRUCTURE OF THE REPORT:-

The Report is divided into two parts, namely Part I, which deals with amendments in the Companies Act, 2013 and Part II, proposing changes to Rules issued under the Act.

**These recommendations would result in changes in 78 sections, and more than 100 changes in the Act and Rules made there under.**

### SYNOPSIS OF PROPOSED AMMENDMENT AND ITS IMPACT

Key Recommendations and its impact are listed in the table below

SR. NO.	SECTION	EXISTING	PROPOSED
1.		<b>DEFINITIONS:</b>	
	Associate Company [Sec.2(6)]	In relation to another company, to mean a company in which the other company has a significant influence, but is not a subsidiary company of the company having such influence, and also	‘Significant influence’ to mean control of at least 20% of the <b>total voting power, or control of or participation in taking business decisions under an agreement</b> ’.  “Joint venture” be assigned the same meaning as under AS 28

	<p>includes a <i>joint venture company</i>.</p> <p>Significant influence - means control of at least <b>20% of the total share capital</b>, or of business decisions under an agreement”.</p> <p>Total share capital includes - Equity share capital and convertible preference share capital.</p>	<p><b>Impact: Instead of control on 20% of total share capital, 20% of voting power on Equity Capital will be considered in determining the Significant influence over the other Company.</b></p>
Net Worth [Sec.2(57)]	<p>Net Worth includes: Total paid-up capital, all reserves credited out of profits and securities premium.</p> <p>Definition <b>does not include</b> the phrase ‘<b>debit or credit balance of the profit and loss account</b>’.</p>	<p>Phrase ‘<b>debit or credit balance of the profit and loss account</b>’ to be included in the definition.</p> <p><b>Impact: Clarity is proposed to be inserted in the said definition.</b></p>
Related Party [Sec.2(76)]	<p>Related party currently defined <b>in Sec.2(76)(viii)</b> as follows.</p> <p>(viii) any <b>Company</b> which is—</p> <p>(A) a holding, subsidiary or an associate company of such company; or</p> <p>(B) a subsidiary of a holding company to which it is also a subsidiary</p> <p><b>It covers only companies incorporated in India and excludes entities incorporated outside India, Investing Company and Venture of the Company.</b></p>	<p>Sec.2(76)(viii) be amended to substitute ‘company’ with ‘<b>body corporate</b>’ and should also <b>include investing company or the venture of a company.</b></p> <p><b>Impact: Entities incorporated outside India, investing Company and Venture of the Company will also come under purview in the said definition.</b></p>

	Subsidiary Company [Sec.2(87)]	In relation to another Company (holding Co.) as a Company in which the Holding Co. controls the composition of the Board of Directors, or exercises or controls more than one-half of the <b>total share capital</b> .	Term 'total share capital' would be replaced with the term ' <b>total voting power</b> ' as equity share capital should be the basis for determining holding/subsidiary status.  <b>Impact: Only voting power on Equity Capital will be considered in determining the Significant influence over the other Company.</b>
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2. INCORPORATION OF COMPANIES:			
	Section 4(1)(c):-	In MOA of the Company, Company is required to state the objects for which the company is proposed to be <b>incorporated and any matter</b> considered necessary in furtherance thereof;	The additional option is proposed to have a generic object clause, i.e., " <b>to engage in any lawful act or activity or business as per the law for the time being in force.</b> "  <b>Impact: MOA to have unrestricted object Clause and doing away with detailed listing of objects.</b>
	Section 4(5)(i)	Upon receipt of an application for availability of name, the Registrar may, on the basis of information and documents furnished along with the application, reserve the name for a <b>period of sixty days</b> from the date of the application.	The <b>period of name reservation</b> is proposed to be <b>reduced</b> from 60 days <b>to 20 days from the date of approval</b> and simultaneously, <b>fees</b> for such reservation be <b>reduced to Rs. 500/-</b> .  <b>Impact: As centralized processing of name reservation/approval has already been implemented this proposal will build in efficiency in the system and will reduce misuse.</b>  <b>Period of Name Reservation will be reduced from 60 to 20 days and fees on application will be reduced to Rs.500/- from Rs.1000/-</b>
	Section 7(1)(c)	An Affidavit is currently required to be given by <b>Directors</b> and the <b>First subscribers</b> with respect to their not being convicted of any offences.	Requirement pertaining to affidavit under the said section is proposed to be replaced with <b>self-declarations</b> , as a wrong declaration carries a stiff punishment.  <b>Impact: Self-declaration will be sufficient from Director and First subscribers.</b>

	Section 12(1)	A Company shall, on and from the <b>fifteenth day</b> of its <b>incorporation</b> , and at all times thereafter, have a Registered Office.	Company to have its registered office within 30days of its incorporation.  <b>Impact: With this amendment company may have its registered office from the day of its incorporation or within 30days.</b>
	Section 3(1)	It provides for minimum number of persons required for formation of a company.  However, it does not provide the minimum number of persons required for continuation of a company after it is formed and legal consequences of number of members falling below the minimum number is not provided in section 3 of the Act	It is proposed to bind the continuing members with the liability for all the debts incurred by the company till the prescribed minimum is restored.  Further, maximum period of 6 months be allowed within which the default shall be made good failing which the violation of the law shall be triggered.

### 3. PROSPECTUS AND ALLOTMENT OF SECURITIES:

	Section 42	Contents of ' <b>Private Placement Offer Letter in Form PAS 4</b> ' is required to be <b>circulated</b> to identified investors and file the same with the Registrar. The said form requires number of details to be included in it.  Further Section 42(3) states that - no fresh offer or invitation under this section shall be made unless the allotments with respect to any offer or invitation made earlier have been completed or that offer or invitation has been	It is proposed that preparation and filing of <b>Private Placement Offer Letter in Form PAS-4</b> be <b>discontinued</b> and an Explanatory Statement disclosing the details as required under Rule 13(2)(d) of the (Companies Share Capital and Debentures) Rules, 2014 be included in Private Placement Application Form.  It is also proposed that a company could, at the same time keep open more than one issue of securities (that is, of equity share or preference share or debenture) in a year to such classes of investors as may be prescribed by Rules in order to provide greater flexibility in raising capital/loans.  It is further proposed that Form PAS 5 need not be filed with ROC.  <b>Impact: Procedural requirement involved in Private Placement will be reduced significantly and Company can keep open more than one private placement offer for different securities.</b>
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		withdrawn or abandoned by the company	
<b>4. SHARE CAPITAL AND DEBENTURES:</b>			
	Section 62(2)	Notice with regards to offers on right basis to be dispatched only through <b>registered post, speed post, or electronic mode.</b>	<p><b>It is proposed that any mode of delivery which would provide certain evidence / undeniable be allowed</b> in case of dispatching notice with regard to offers on right basis.</p> <p><b>Impact: Proof of dispatch will not be restricted to registered post, speed post or electronic mode only. Dispatch by way of hand delivery and courier will also be allowed.</b></p>
	Section 73(2)(c) and 73(5)	Requirement of keeping an amount <b>not less than 15%</b> of the amount of its deposits maturing during a financial year and the next financial year deposited and maintaining a separated schedule bank account	<p><b>Requirement for the amount to be deposited</b> in a scheduled bank in a financial year should be changed to <b>not less than 20%</b> of the amount of deposits <b>maturing during that financial year.</b></p> <p><b>Impact: Higher amount of deposits maturing during the FY only, will be required to be kept in separated schedule bank. Amount maturing in next financial year is not required to be considered while determining 20%.</b></p>
		At present, private companies are permitted to accept deposits from their members' deposits which amount shall not exceed 100% of their paid up capital and free reserves with relaxed compliance requirements.	With a view to ease for raising of funds for start-ups without additional compliance costs, it is proposed that limits with regard to raising of deposits from members for 'Start-ups' which are private companies be removed for the first five years from their incorporation.

	Section 73 & 76	<p>Contravention of the said section is punishable with a fine which should <b>not be less than Rs.1 crore</b>, but which could <b>extend to Rs.10 crore</b>. Such fine is in <b>addition</b> to the <b>repayment</b> of the amount of <b>deposit</b> and the <b>interest</b> due thereon.</p>	<p>It is proposed that the <b>minimum fine</b> be modified to <b>lower of Rs. 1 crore OR twice the amount of deposit accepted</b></p> <p><b>Impact: Relaxation in penal section to be introduced.</b></p>
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6.

**MANAGEMENT AND ADMINISTRATION:**

	Section 89	<p>Beneficial interest in a share obligates every person acquiring / holding beneficial interest in a share as well as the legal owner to make a declaration to the company in respect of such beneficial interest;</p> <p>In view of the absence of a definition of beneficial interest in a share in a Company, no enabling provisions to maintain a separate register on beneficial ownership, in the Act, the existing provisions are considered inadequate for the</p>	<p>It is proposed to give a <b>definition</b> of <b>beneficial interest</b> in a share, and <b>beneficial ownership</b> of a Company.</p> <p>At the same time, Companies and individuals may be <b>obligated to obtain information</b> on beneficial ownership.</p> <p>Further, Companies would also be <b>mandated to maintain registers of beneficial owners</b> and <b>provide</b> the information to the MCA.</p> <p><b>Impact: This recommendation may provide a clear distinction between the registered and beneficial ownership in the Company and smooth functioning of the business activities.</b></p>
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		purpose of mandating a register of beneficial owners of the company.	
Section 92(3)	<b>Mandatory filing of an extract of the Annual Return as a part of the Board's report.</b>	It is proposed to <b>omit the filing the same</b> , and add the web address/ link <b>Annual Return</b> filed by the company and hosted on its website, if any, be provided in the <b>Board's Report</b> and information with regard to shareholding pattern be provided as part of section 134 requirements.  <b>Impact: Simplified procedure may be introduced where in repetitive information would be avoided.</b>	
Section 93	It requires filing of a return by a listed company with the Registrar, in a prescribed form with respect to changes in the number of shares held by promoters, and top ten shareholders.	It is proposed that the same be omitted as the similar information is filed by the Companies with Stock Exchanges / SEBI.  <b>Impact: It will reduce the number of filings to be done by the Company with ROC.</b>	
Section 96(2)	<b>Requirement of holding of Annual General Meeting at the registered office of the company or at any other place within the city, town or village in which the registered office of the company is situated.</b>	Suggestions to allow <b>private limited companies and wholly owned subsidiaries(WOS) of unlisted companies to convene the AGMs at any place in India provided approval of 100% shareholders is obtained in advance</b> , with a view to carry out smooth flow of business.  <b>Impact: Liberal provision for private and WOS of unlisted companies to hold AGM anywhere in India.</b>	



	<a href="#">Section 120</a>	<b>Maintenance and inspection of documents in electronic form</b>	<p>It is suggested, with respect to Section 120 of the Act, that a new form should be introduced by MCA to which extracts of all statutory registers and minute books for each financial year should be enclosed which would be accessible only to the MCA officials and not to the public.</p> <p><b>Impact: Better compliances and transparency will be infused in the regulatory system.</b></p>
<b>7. DECLARATION AND PAYMENT OF DIVIDEND:</b>			
	<a href="#">Section 123(3)</a>	Allows the Board of Directors to <b>declare interim dividend</b> during any financial year out of the <b>surplus in the profit and loss account</b> , and out of the <b>profits of the financial year</b> in which such dividend is sought to be declared.	<p>The said provision to be amended in such a way as to allow <b>declaration of interim dividend from out of the profits of the current financial year, generated till the date of declaration, including brought forward surplus in the Profit &amp; Loss Account</b>, and the same could be <b>declared anytime up to convening of AGM for the said financial year.</b></p> <p><b>Impact: Beneficial to the shareholders as the recommended provision may result in higher amount for interim dividend.</b></p>
<b>8. ACCOUNTS OF COMPANIES:</b>			
	<a href="#">Rule 6 of the Companies (Accounts) Rules, 2014</a>	The third proviso to Rule 6 states that this Rule shall not apply in respect of <b>consolidation of financial statement</b> by a company having subsidiary or subsidiaries incorporated outside India only for the financial year commencing on 1 April 2014 and ending 31 March 2015.	<p>The Committee deliberated on extending this exemption perpetually, as demanded, and decided that this exemption was only a facilitative provision for transition and it <b>should not be extended beyond 2014-15.</b> Further, in case the company does not have subsidiaries but only associates and joint ventures, the Committee suggested that the exemption to consolidate the accounts of joint ventures and associates not be extended perpetually as AS 21 requirement are being suitably modified.</p> <p><b>Impact: Consolidation of accounts would be applicable for Subsidiaries, Joint Venture and associate companies from FY 2015-16.</b></p>
	<a href="#">Rule 8(1) of the Companies</a>	The rule requires the Boards' of Report to contain a separate section on <b>performance and</b>	The Committee recommended that the requirements under Rule 8(1) may be captured to the extent feasible in the statement under Rule 5.



(Account s) Rules	financial position of each of the subsidiaries, associates and joint ventures.	<b>Impact: Reporting requirement under Rule 8(1) will be reduced.</b>
Section 135 (1)	Every company having a net worth of Rupees Five Hundred Crore or more; or a turnover of Rupees One Thousand Crore or more; or a net profit of Rupees Five Crore or more, during any financial year, is required to constitute a <b>'Corporate Social Responsibility Committee'</b> of the Board, consisting of three or more directors, out of which <b>at least one director</b> has to be an <b>Independent Director</b> .	Composition of CSR Committee for companies not required to appoint Independent Directors be prescribed as <b>'having two or more Directors'</b> . [Rule 5(1) of CSR Policy Rules, 2014] <b>Impact: Requirement pertaining to Composition of CSR Committee is reduced to facilitate unlisted, Private and Foreign Companies (Companies not required to appoint Independent Director).</b>
Section 134(5)(f)	As per the said section, Directors Responsibility Statement should state that the directors had devised proper systems to <b>ensure compliance</b> with the provisions of <b>all applicable laws</b> and that such systems were adequate and operating efficiently.	The Committee deliberated on restricting disclosure of compliance to <b>important</b> laws and felt that as the company has to comply with all applicable laws, restricting the Director's responsibility to compliance of specific laws only would not be acceptable. <b>Impact: Director responsibility statement will not only be restricted to specific laws and should cover all applicable laws.</b>

<p>Sections 134(3)(a) and 92(3)</p>	<p>Said provision requires the Board's Report of a company to <b>include an Extract of Annual Return in Form MGT-9.</b> The said Form, inter alia, requires companies to disclose remuneration of Directors and key Management Personnel (KMP)</p>	<p>The Committee has recommended for omission of <b>MGT-9</b> requirements.</p> <p>In addition, disclosure of employees receiving remuneration of Rs. 5Lac p.m. or Rs.60 lac p.a. may be increased to Rs. 102 lac p.a.</p> <p><b>Impact: Disclosure in Form MGT 9 to be omitted. Further threshold limit is proposed to be increased.</b></p>
<p>Section 135(1)</p>	<p>Suggestion for clarity with regard to <b>'any financial year'</b> as used in the said section for determining whether the threshold of specified net worth or turnover or net profit.</p>	<p>The words <b>"any financial year"</b> be <b>replaced</b> by the words <b>'preceding financial year'</b>.</p> <p><b>Impact: Clarity for the purpose of interpretation is recommended by the committee.</b></p>
<p>Section 135(5)</p>	<p><b>'Average net profit'</b> shall be calculated in accordance with Section 198.</p>	<p>'Average net profit' to be replaced with the words <b>'net profit'</b>.</p> <p><b>Impact: Only preceding financial year will be considered instead of three immediately preceding financial year.</b></p>

9.

**AUDIT AND AUDITORS:**

<p>Section 139(1)</p>	<p>Shareholders at the 'Annual General Meeting' shall <b>appoint an auditor</b> of a company, for a consecutive period of <b>five years</b>, and that his <b>appointment</b> shall be <b>ratified</b> every year at the AGM.</p>	<p>The Committee felt that shareholders may not ratify his appointment at the AGM and hence it would mean removal of auditors. Such removal requires compliance of provisions of Act and it would not be considered casual vacancy. Hence it is proposed to <b>omit</b> the <b>provisions</b> with respect to <b>ratification</b>, as it defeats the objective of giving five year term to the auditors as this would remove the inconsistency in the Act.</p> <p><b>Impact: Ratification will not be required in every year's AGM.</b></p>
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	Section 143(1)	<p><b>Auditor</b> of a <b>holding company</b> shall also have the <b>right to access</b> the <b>books of accounts</b> of <b>subsidiary companies</b>, in connection to the consolidation of accounts.</p>	<p>Auditor of a holding company to have a right of <b>access</b> to the <b>accounts</b> and <b>records</b> of the <b>associate company</b> and <b>joint venture</b> company, whose accounts are required to be consolidated.</p> <p><b>Impact: Auditor can have right to access the books of accounts of associate company and joint venture company whose accounts are to be consolidated. Scope of audit will be wider.</b></p>
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**10. APPOINTMENT AND QUALIFICATIONS OF DIRECTORS:**

	Section 149(3)	<p>A company to have <b>at least one Director</b> to have <b>stayed in India</b> for a total period of <b>not less than one hundred and eighty-two days</b> in the <b>previous calendar year</b>.</p>	<p>Such a <b>requirement</b> to be in relation to the director's stay in India during the <b>financial year</b> and not the calendar year, with the <b>requirement effective after a period of six months from incorporation</b>.</p> <p><b>Impact: Harmony between Companies Act and Income Tax Act.</b></p>
	Section 149(6)(c)	<p>An independent director must not have or had <b>any pecuniary relationship with the company</b>, its holding, subsidiary or associate company, or their promoters or directors, during the <b>two immediately preceding financial years</b> or during the current financial year.</p>	<p>In view of the difficulties being faced, the <b>test of materiality</b> for the purpose of <b>determining</b> whether <b>pecuniary relationships</b> could impact the independence of an individual to be an independent director may be <b>introduced</b>.</p> <p><b>Impact: Only material pecuniary relationship will be considered to determine independence of a director.</b></p>
	Section 149(6)(d)	<p>A director can be appointed as an Independent Director only if none of his <b>relatives has or had a pecuniary relationship or transaction of a prescribed value</b> with the company, its holding, subsidiary or</p>	<p>Scope of the restriction on <b>“pecuniary relationship or transaction”</b> entered into by a relative be made <b>more specific</b> by clearly <b>categorizing</b> the <b>types of transactions</b> as <b>provided under 141(3)(d)</b></p> <p><b>Impact: More specific and clear provision will be introduced with regards to relationship or transactions entered by relative.</b></p>

		associate company or their promoters or directors during the two immediately preceding financial years, or during the current financial year.	
	Section 149(6)(e) (i)	Restrictions on appointment of an individual as an Independent Director in case his relative is or <b>was a KMP or an employee</b> in the company, its holding, subsidiary or associate company during any of the preceding three financial years.	Scope of the <b>restriction</b> to be <b>modified</b> . Therefore for the <b>preceding years</b> , the <b>restriction</b> should be for <b>relatives holding Board or KMP / one level below Board position</b> similar to that contained in Section 141(3)(f). Further, such <b>scope of restriction</b> after appointment should be <b>retained</b> .  <b>Impact: Scope and definition of relative will be clear</b>
	Section 161(4)	Authorises the Board of a <b>public company to fill a vacancy caused by vacation of the office of any director</b> before the expiry of his term, subject to the AOA of the company.	<b>Authority to the Boards of Private Companies as well should be available.</b>  <b>Impact: Private Companies will also come under purview of the said section.</b>
<b>11. MEETINGS OF BOARD AND ITS POWERS:</b>			
	Section 184(2)	Private companies have been exempted from the prescription under Section 184(2) barring participation of interested directors in Board meetings.	Since <b>Sec.184(2) and Sec. 174(3)</b> are <b>related sections</b> with respect to <b>interested directors</b> , related <b>exemption under Sec. 174(3)</b> to <b>enable</b> such <b>participating interested Directors</b> for the purposes of <b>quorum</b> , should be <b>given to private companies</b> using the power to exempt under Section 462 of the Act.  <b>Impact: Private Companies may be exempted from the prescription under Section 174(3) as well.</b>

Section 180(1)(c)	Limits of Borrowings are aggregate of paid up share capital and free reserves.	<b>Securities premium</b> also to be <b>included</b> for the purpose of recognizing the borrowing limits, since it was a part of the capital of a company.  <b>Impact: Limits pertaining to borrowings under the said section is proposed be increased.</b>
Section 186(1)	A company shall unless otherwise prescribed, make investment through not more than two layers of investment companies.	The CLC is of the opinion that sufficient <b>safeguards</b> have been <b>built</b> into the oversight mechanism of <b>SEBI &amp; Stock Exchanges</b> and so it recommended that the <b>restrictions on layering</b> to be <b>omitted</b> .  <b>Impact: Liberalization is recommended on investing beyond two layers of Investment Companies.</b>
Second proviso to Section 188(1)	The said section requires that no member of the company shall vote on a special resolution to approve the contract or arrangement (referred to in the first proviso), if such a member is a related party.	As all the <b>parties</b> in case of <b>joint ventures and closely held public companies may be related parties</b> , restricting them to vote may be <b>impractical</b> and such cases may be specifically <b>excluded</b> from the requirements of the second proviso of the said section.  <b>Impact: Practical difficulties will be removed in case of related parties.</b>

## 12. APPOINTMENT AND REMUNERATION OF MANAGERIAL PERSONNEL:

Section 198(4)(1)	Section refers to deduction of 'brought forward losses' of the company while calculating the net profit, for computing managerial remuneration in the subsequent years.	<b>Brought forward losses</b> of the years subsequent to the enactment of Companies (Amendment) Act, 1960, to be <b>included</b> while calculating the net profit for computing managerial remuneration.  <b>Impact: Qualifying amount for computation of Managerial Remuneration will be arrived at after setting of previous years losses</b>
Section 196 and Schedule V	A Managing Director/Whole Time Director should have been resident in India for previous one year.  It prevents a foreign	Such <b>requirement</b> may be <b>done away</b> with <b>subject to satisfaction</b> of <b>other applicable regulatory clearances</b>  <b>Impact: This proposal will provide larger pool of resources and increasing mobility of professionals globally and a foreign</b>

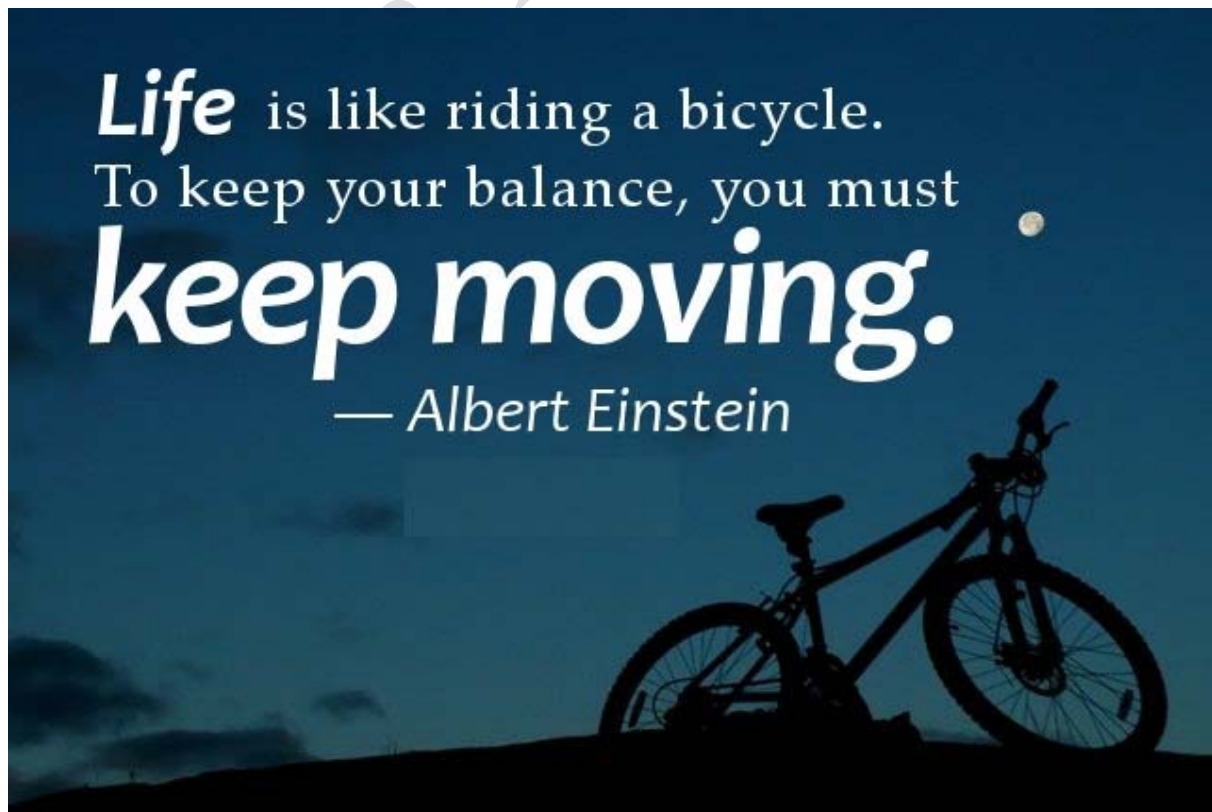
		national to be a Managing Director/Whole Time Director unless he has stayed in the country for a year.	<b>national can become a Managing Director / Whole Time Director.</b>
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Amita Desai & Co.



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## **Amita Desai & Co. Company Secretaries**

### **Mumbai Off :**

404 | Flyover Apt | Andheri  
Flyover,  
Opp Telli Galli | Next to Hub  
Town)  
Andheri (East)| Mumbai - 400  
069 | India

Landline : +91-22- 2684-5920/21  
Fax : +91-22- 6678-7499  
Mobile : +91-982-017-7691

### **Hyderabad Off :**

My Home Hub, 4th Floor, C Block, Madhupur,  
Hi-Tech City, Hyderabad, AP 500 081

**Chief Editor: Mrs. Amita Desai**

**Editor: Mr. Chintan Sheth  
Ms. Nidhi Gandhi  
Ms. Hirak Patel**