

ICSI-CCGRT – “GEETA SAAR” – A Brief of Premier on Company Law

Section -1 of Companies Act, 2013: Short title, extent, commencement and application

Brief history of Company Legislations in India

The genesis of the company law in India can be traced back to the year 1850 when for the first time an Act in the name of Joint Stock Companies Act, 1850 to regulate joint stock companies was enacted. This Act of 1850 was replaced by Joint Stock Companies Act, 1857, which was soon after replaced by Joint Stock Companies Act, 1860. First comprehensive enactment for regulating the companies in India was made in the year 1866 in the name of the Indian Companies Act, 1866, which replaced Joint Stock Companies Act, 1860. The Indian Companies Act, 1866 was again repealed in turn by the Act of 1882. This last mentioned Act remained on the statute book upto 1913 though in the meantime it was amended several times to meet the demands of the commercial world. The Indian Companies Act of 1913 was passed with the object of consolidating and amending the law relating to trading companies and other associations in what was then known as British India and was mainly based upon the English Companies Act of 1908 with certain additional provisions to meet the peculiar business conditions obtaining in this country. Since the Indian Act closely followed the English Company Law, the decisions of the English courts under the latter were also generally followed by courts in India. This Act of 1913, however, did not provide for certain - peculiarities of the Indian commercial world such as managing agency and was, therefore, found to be highly unsatisfactory in several respects in the course of its working.

Eventually, extensive amendments were introduced in the Act by the Indian Companies (Amendment) Act of 1935, which came into operation on the 15.01.1937. The vast number of amendments introduced by this Act, 1937, however, involved a few omissions but they were sought to be removed by amending the Act frequently in the subsequent years. However, this Act was significant as it amended Indian Act instead of replacing it in response to change in English Act. Further in exercise of the powers under the Government of India Act, 1935, the Registration of Transferred Companies Ordinance, 1942 was issued to enable the companies incorporated under the law in force in certain

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parts of British Dominions outside British India to continue to operate effectively by removal to British India. It provided powers to the Central Government to modify the applicability of the provisions of the Indian Companies Act, 1913 and frame rules for registration and other incidental powers.

The Companies Act, 1913 was replaced by the Companies Act, 1956 (1 of 1956) which came into force with effect from 01.04.1956.

The Companies Act 1956 was enacted on the recommendations of the Bhaba Committee set up in 1950 with the object to consolidate the existing corporate laws and to provide a new basis for corporate operation in independent India. With enactment of this legislation in 1956, the Companies Act 1913 was repealed.

The Companies Act, 1956 for the first time provided for a greater measure of governmental control over the formation and management of joint stock companies. This was considered desirable in public interest in order to prevent the diversion of Company's funds.

The basic objectives of the Companies Act, 1956 as highlighted by Rajender Sacher Committee were as under:

- (i) to provide a minimum standard of good behaviours and business honesty in company promotion and management;
- (ii) due recognition of the legitimate interest of shareholders and creditors and of the duty of management not to prejudice or jeopardize those interests;
- (iii) provision for greater and effective control over and voice in the management for shareholders;
- (iv) a fair and true disclosure of the affairs of companies in their annual published balance sheet and profit and loss accounts;
- (v) a higher standard of accounting and auditing;
- (vi) recognition of the rights of shareholders to receive reasonable information and facilities for exercising an intelligence judgment with reference to the management;

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- (vii) a ceiling on the share of profits payable to the management as remuneration for services rendered;
- (viii) a check on their transactions where there was a possibility of conflict of duty and interest;
- (ix) a provision for investigation into the affairs of any company managed in a manner oppressive to a minority of the shareholders or prejudicial to the interests of the company as a whole;
- (x) enforcement of the performance of their duties by those engaged in the management of public companies by providing sanctions in the case of breach and subjecting the latter also to the more restrictive provisions of law applicable to public companies.

The Companies Act, 1956 was further amended/extended several times by various amendment Acts as well as other legislations in the following order:

- (1) Jammu and Kashmir (Extension of laws) Act, 1956 (62 of 1956)
- (2) The Companies (Amendment) Act 1960 (65 of 1960)
- (3) The Companies (Amendment) Act 1962 (43 of 1962)
- (4) The Companies (Amendment) Act 1963 (53 of 1963)
- (5) The Companies (Amendment) Act 1964 (32 of 1964)
- (6) The Companies (Amendment) Act 1964 (52 of 1964)
- (7) The Companies (Amendment) Act 1965 (31 of 1965)
- (8) The Companies (Amendment) Act 1966 (34 of 1966)
- (9) The Companies (Second Amendment) Act 1966 (37 of 1966)
- (10) The Companies Tribunal (Abolition) Act 1967 (17 of 1967)
- (11) Central Laws (Extension to J &K) Act, 1968 (25 of 1968)
- (12) The Companies (Amendment) Act 1969 (17 of 1969)
- (13) The Companies (Amendment) Act 1971 (80 of 1971)
- (14) The Companies (Amendment) Act 1974 (41 of 1974)
- (15) The Companies (Amendment) Act 1977 (46 of 1977)
- (16) The Companies (Amendment) Act 1985 (35 of 1985)
- (17) The Companies (Amendment) Act 1988 (31 of 1988)
- (18) The MRTP (Amendment) Act, 1991 (58 of 1991)
- (19) The Depositories Act, 1996 (22 of 1996) (w.e.f. 20-9-1995),

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- (20) The Companies (Amendment) Act, 1996 (5 of 1997), (w.e.f. 1-3-1997)
- (21) The Depositories Related Laws (Amendment) Act, 1997, (w.e.f. 15-1-1997)
- (22) The Companies (Amendment) Act, 1999 (21 of 1999), (w.e.f. 31-10-1998)
- (23) The Trade Marks Act, 1999 (47 of 1999)
- (24) The Companies (Amendment) Act, 2000 (53 of 2000), (w.e.f. 13-12-2000 excepts s. 7 and s. 80)
- (25) The Companies (Amendment) Act, 2001 (57 of 2001)
- (26) The Securitisation and Reconstruction of financial assets and Enforcement of Securities Interest Act, 2002 (54 of 2002)
- (27) The Companies (Amendment) Act, 2002 (1 of 2003)
- (28) The Companies (Second Amendment) Act, 2002 (11 of 2003)
- (29) The Election and other Related Laws (Amendment) Act, 2003 (46 of 2003)
- (30) Enforcement of Security Interest and Recovery of Debts laws (Amendment) Act, 2004 (30 of 2004) and
- (31) The Companies (Amendment) Act, 2006 (23 of 2006)

The Companies Act, 1956 was in force for about 57 years. In view of changes in the national and international economic scenario and growth of the Indian corporate and also to consolidate and align with other legislation there was a need to revise the existing company law by passing a new Companies Act.

The Companies Act, 1956, has since provided the legal framework for corporate entities in India. The need for streamlining this Act was felt from time to time as the corporate sector grew in pace with the Indian economy, with as many as 24 amendments taking place since 1956. Major amendments to the Act were made through Companies (Amendment) Act, 1988 after considering the recommendations of the Sachar Committee, and then again in 1998, 2000 and finally in 2002 through the Companies (Second Amendment) Act 2002, consequent to the report of the Eradi Committee.

The Government, therefore, felt it appropriate that the proposals contained in the concept paper and suggestions received thereon be put to merit evaluation by an independent Expert Committee. A committee was constituted on 2nd December, 2004 under the chairmanship of Dr. J J Irani, Director, Tata Sons, with the task of advising the Government on the proposed revisions to the Companies Act, 1956. The objective of this

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exercise is perceived as the desire on the part of the Government to have a simplified compact law that will be able to address the changes taking place in the national and international scenario, enable adoption of internationally accepted best practices as well as provide adequate flexibility for timely evolution of new arrangements in response to the requirements of ever-changing business models. The committee felt that this is a welcome attempt to provide India with a modern Company Law to meet the requirements of a competitive economy.

The Expert Committee consisted of 13 members and 6 special invitees drawn from various disciplines and fields including trade and industry, chambers of commerce, professional institutes, representatives of Banks and Financial Institutions, Senior Advocates etc. Government Ministries as well as regulatory bodies concerned with the subject were represented. The Committee thus brought a wide range of expertise and experience on the issues before it. In the exercise taken up by it, the Committee took the Companies Act, 1956, as amended, as the base and adopted the following approach:

- i. Taking note of the Concept Paper and suggestions/ objections and comments on the same received from various quarters, to enable synthesis of opinion on the desirable features of the new law;
- ii. Identifying the essential ingredients to be addressed by the new law, retaining desirable features of the existing framework, segregating substantive law from the procedures to enable a clear framework for good corporate governance that addresses the concerns of all stakeholders equitably.
- iii. Making recommendations to enable easy and unambiguous interpretation by recasting the provisions of the law so as to enable easy understanding and interpretation;
- iv. Enabling greater flexibility in procedural aspects through rule making, so that with the change of time the legal framework may adapt without amendment of the substantive enactment, which would be a time consuming process;
- v. Addressing the concerns arising out of the experience of the stock market scams of the '90s, the phenomenon of vanishing companies and

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recommendations made by Joint Parliamentary Committee on Stock Market Scam;

- vi. Enabling measures to protect the interests of stakeholders and investors, including small investors, through legal basis for sound corporate governance practices.
- vii. Providing a framework for responsible self-regulation through determination of corporate matters through decisions by shareholders, in the background of clear accountability for such decisions, obviating the need for a regime based on Government approvals;
- viii. Recognizing the relevance of a climate that encourages people to set up businesses and make them grow, addresses the practical concerns of small businesses so that people may deal with and invest in companies with confidence, promotes international competitiveness of Indian businesses and provides it the flexibility to meet the challenges of the global economy.

To enact a new legislation, the Companies Amendment Bill, 2009 was introduced on 3rd August, 2009 in the Lok Sabha along with a statement of objects and reasons appended to the Bill consisting of the salient features of the bill. The same was referred to the Parliamentary Standing Committee on finance for examination and report.

The Committee has reviewed the Bill and submitted its report on 31st August, 2010. Upon introduction of the Companies Bill, 2009 in Lok Sabha the Central Government circulated the bill to various authorities, Industries, Chambers, federations and other stakeholders.

The Central Government has received several suggestions, recommendations along with comments for suitable changes in the Bill. The Parliamentary Standing Committee on finance also made various recommendations in its report. The Central Government after reviewing and considering various comments and recommendations received by it, has decided to introduce a fresh bill in place of the Companies Bill, 2009.

The salient features of the Companies Bill, 2011 are as follows:

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- (i) E-Governance:- Maintenance and allowing inspection of documents by companies in electronic form being allowed for the first time.
- (ii) Concept of Corporate Social Responsibility is being introduced. (iii) Enhanced Accountability on the part of Companies:
 - (a) In addition to the concept of Independent Directors (IDs) introduced, the provisions in respect of their tenure and liability, etc., have been provided. Code for IDs provided in a new Schedule to the Bill. Databank for IDs proposed to be maintained by a body/institute notified by the Central Government to facilitate appointment of IDs.
 - (b) Corporate Social Responsibility (CSR) Committee of the Board proposed in addition to other Committees of the Board viz. Audit Committee, Nomination and Remuneration and Stakeholders Relationship Committee. These committees shall have IDs/non-executive directors to bring more independence in Board functioning and for protection of interests of minority shareholders.
 - (c) Definition of “promoter” also included along with his liability in certain cases.
 - (d) Provisions in respect of vigil mechanism (whistle blowing) proposed to enable a company to evolve a process to encourage ethical corporate behaviour, while rewarding employees for their integrity and for providing valuable information to the management on deviant practices.
 - (e) The Central Government has been empowered to prescribe restrictions in respect of layers of subsidiaries for any class or classes of companies.
 - (f) New provisions suggested for allowing re-opening of accounts in certain cases with due safeguards.
- (iv) Additional Disclosure Norms:
 - (a) New disclosures like development and implementation of risk management policy, Corporate Social Responsibility Policy, manner of formal evaluation of performance of Board of directors and individual directors included in the Board report in addition to disclosures proposed in such report in the Companies Bill, 2009.

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- (b) Consolidation of Accounts: Accounts of Foreign subsidiaries to be attached for filing them with the Registrar. Subsidiary to include “associate” and “joint venture” for the purpose of consolidation.
- (c) Every listed company is required to file a return with the Registrar regarding change in the shareholding position of the promoters and top ten shareholders of such company.
- (v) Facilitating raising of capital by companies:
 - (a) Provisions for offer or invitation for subscription of securities on private placement basis revised to ensure more transparency and accountability.
 - (b) Companies being allowed to issue equity shares with differential voting rights.
 - (c) Central Government empowered to prescribe, through rules, the requirements in connection with provision for money made by a company for allowing purchase of company’s shares by its employees under a scheme for their benefit. Disclosure to be made in the Board’s report in respect of voting rights not exercised directly by the employees in respect of shares to which the scheme relates.
- (vi) Audit Accountability:
 - (a) Rotation of auditors and audit firms being provided for.
 - (b) Stricter and more accountable role for auditor being retained. Provisions relating to prohibiting auditor from performing non-audit services revised to ensure independence and accountability of auditor. Subject to the maximum prescribed number of companies, the members of a company may resolve that the auditor or audit firm of such company shall not become auditor in companies beyond the number as may be specified in such resolution.
 - (c) National Advisory Committee on Accounting and Auditing Standards (NACAAS) proposed to be renamed as National Financial Reporting Authority (NFRA) with a mandate to ensure monitoring and compliance of accounting and auditing standards and to oversee quality of service of professionals associated with compliance. The Authority shall consider the International Financial Reporting Standards and other internationally accepted accounting and

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auditing policies and standards while making recommendations on such matters to the Central Government which will improve the competitiveness of our companies with other companies. The Authority is also proposed to be empowered with quasi-judicial powers to ensure independent oversight over professionals.

- (d) **Cost Audit:** Cost records to be mandated for companies engaged in production of such goods or rendering of such services as may be prescribed. The concept of “cost auditing standards” being mandated.
- (e) **Secretarial Audit:** Prescribed class of companies would need to attach with the Board’s Report, a Secretarial Audit Report given by a company secretary in practice.
- (vii) **Managerial Remuneration:**
 - (a) Provisions relating to limits on remuneration provided in the existing Act (11% of net profits) included.
 - (b) For companies with no profits or inadequate profits remuneration shall be payable in accordance with new Schedule of Remuneration annexed to the Bill and in case a company is not able to comply with such Schedule, approval of Central Government would be necessary. Individual limits for remuneration enhanced in the Bill vis-à-vis the existing limits. Concept of payment of periodical fees which shall include sitting fees to directors being included in the Bill.
 - (c) Independent Directors (IDs) not to get stock option: IDs not to get stock option but may get payment of fees and profit linked commission subject to limits specified in the Bill/rules. Central Government may prescribe amount of fees under the rules.
- (viii) **Facilitating Mergers/ Acquisitions:** Simplified procedure (through confirmation by the Central Government), laid down for compromise or arrangement including for merger or amalgamation of holding companies and wholly owned subsidiary(ies), between two or more small companies and for such other class or classes of companies as may be prescribed. This would result into faster decisions on approvals for mergers and amalgamations resulting effective restructuring in companies and growth in the economy. For other companies, such matters would be approved by Tribunal.

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- (ix) Protection for Minority Shareholders:
- (a) Exit option to shareholders in case of dissent to change in object for which public issue was made.
 - (b) Specific disclosure regarding effect of merger on creditors, key managerial personnel, promoters and non-promoter shareholders is being provided. The Tribunal is being empowered to provide for exit offer to dissenting shareholders in case of compromise or arrangement.
 - (c) The Board may have a director representing small shareholders who may be elected in such manner as may be prescribed by rules.
- (x) Investor Protection Measures
- (a) Acceptance of deposits from public subject to a more stringent regime.
 - (b) Central Government to have power to prescribe class or classes of companies which shall not be permitted to allow use of proxies. The Bill also to have provisions to provide that a person shall have proxies for such number of members /such shares as may be prescribed.
 - (c) Provisions for Class Action Suits revised to provide minimum number of persons who may apply for such suits. Safeguards against misuse of these provisions also being included.
- (xi) Serious Fraud Investigation Office (SFIO): Statutory status to SFIO proposed. Investigation report of SFIO filed with the Court for framing of charges shall be treated as a report filed by a Police Officer. SFIO shall have power to arrest in respect of certain offences of the Bill which attract the punishment for fraud. Those offences shall be cognizable and the person accused of any such offence shall be released on bail subject to certain conditions provided in the relevant clause of the Bill. Definition of 'Fraud' provided. Stringent penalty provided for fraud related offences.
- (xii) Woman Director: At least one woman director being made mandatory in the prescribed class or classes of companies.
- (xiii) National Company Law Tribunal (Tribunal): Keeping in view the Supreme Court's judgment, on the 11th May, 2010 on the composition and constitution of the Tribunal, modifications relating to qualification and experience, etc., of the

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members of the Tribunal have been made. Appeals from Tribunal shall lie to National Company Law Appellate Tribunal.

- (xiv) Mediation and Conciliation Panel: It is proposed to create and maintain as “Mediation and Conciliation Panel” for facilitating mediation and conciliation between parties during any proceeding under the proposed Legislation before the Central Government or Tribunal.
- (xv) Central Government to have power to exempt/modify provisions of the Act for a class or classes of companies in public interest. Relevant notification shall be required to be laid in draft form in Parliament for a period of thirty days.

Commencement of the Companies Act, 2013

According to sub-section (3), while section 1 came into force on 29th August, 2013 and the remaining provisions of the Companies Act, 2013 (the Act) shall come into force on such date as the Central Government, by notification in Official Gazette, appoint. The Central Government may appoint different dates for different provisions of the Act. Accordingly any reference in any provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

The Central Government so far issued several notifications right from 30.08.2013 till date enforcing several sections and sub-sections of the Act.

Extent of the Companies Act, 2013

According to section 1, the Companies Act, 2013 extends to the whole of India. This section does not contain the proviso unlike in the 1956 Act which provided that it would apply to the State of Nagaland subject to such modifications, if any, as the Central Government may, by notification of official Gazette, specify.

The Act was notified on 29th August, 2013 and there are about 92 sections enforced with effect from 12th September 2013. The balance sections barring provisions relating to Chapters XV to XX and certain other provisions relating to setting up of/ exercise of powers by National Company Law Tribunal (NCLT)/ National Company Law Appellate Tribunal (NCLAT); Investor Education and Protection Fund (IEPF); National Financial Reporting Authority (NFRA) and Special Courts, all provisions of the Act have been notified on 27th March, 2014 and brought into force with effect from 1st April, 2014. The provisions related to special court were notified on 18th May 2016. Many sections associated with constitution of NCLT/ NCLAT were brought into force effectively from 01-06-2016. Sections related to IEPF were brought into force with effect from 5th September 2016. The provisions relating to NFRA are yet to be notified.

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Further chapter XIX, consisting of sections 253 to 269 shall be omitted from the Act by the Insolvency and Bankruptcy Code, 2016 with effective from a date yet to be notified.

The Companies (Amendment) Act, 2015

Statement of Objects And Reasons

After the commencement of provisions of the Act, the Government have received representations from various stakeholders (including Industry Chambers, Professional Institutes, Legal Experts and Ministries/ Departments) expressing practical difficulties in complying with some of the requirements laid down in the enforced provisions. It was noted that some of the issues raised and suggestions made can be addressed only by way of amendment to the Act and their immediate resolution is also considered to be necessary. Some of the amendments are also required with a view to further facilitate 'ease of doing business' and deal with certain difficulties in this behalf brought out by Industry Chambers and other agencies.

The proposed amendments includes inter-alia related party transactions, fraud reporting by auditors, disclosure of certain Board Resolutions, responsibilities of Audit Committee, making common seal optional, requirement of minimum paid-up share capital, increasing the strength of benches for hearing winding up petitions, jurisdiction of Special Courts to try criminal offences etc.

Amendments were proposed to the Act to incorporate some of the provisions earlier left out inadvertently, viz. setting-off of past losses/ depreciation before declaring dividend, exemptions for giving loan/ guarantee/ security by holding company to its subsidiaries.

Accordingly the Companies (Amendment) Bill 2014, inter alia, contains the amendments to the Companies Act, 2013 as under:—

- (i) to amend clauses (68), (71) of section 2 and section 11 of the said Act to omit the requirement for minimum paid-up share capital, and consequential changes;

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- (ii) to amend sections 9, 12, 22, 46 and 223 of the said Act for making common seal optional, and consequential changes for authorisation for execution of documents;
- (iii) to insert a new section 76A to provide for punishment for deposits accepted in violation of the provisions of the said Act;
- (iv) to amend clause (g) of sub-section (3) of section 117 to prohibit public inspection of Board resolutions filed in the Registry;
- (v) to amend sub-section (1) of section 123 of the said Act to include provisions for writing off past losses/depreciation before declaring dividend for the year;
- (vi) to amend sub-section (6) of section 124 of the said Act for rectifying the requirement of transferring equity shares for which unclaimed/unpaid dividend has been transferred to the Investors Education and Protection Fund even though subsequent dividend(s) has been claimed;
- (vii) to amend sub-section (3) of section 134 and sub-section (12) of section 143 of the said Act to incorporate enabling provisions to prescribe thresholds beyond which fraud shall be reported to the Central Government (below the threshold, it will be reported to the Audit Committee). Disclosures for the latter category also to be made in the Board's Report;
- (viii) to amend clause (iv) of sub-section (4) of section 177 of the said Act to provide provision empowering Audit Committee to give omnibus approvals for related party transactions on annual basis;
- (ix) to amend section 185 of the said Act to provide for exemption u/s 185 (Loans to Directors) provided for loans to wholly owned subsidiaries and guarantees/securities on loans taken from banks by subsidiaries;
- (x) to amend sub-section (1) of section 188 of the said Act for replacing 'special resolution' with 'resolution' for approval of related party transactions by non-related shareholders;
- (xi) to amend sub-section (1) of section 188 of the said Act to exempt related party transactions between holding companies and wholly owned subsidiaries (WOS) from the requirement of approval of non-related shareholders';
- (xii) to amend sub-section (6) of section 212 of the said Act to provide for bail restrictions to apply only for offence relating to fraud u/s 447;
- (xiii) to amend sub-section (4) of section 419 of the said Act to provide for winding up cases to be heard by 2-member Bench instead of a 3-member Bench; and

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- (xiv) to amend sections 435 and 436 of the said Act to provide for that Special Courts to try only offences carrying imprisonment of two years or more.

In exercise of the powers conferred by sub-section (2) of section 1 of the Companies (Amendment) Act, 2015, the Central Government notified 29th May, 2015 as the date on which the provisions of section 1 to 12 and 15 to 23 of the said Act shall come into force as per Notification No. SO 1440 (E), dated 29.5.2015. Further the provisions of section 13 & 14 came in to force as per Notification No. SO 3388 (E), dated 14.12.2015.

The Companies (Amendment) Bill, 2016 (Bill no. 73 of 2016)

Though a few immediate amendments were made in May, 2015, the Government continued to receive representations that the Act needed further review. The Hon'ble Minister of Corporate Affairs, at the time of consideration of the amendments in the Rajya Sabha in May 2015, also underscored some of these concerns and committed to constitute a 'Committee in which we have the representatives of the Company Secretary institute, the CA institute or some Chambers, plus somebody from the Department, a broad-based Committee, will be constituted to go into this whole question for the next few months as to where the shoe pinches'. In view thereof, the Ministry of Corporate Affairs (the "MCA") constituted the Companies Law Committee (the "CLC" or the "Committee") under the chairmanship of the Secretary, Ministry of Corporate Affairs vide an office order dated 4th June, 2015.

The CLC was constituted with the mandate of (a) making recommendations on issues arising from the implementation of the Companies Act, 2013, and (b) examining the recommendations received from the Bankruptcy Law Reforms Committee, the High Level Committee on Corporate Social Responsibility, the Law Commission of India and other agencies.

Based on the recommendations of CLC report a bill to further amend an Act was prepared and introduced before Lok Sabha on 16.03.2016.

The objective of further amendment to the Act can be understood from the statement of objects and reasons as stated in the Companies (amendment) Bill, 2016, reading as under:

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The Act was enacted to consolidate and amend the Laws relating to companies. Out of 470 sections of the Act, 284 sections have been brought into force so far. The process for establishment of the National Company Law Tribunal and National Company Law Appellate Tribunal is at its final stage. After the constitution of these Tribunals, most of the remaining 186 sections of the Act shall also be brought into force.

The Act introduced significant changes related to disclosures to stakeholders, accountability of directors, auditors and key managerial personnel, investor protection and corporate governance. However, Government received number of representations from industry Chambers, Professional Institutes, legal experts and Ministries/Departments regarding difficulties faced in compliance of certain provisions. Amendments of the Act were carried out through the Companies (Amendment) Act, 2015 to address the immediate difficulties arising out of the initial experience of the working of the Act, and to facilitate “ease of doing business”. During the consideration of the Companies (Amendment) Bill, 2015 in the Rajya Sabha, views were expressed that more amendments would be required. A Companies Law Committee (the Committee) was, therefore, constituted consisting of representatives from the industry, professional institutes of chartered accountants, cost accountants and company secretaries, and a former High Court Judge under the chairmanship of Secretary, Ministry of Corporate Affairs, to examine the need for further amendments.

The Committee had invited suggestions from all stakeholders and thereafter held broad based consultations on the suggestions received. The Committee submitted its report to the Government on the 1st February, 2016 which was put in public domain for comments. Based on the report and comments received from the stakeholders and Ministries/ Departments, it has been decided to amend the Companies Act, 2013.

The proposed changes are broadly aimed at addressing difficulties in implementation owing to stringency of compliance requirements; facilitating ease of doing business in order to promote growth with employment; harmonisation with accounting standards, the Securities and Exchange Board of India Act, 1992 and the regulations made thereunder, and the Reserve Bank of India Act, 1934 and the regulations made thereunder; rectifying omissions and inconsistencies in the Act, and carrying out amendments in the provisions relating to qualifications and selection of members of the National Company Law

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Tribunal and the National Company Law Appellate Tribunal in accordance with the directions of the Supreme Court.

The Companies (Amendment) Bill, 2016, inter alia, proposes the following, namely:—

- a) simplification of the private placement process by doing away with separate offer letter, by making filing of details or records of applicants to be part of return of allotment only, and reducing number of filings to Registrar;
- b) allow unrestricted object clause in the Memorandum of Association dispensing with detailed listing of objects, self-declarations to replace affidavits from subscribers to memorandum and first directors;
- c) provisions relating to forward dealing and insider trading to be omitted from the Act;
- d) requirement of approval of the Central Government for Managerial remuneration above prescribed limits to be replaced by approval through special resolution by shareholders;
- e) a company may give loans to entities in which directors are interested after passing special resolution and adhering to disclosure requirement;
- f) remove restrictions on layers of subsidiaries and investment companies;
- g) allow for exempting class of foreign companies from registering and compliance regime under the Act;
- h) align prescription for companies to have Audit Committee and Nomination and Remuneration Committee with that of Independent Directors;
- i) test of materiality to be introduced for pecuniary interest for testing independence of Independent Directors;
- j) disclosures in the prospectus required under the Companies Act and the Securities and Exchange Board of India Act, 1992 and the regulations made thereunder to be aligned by omitting prescriptions in the Companies Act and allowing these prescriptions to be made by the Securities and Exchange Board of India in consultation with the Central Government;
- k) provide for maintenance of register of significant beneficial owners by a company, and filing of returns in this regard to the Registrar;
- l) removal of requirement for annual ratification of appointment or continuance of auditor; m) amend provisions relating to Corporate Social Responsibility to bring greater clarity.