

Bill No. 73-C of 2016

THE COMPANIES (AMENDMENT) BILL, 2017

A

BILL

further to amend the Companies Act, 2013.

BE it enacted by Parliament in the Sixty-eighth Year of the Republic of India as follows:—

1. (1) This Act may be called the Companies (Amendment) Act, 2017.

Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act and 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.

18 of 2013.

2. In section 2 of the Companies Act, 2013 (hereinafter referred to as the principal Act),—

Amendment of section 2.

(i) in clause (6), for the *Explanation*, the following *Explanation* shall be substituted, namely:—

Explanation.—For the purpose of this clause,—

(a) the expression "significant influence" means control of at least twenty per cent. of total voting power, or control of or participation in business decisions under an agreement;

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(b) the expression "joint venture" means a joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement;";

(ii) for clause (28), the following clause shall be substituted, namely:—

'(28) "Cost Accountant" means a cost accountant as defined in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959 and who holds a valid certificate of practice under sub-section (1) of section 6 of that Act;'

(iii) in clause (30), the following proviso shall be inserted, namely:—

"Provided that—

(a) the instruments referred to in Chapter III-D of the Reserve Bank of India Act, 1934; and

(b) such other instrument, as may be prescribed by the Central Government in consultation with the Reserve Bank of India, issued by a company,

shall not be treated as debenture;";

(iv) in clause (41), in the first proviso, after the word "subsidiary", the words "or associate company" shall be inserted;

(v) in clause (46), the following *Explanation* shall be inserted, namely:—

Explanation.—For the purposes of this clause, the expression "company" includes any body corporate;";

(vi) clause (49) shall be omitted;

(vii) in clause (51),—

(a) in sub-clause (iv), the word "and" shall be omitted;

(b) for sub-clause (v), the following sub-clauses shall be substituted, namely:—

"(v) 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; and

(vi) such other officer as may be prescribed;";

(viii) in clause (57), for the words "and securities premium account", the words ", securities premium account and debit or credit balance of profit and loss account," shall be substituted;

(ix) in clause (71), in sub-clause (a), after the word "company;", the word "and" shall be inserted;

(x) in clause (72), in the proviso, in clause (A), after the words "State Act", the words "other than this Act or the previous company law" shall be inserted;

(xi) in clause (76), for sub-clause (viii), the following sub-clause shall be substituted, namely:—

"(viii) any body corporate which is—

(A) a holding, subsidiary or an associate company of such company;

(B) a subsidiary of a holding company to which it is also a subsidiary;

or

(C) an investing company or the venturer of the company;";

Explanation.—For the purpose of this clause, "the investing company or the venturer of a company" means a body corporate whose investment in the company would result in the company becoming an associate company of the body corporate.

(xii) in clause (85),—

(a) in sub-clause (i), for the words "five crore rupees", the words "ten crore rupees" shall be substituted;

(b) in sub-clause (ii),—

5 (A) for the words "as per its last profit and loss account", the words "as per profit and loss account for the immediately preceding financial year" shall be substituted;

(B) for the words "twenty crore rupees", the words "one hundred crore rupees" shall be substituted;

10 (xiii) in clause (87), in sub-clause (ii), for the words "total share capital", the words "total voting power" shall be substituted;

(xiv) for clause (91), the following clause shall be substituted, namely:—

15 '(91) "turnover" means the gross amount of revenue recognised in the profit and loss account from the sale, supply, or distribution of goods or on account of services rendered, or both, by a company during a financial year;'

3. After section 3 of the principal Act, the following section shall be inserted, namely:—

Insertion of new section 3A.

20 "3A.If at any time the number of members of a company is reduced, in the case of a public company, below seven, in the case of a private company, below two, and the company carries on business for more than six months while the number of members is so reduced, every person who is a member of the company during the time that it so carries on business after those six months and is cognisant of the fact that it is carrying on business with less than seven members or two members, as the case may be, shall be severally liable for the payment of the whole debts of the company contracted during that time, and may be severally sued therefor."

Members severally liable in certain cases.

4. In section 4 of the principal Act, in sub-section (5), for clause (i), the following shall be substituted, namely:—

Amendment of section 4.

30 "(i) Upon receipt of an application under sub-section (4), the Registrar may, on the basis of information and documents furnished along with the application, reserve the name for a period of twenty days from the date of approval or such other period as may be prescribed:

Provided that in case of an application for reservation of name or for change of its name by an existing company, the Registrar may reserve the name for a period of sixty days from the date of approval."

35 5. In section 7 of the principal Act, in sub-section (1), in item (c), for the words "an affidavit", the words "a declaration" shall be substituted.

Amendment of section 7.

6. In section 12 of the principal Act,—

Amendment of section 12.

40 (i) in sub-section (1), for the words "on and from the fifteenth day of its incorporation", the words " within thirty days of its incorporation" shall be substituted;

(ii) in sub-section (4), for the words "within fifteen days", the words "within thirty days" shall be substituted.

7. In section 21 of the principal Act, for the words "an officer of the company", the words "an officer or employee of the company" shall be substituted.

Amendment of section 21.

8. In section 26 of the principal Act, in sub-section (1),—

Amendment of section 26.

45 (i) after the words "signed and shall", the following shall be inserted, namely:—
"state such information and set out such reports on financial information as may be specified by the Securities and Exchange Board in consultation with the Central Government:

Provided that until the Securities and Exchange Board specifies the information and reports on financial information under this sub-section, the regulations made by the Securities and Exchange Board under the Securities and Exchange Board of India Act, 1992, in respect of such financial information or reports on financial information shall apply.";

(ii) clauses (a), (b) and (d) shall be omitted.

Amendment of section 35.

9. In section 35 of the principal Act, in sub-section (2), after clause (b), the following clause shall be inserted, namely:—

"(c) that, as regards every misleading statement purported to be made by an expert or contained in what purports to be a copy of or an extract from a report or valuation of an expert, it was a correct and fair representation of the statement, or a correct copy of, or a correct and fair extract from, the report or valuation ; and he had reasonable ground to believe and did up to the time of the issue of the prospectus believe, that the person making the statement was competent to make it and that the said person had given the consent required by sub-section (5) of section 26 to the issue of the prospectus and had not withdrawn that consent before delivery of a copy of the prospectus for registration or, to the defendant's knowledge, before allotment thereunder."

Substitution of section 42.

10. For section 42 of the principal Act, the following section shall be substituted, namely:—

Issue of shares on private placement basis.

'42. (1) A company may, subject to the provisions of this section, make a private placement of securities.

(2) A private placement shall be made only to a select group of persons who have been identified by the Board (herein referred to as "identified persons"), whose number shall not exceed fifty or such higher number as may be prescribed [excluding the qualified institutional buyers and employees of the company being offered securities under a scheme of employees stock option in terms of provisions of clause (b) of sub-section (1) of section 62], in a financial year subject to such conditions as may be prescribed.

(3) A company making private placement shall issue private placement offer and application in such form and manner as may be prescribed to identified persons, whose names and addresses are recorded by the company in such manner as may be prescribed:

Provided that the private placement offer and application shall not carry any right of renunciation.

Explanation I.—"private placement" means any offer or invitation to subscribe or issue of securities to a select group of persons by a company (other than by way of public offer) through private placement offer-cum-application, which satisfies the conditions specified in this section.

Explanation II.—"qualified institutional buyer" means the qualified institutional buyer as defined in the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009, as amended from time to time, made under the Securities and Exchange Board of India Act, 1992.

Explanation III.—If a company, listed or unlisted, makes an offer to allot or invites subscription, or allots, or enters into an agreement to allot, securities to more than the prescribed number of persons, whether the payment for the securities has been received or not or whether the company intends to list its securities or not on any recognised stock exchange in or outside India, the same shall be deemed to be an offer to the public and shall accordingly be governed by the provisions of Part I of this Chapter.

(4) Every identified person willing to subscribe to the private placement issue shall apply in the private placement and application issued to such person along with subscription money paid either by cheque or demand draft or other banking channel and not by cash:

5 Provided that a company shall not utilise monies raised through private placement unless allotment is made and the return of allotment is filed with the Registrar in accordance with sub-section (8).

(5) 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
10 that offer or invitation has been withdrawn or abandoned by the company:

 Provided that, subject to the maximum number of identified persons under sub-section (2), a company may, at any time, make more than one issue of securities to such class of identified persons as may be prescribed.

(6) A company making an offer or invitation under this section shall allot its
15 securities within sixty days from the date of receipt of the application money for such securities and if the company is not able to allot the securities within that period, it shall repay the application money to the subscribers within fifteen days from the expiry of sixty days and if the company fails to repay the application money within the aforesaid period, it shall be liable to repay that money with interest at the rate of twelve
20 per cent. per annum from the expiry of the sixtieth day:

 Provided that monies received on application under this section shall be kept in a separate bank account in a scheduled bank and shall not be utilised for any purpose other than—

(a) for adjustment against allotment of securities; or

25 (b) for the repayment of monies where the company is unable to allot securities.

(7) No company issuing securities under this section shall release any public advertisements or utilise any media, marketing or distribution channels or agents to inform the public at large about such an issue.

(8) A company making any allotment of securities under this section, shall file
30 with the Registrar a return of allotment within fifteen days from the date of the allotment in such manner as may be prescribed, including a complete list of all allottees, with their full names, addresses, number of securities allotted and such other relevant information as may be prescribed.

(9) If a company defaults in filing the return of allotment within the period
35 prescribed under sub-section (8), the company, its promoters and directors shall be liable to a penalty for each default of one thousand rupees for each day during which such default continues but not exceeding twenty-five lakh rupees.

(10) Subject to sub-section (11), if a company makes an offer or accepts monies
40 in contravention of this section, the company, its promoters and directors shall be liable for a penalty which may extend to the amount raised through the private placement or two crore rupees, whichever is lower, and the company shall also refund all monies with interest as specified in sub-section (6) to subscribers within a period of thirty days of the order imposing the penalty.

(11) Notwithstanding anything contained in sub-section (9) and sub-section (10),
45 any private placement issue not made in compliance of the provisions of the sub-section (2) shall be deemed to be a public offer and all the provisions of this Act and the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992 shall be applicable. ’

(b) in clause (b),—

(i) for the words "seven years of with fine", the words "seven years and with fine" shall be substituted;

(ii) the words "or with both" shall be omitted.

5 **18.** In section 77 of the principal Act, in sub-section (1), after the third proviso, the following proviso shall be inserted, namely:— Amendment of section 77.

"Provided also that this section shall not apply to such charges as may be prescribed in consultation with the Reserve Bank of India."

10 **19.** In section 78 of the principal Act, for the words and figures "register the charge within the period specified in section 77", the words, brackets and figures "register the charge within the period of thirty days referred to in sub-section (1) of section 77" shall be substituted. Amendment of section 78.

20. In section 82 of the principal Act, in sub-section (1),— Amendment of section 82.

15 (i) the words, brackets and figures "and the provisions of sub-section (1) of section 77 shall, as far as may be, apply to an intimation given under this section" shall be omitted;

(ii) the following proviso shall be inserted, namely:—

20 "Provided that the Registrar may, on an application by the company or the charge holder, allow such intimation of payment or satisfaction to be made within a period of three hundred days of such payment or satisfaction on payment of such additional fees as may be prescribed."

21. In section 89 of the principal Act,— Amendment of section 89.

(i) in sub-section (6), the words and figures, "within the time specified under section 403" shall be omitted;

25 (ii) in sub-section (7), for the words and figures, "under the first proviso to sub-section (1) of section 403", the word "therein", shall be substituted;

(iii) after sub-section (9), the following sub-section shall be inserted, namely:—

30 "(10) For the purposes of this section 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

35 (ii) receive or participate in any dividend or other distribution in respect of such share."

22. For section 90 of the principal Act, the following section shall be substituted, namely:— Substitution of section 90.

40 '90. (1) 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 twenty-five per cent. 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 (herein referred to as "significant beneficial owner"), shall make a declaration to the company, specifying the nature of his interest and other particulars, in such manner Register of significant beneficial owners in a company.

and within such period of acquisition of the beneficial interest or rights and any change thereof, as may be prescribed:

Provided that the Central Government may prescribe a class or classes of persons who shall not be required to make declaration under this sub-section.

(2) Every company shall maintain a register of the interest declared by individuals under sub-section (1) and changes therein which shall include the name of individual, his date of birth, address, details of ownership in the company and such other details as may be prescribed. 5

(3) The register maintained under sub-section (2) shall be open to inspection by any member of the company on payment of such fees as may be prescribed. 10

(4) Every company shall file a return of significant beneficial owners of the company and changes therein with the Registrar containing names, addresses and other details as may be prescribed within such time, in such form and manner as may be prescribed.

(5) A company shall give notice, in the prescribed manner, to any person (whether or not a member of the company) whom the company knows or has reasonable cause to believe— 15

(a) to be a significant beneficial owner of the company;

(b) to be having knowledge of the identity of a significant beneficial owner or another person likely to have such knowledge; or 20

(c) to have been a significant beneficial owner of the company at any time during the three years immediately preceding the date on which the notice is issued,

and who is not registered as a significant beneficial owner with the company as required under this section. 25

(6) The information required by the notice under sub-section (5) shall be given by the concerned person within a period not exceeding thirty days of the date of the notice.

(7) The company shall,—

(a) where that person fails to give the company the information required by the notice within the time specified therein; or 30

(b) where the information given is not satisfactory,

apply to the Tribunal within a period of fifteen days of the expiry of the period specified in the notice, for an order directing that the shares in question be subject to restrictions with regard to transfer of interest, suspension of all rights attached to the shares and such other matters as may be prescribed. 35

(8) On any application made under sub-section (7), the Tribunal may, after giving an opportunity of being heard to the parties concerned, make such order restricting the rights attached with the shares within a period of sixty days of receipt of application or such other period as may be prescribed. 40

(9) The company or the person aggrieved by the order of the Tribunal may make an application to the Tribunal for relaxation or lifting of the restrictions placed under sub-section (8).

(10) If any person fails to make a declaration as required under sub-section (1), 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. 45

(11) If a company, required to maintain register under sub-section (2) and file the information under sub-section (4), fails to do so or denies inspection as provided therein, the company and every officer of the company who is in default shall be punishable with fine which shall not be less than ten lakh rupees but which may extend to fifty 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.

(12) 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 447.1.

23. In section 92 of the principal Act,—

Amendment of section 92.

(i) in sub-section (1),—

(a) clause (c) shall be omitted;

(b) in clause (j), the words "indicating their names, addresses, countries of incorporation, registration and percentage of shareholding held by them" shall be omitted;

(c) after the proviso, the following proviso shall be inserted, namely:—

"Provided further that the Central Government may prescribe abridged form of annual return for One Person Company, small company and such other class or classes of companies as may be prescribed.

(ii) for sub-section (3), the following sub-section shall be substituted, namely:—

"(3) Every company shall place a copy of the annual return on the website of the company, if any, and the web-link of such annual return shall be disclosed in the Board's report."

(iii) in sub-section (4), the words and figures, "within the time as specified, under section 403" shall be omitted;

(iv) in sub-section (5), for the words and figures, "under section 403 with additional fees" the word "therein" shall be substituted.

24. Section 93 of the principal Act shall be omitted.

Omission of section 93.

25. In section 94 of the principal Act,—

Amendment of section 94.

(i) in sub-section (1), in the first proviso, the words "and the Registrar has been given a copy of the proposed special resolution in advance" shall be omitted;

(ii) in sub-section (3), the following proviso shall be inserted, namely:—

"Provided that such particulars of the register or index or return as may be prescribed shall not be available for inspection under sub-section (2) or for taking extracts or copies under this sub-section."

26. In section 96 of the principal Act, in sub-section (2), in the proviso, for the words "Provided that", the following shall be substituted, namely:—

Amendment of section 96.

"Provided that 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:

Provided further that".

- Amendment of section 100. **27.** In section 100 of the principal Act, in sub-section (I), the following proviso shall be inserted, namely:—
- "Provided that an 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." 5
- Amendment of section 101. **28.** In section 101 of the principal Act, in sub-section (I), for the proviso, the following proviso shall be substituted namely:—
- "Provided that a general meeting may be called after giving shorter notice than that specified in this sub-section if consent, in writing or by electronic mode, is accorded thereto— 10
- (i) in the case of an annual general meeting, by not less than ninety-five per cent. of the members entitled to vote thereat; and
- (ii) in the case of any other general meeting, by members of the company—
- (a) holding, if the company has a share capital, majority in number of members entitled to vote and who represent not less than ninety-five per cent of such part of the paid-up share capital of the company as gives a right to vote at the meeting; or 15
- (b) having, if the company has no share capital, not less than ninety-five per cent. of the total voting power exercisable at that meeting;
- Provided further that where any member of a company is entitled to vote only on some resolution or resolutions to be moved at a meeting and not on the others, those members shall be taken into account for the purposes of this sub-section in respect of the former resolution or resolutions and not in respect of the latter." 20
- Amendment of section 110. **29.** In section 110 of the principal Act, in sub-section (I), the following proviso shall be inserted, namely:— 25
- "Provided that any item of business required to be transacted by means of postal ballot under clause (a), may be transacted at a general meeting by a company which is required to provide the facility to members to vote by electronic means under section 108, in the manner provided in that section.".
- 30.** In section 117 of the principal Act,— 30
- (i) in sub-section (I), the words and figures "within the time specified under section 403" shall be omitted;
- (ii) in sub-section (2),—
- (a) for the words and figures "under section 403 with additional fees", the word "therein" shall be substituted; 35
- (b) for the words "not be less than five lakh rupees", the words "not be less than one lakh rupees" shall be substituted;
- (c) for the words "one lakh rupees", the words "fifty thousand rupees" shall be substituted;
- (iii) in sub-section (3),— 40
- (a) clause (e) shall be omitted;
- (b) in clause (g), in the proviso, the word "and" shall be omitted and the following proviso shall be inserted, namely:—
- "Provided further that nothing contained in this clause shall apply to a banking company in respect of a resolution passed to grant loans, or 45

give guarantee or provide security in respect of loans under clause (f) of sub-section (3) of section 179 in the ordinary course of its business; and."

31. In section 121 of the principal Act,—

Amendment
of section 121.

5 (i) in sub-section (2), the words and figures "within the time as specified, under section 403" shall be omitted;

(ii) in sub-section (3), for the words and figures "under section 403 with additional fees", the word "therein" shall be substituted.

32. In section 123 of the principal Act,—

Amendment
of section 123.

10 (a) in sub-section (1),—

(i) in clause (a),—

(A) for the words "both; or", the word "both:" shall be substituted;

(B) the following proviso shall be inserted, namely:—

15 "Provided that in computing profits any amount representing unrealised gains, national gains or revaluation of assets and any changes in carrying amount of an asset or of a liability on measurement of the asset or the liability at fair value shall be excluded; and";

20 (ii) in the second provision, for the words "transferred by the company to the reserves", the words "transferred by the company to the free reserves" shall be substituted;

(b) for sub-section (3), the following sub-section shall be substituted, namely:—

25 "(3) The Board of Directors of a company may declare interim dividend during any financial year or at any time during the period from closure of financial year till holding of the annual general meeting out of the surplus in the profit and loss account or out of profits of the financial year for which such interim dividend is sought to be declared or out of profits generated in the financial year till the quarter preceding the date of declaration of the interim dividend:

30 Provided that in case the company has incurred loss during the current financial year up to the end of the quarter immediately preceding the date of declaration of interim dividend, such interim dividend shall not be declared at a rate higher than the average dividends declared by the company during immediately preceding three financial years."

35 **33.** In section 129 of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely:—

Amendment
of section 129.

40 "(3) Where a company has one or more subsidiaries or associate companies, it shall, in addition to financial statements provided under sub-section (2), prepare a consolidated financial statement of the company and of all the subsidiaries and associate companies in the same form and manner as that of its own and in accordance with applicable accounting standards, which shall also be laid before the annual general meeting of the company along with the laying of its financial statement under sub-section (2):

45 Provided that the company shall also attach along with its financial statement, a separate statement containing the salient features of the financial statement of its subsidiary or subsidiaries and associate company or companies in such form as may be prescribed:

Provided further that the Central Government may provide for the consolidation of accounts of companies in such manner as may be prescribed."

Amendment of section 130.

34. In section 130 of the principal Act,—

(i) in sub-section (1), in the proviso,—

(a) after the words "regulatory body or authorities concerned", the words "or any other person concerned" shall be inserted; 5

(b) after the words "the body or authority concerned", the words "or the other person concerned" shall be inserted;

(ii) after sub-section (2), the following sub-section shall be inserted, namely:—

"(3) No order shall be made under sub-section (1) in respect of re-opening of books of account relating to a period earlier than eight financial years immediately preceding the current financial year: 10

Provided that where a direction has been issued by the Central Government under the proviso to sub-section (5) of section 128 for keeping of books of account for a period longer than eight years, the books of account may be ordered to be re-opened within such longer period." 15

Amendment of section 132.

35. In section 132 of the principal Act,—

(i) in sub-section (4), in clause (c), in sub-clause (A), in item (II), for the words "ten lakh rupees", the words "five lakh rupees" shall be substituted;

(ii) in sub-section (5), for the words, brackets and figure "the Appellate Authority constituted under sub-section (6) in such manner as may be prescribed", the words "the Appellate Tribunal in such manner and on payment of such fee as may be prescribed" shall be substituted; 20

(iii) sub-sections (6), (7), (8) and (9) shall be omitted.

Amendment of section 134.

36. In section 134 of the principal Act,— 25

(a) for sub-section (1), the following sub-section shall be substituted, namely:—

"(1) The financial statement, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board 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, or in the case of One Person Company, only by one director, for submission to the auditor for his report thereon."; 30

(b) in sub-section (3),— 35

(i) for clause (a), the following clause shall be substituted, namely:—

"(a) the web address, if any, where annual return referred to in sub-section (3) of section 92 has been placed;"

(ii) in clause (p), for the words "annual evaluation has been made by the Board of its own performance and that of its committees and individual directors", the words "annual evaluation of the performance of the Board, its Committees and of individual directors has been made" shall be substituted; 40

(iii) after clause (q), the following provisos shall be inserted, namely:—

"Provided that where disclosures referred to in this sub-section have been included in the financial statements, such disclosures shall be referred to instead of being repeated in the Board's report: 45

Provided further that where the policy referred to in clause (e) or clause (o) is made available on company's website, if any, it shall be sufficient compliance of the requirements under such clauses if the salient features of the policy and any change therein are specified in brief in the Board's report and the web-address is indicated therein at which the complete policy is available.";

(c) after sub-section (3), the following sub-section shall be inserted, namely:—

"(3A) The Central Government may prescribe an abridged Board's report, for the purpose of compliance with this section by One Person Company or small company."

37. In section 135 of the principal Act,—

Amendment of section 135.

(i) in sub-section (1),—

(a) for the words "any financial year", the words "the immediately preceding financial year" shall be substituted;

(b) the following proviso shall be inserted, namely:—

"Provided that where a company is not required to appoint an independent director under sub-section (4) of section 149, it shall have in its Corporate Social Responsibility Committee two or more directors.";

(ii) in sub-section (3), in clause (a), for the words and figures "as specified in Schedule VII", the words and figures "in areas or subject, specified in Schedule VII" shall be substituted;

(iii) in sub-section (5), for the *Explanation*, the following *Explanation* shall be substituted, namely:—

Explanation.—For the purposes of this section "net profit" shall not include such sums as may be prescribed, and shall be calculated in accordance with the provisions of section 198.1.

38. In section 136 of the principal Act,—

Amendment of section 136.

(i) in sub-section (1),—

(a) the words and figures "Without prejudice to the provisions of section 101," shall be omitted;

(b) in the first proviso, for the words "Provided that", the following shall be substituted, namely:—

"Provided that if the copies of the documents are sent less than twenty-one days before the date of the meeting, they shall, notwithstanding that fact, be deemed to have been duly sent if it is so agreed by members—

(a) holding, if the company has a share capital, majority in number entitled to vote and who represent not less than ninety-five per cent. of such part of the paid-up share capital of the company as gives a right to vote at the meeting; or

(b) having, if the company has no share capital, not less than ninety-five per cent. of the total voting power exercisable at the meeting:

Provided further that";

(c) in the second proviso, for the words "Provided further", the words, "Provided also" shall be substituted;

(d) for the fourth proviso, the following provisos shall be substituted, namely:—

'Provided also that every listed company having a subsidiary or subsidiaries shall place separate audited accounts in respect of each of subsidiary on its website, if any: 5

Provided also that a listed company which has a subsidiary incorporated outside India (herein referred to as "foreign subsidiary")—

(a) where such foreign subsidiary is statutorily required to prepare consolidated financial statement under any law of the country of its incorporation, the requirement of this proviso shall be met if consolidated financial statement of such foreign subsidiary is placed on the website of the listed company; 10

(b) where such foreign subsidiary is not required to get its financial statement audited under any law of the country of its incorporation and which does not get such financial statement audited, the holding Indian listed company may place such unaudited financial statement on its website and where such financial statement is in a language other than English, a translated copy of the financial statement in English shall also be placed on the website.'; 15

(ii) in sub-section (2), the following proviso shall be inserted, namely:— 20

"Provided that every company having a subsidiary or subsidiaries shall provide a copy of separate audited or unaudited financial statements, as the case may be, as prepared in respect of each of its subsidiary to any member of the company who asks for it.".

Amendment of section 137.

39. In section 137 of the principal Act,— 25

(i) in sub-section (1),—

(a) the words and figures "within the time specified under section 403" shall be omitted;

(b) in the second proviso, the words and figures "within the time specified under section 403" shall be omitted; 30

(c) after the fourth proviso, the following proviso shall be inserted, namely:—

'Provided also that in the case of a subsidiary which has been incorporated outside India (herein referred to as "foreign subsidiary"), which is not required to get its financial statement audited under any law of the country of its incorporation and which does not get such financial statement audited, the requirements of the fourth proviso shall be met if the holding Indian company files such unaudited financial statement along with a declaration to this effect and where such financial statement is in a language other than English, along with a translated copy of the financial statement in English.' 35 40

(ii) in sub-section (2), the words and figures "within the time specified, under section 403" shall be omitted;

(iii) in sub-section (3), for the words and figures "in section 403", the word "therein" shall be substituted. 45

Amendment of section 139.

40. In section 139 of the principal Act, in sub-section (1), the first proviso shall be omitted.

41. In section 140 of the principal Act, in sub-section (3), for the words "fifty thousand rupees", the words "fifty thousand rupees or the remuneration of the auditor, whichever is less," shall be substituted. Amendment of section 140.
42. In section 141 of the principal Act, in sub-section (3), for clause (i), the following clause shall be substituted, namely:— Amendment of section 141.
- ‘(i) a person who, directly or indirectly, renders any service referred to in section 144 to the company or its holding company or its subsidiary company.
- Explanation.*—For the purposes of this clause, the term "directly or indirectly" shall have the meaning assigned to it in the *Explanation* to section 144.’.
43. In section 143 of the principal Act, — Amendment of section 143.
- (i) in sub-section (1), in the proviso, for the words "its subsidiaries", at both the places, the words "its subsidiaries and associate companies" shall be substituted;
- (ii) in sub-section (3), in clause (i), for the words "internal financial controls system", the words "internal financial controls with reference to financial statements" shall be substituted;
- (iii) in sub-section (14), in clause (a), for the words "cost accountant in practice", the words "cost accountant" shall be substituted.
44. In section 147 of the principal Act,— Amendment of section 147.
- (i) in sub-section (2),—
- (a) after the words "five lakh rupees", the words "or four times the remuneration of the auditor, whichever is less" shall be inserted;
- (b) in the proviso, for the words "and with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees", the words "and with fine which shall not be less than fifty thousand rupees but which may extend to twenty-five lakh rupees or eight times the remuneration of the auditor, whichever is less" shall be substituted;
- (ii) in sub-section (3), in clause (ii), for the words "or to any other persons", the words "or to members or creditors of the company" shall be substituted;
- (iii) in sub-section (5), the following proviso shall be inserted, namely:—
- "Provided that in case of criminal liability of an audit firm, in respect of liability other than fine, the concerned partner or partners, who acted in a fraudulent manner or abetted or, as the case may be, colluded in any fraud shall only be liable."
45. In section 148 of the principal Act,— Amendment of section 148.
- (i) in sub-section (3),—
- (a) for the words "Cost Accountant in practice", the words "cost accountant" shall be substituted;
- (b) in the *Explanation*, for the words "Institute of Cost and Works Accountants of India", the words "Institute of Cost Accountants of India" shall be substituted;
- (ii) in sub-section (5), in the proviso, for the words "cost accountant in practice", the words "cost accountant" shall be substituted.
46. In section 149 of the principal Act,— Amendment of section 149.
- (i) for sub-section (3), the following sub-section shall be substituted, namely:—

"(3) Every company shall have at least one director who stays in India for a total period of not less than one hundred and eighty-two days during the financial year:

Provided that in case of a newly incorporated company the requirement under this sub-section shall apply proportionately at the end of the financial year in which it is incorporated.";

(ii) in sub-section (6),—

(a) in clause (c), for the words "pecuniary relationship", the words "pecuniary relationship, other than remuneration as such director or having transaction not exceeding ten per cent. of his total income or such amount as may be prescribed," shall be substituted;

(b) for clause (d), the following clause shall be substituted, namely:—

"(d) none of whose relatives—

(i) is holding any security of or interest in the company, its holding, subsidiary or associate company during the two immediately preceding financial years or during the current financial year:

Provided that the relative may hold security or interest in the company of face value not exceeding fifty lakh rupees or two per cent. of the paid-up capital of the company, its holding, subsidiary or associate company or such higher sum as may be prescribed;

(ii) is indebted to the company, its holding, subsidiary or associate company or their promoters, or directors, in excess of such amount as may be prescribed during the two immediately preceding financial years or during the current financial year;

(iii) has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, its holding, subsidiary or associate company or their promoters, or directors of such holding company, for such amount as may be prescribed during the two immediately preceding financial years or during the current financial year; or

(iv) has any other pecuniary transaction or relationship with the company, or its subsidiary, or its holding or associate company amounting to two per cent. or more of its gross turnover or total income singly or in combination with the transactions referred to in sub-clause (i), (ii) or (iii);"

(c) in clause (e), in sub-clause (i), the following proviso shall be inserted, namely:—

"Provided that in case of a relative who is an employee, the restriction under this clause shall not apply for his employment during preceding three financial years."

Amendment of section 152.

47. In section 152 of the principal Act,—

(a) in sub-section (3), after the word and figures "section 154", the words and figures "or any other number as may be prescribed under section 153" shall be inserted;

(b) in sub-section (4), after the word "Number", the words and figures "or such other number as may be prescribed under section 153" shall be inserted.

Amendment of section 153.

48. In section 153 of the principal Act, the following proviso shall be inserted, namely:—

"Provided that the Central Government may prescribe any identification number which shall be treated as Director Identification Number for the purposes of this Act

and in case any individual holds or acquires such identification number, the requirement of this section shall not apply or apply in such manner as may be prescribed."

49. In section 157 of the principal Act,—

Amendment of section 157.

5 (i) in sub-section (1), the words and figures, "within the time specified under section 403" shall be omitted;

(ii) in sub-section (2), the words and figures, "before the expiry of the period specified under section 403 with additional fee", shall be omitted.

50. In section 160 of the principal Act, in sub-section (1), the following proviso shall be inserted, namely:—

Amendment of section 160.

10 "Provided that requirements of deposit of amount 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 sub-section (1) of section 178 "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."

15 **51.** In section 161 of the principal Act,—

Amendment of section 161.

(i) in sub-section (2), after the words "alternate directorship for any other director in the company", the words "or holding directorship in the same company" shall be inserted;

(ii) in sub-section (4),—

20 (a) the words "In the case of a public company," shall be omitted;

(b) after the words "meeting of the Board", the words "which shall be subsequently approved by members in the immediate next general meeting" shall be inserted.

52. In section 164 of the principal Act,—

Amendment of section 164.

25 (i) in sub-section (2), the following proviso shall be inserted, namely:—

"Provided that where a person is appointed as a director of a company which is in default of clause (a) or clause (b), he shall not incur the disqualification for a period of six months from the date of his appointment.";

30 (ii) in sub-section (3), for the proviso, the following proviso shall be substituted, namely:—

"Provided that the disqualifications referred to in clauses (d), (e) and (g) of sub-section (1) shall continue to apply even if the appeal or petition has been filed against the order of conviction or disqualification."

35 **53.** In section 165 of the principal Act, in sub-section (1), the *Explanation* shall be renumbered as *Explanation I* and after *Explanation I* as so numbered, the following *Explanation* shall be inserted, namely:—

Amendment of section 165.

"*Explanation II.*—For reckoning the limit of directorships of twenty companies, the directorship in a dormant company shall not be included."

54. In section 167 of the principal Act, in sub-section (1),—

Amendment of section 167.

40 (i) in clause (a), the following proviso shall be inserted, namely:—

"Provided that where he incurs disqualification under sub-section (2) of section 164, the office of the director shall become vacant in all the companies, other than the company which is in default under that sub-section.";

(ii) in clause (f), for the proviso the following proviso shall be substituted, namely,—

"Provided that the office shall not be vacated by the director in case of orders referred to in clauses (e) and (f)—

(i) for thirty days from the date of conviction or order of 5
disqualification;

(ii) where an appeal or petition is preferred within thirty days as aforesaid against the conviction resulting in sentence or order, until expiry of seven days from the date on which such appeal or petition is disposed of; or 10

(iii) where any further appeal or petition is preferred against order or sentence within seven days, until such further appeal or petition is disposed of."

Amendment of section 168. **55.** In section 168 of the principal Act, in sub-section (1), in the proviso, for the words, "director shall also forward", the words, "director may also forward" shall be substituted. 15

Amendment of section 173. **56.** In section 173 of the principal Act, in sub-section (2), after the first proviso, the following proviso shall be inserted, namely:—

"Provided further that where there is quorum in a meeting through physical presence of directors, any other director may participate through video conferencing or other audio visual means in such meeting on any matter specified under the first proviso." 20

Amendment of section 177. **57.** In section 177 of the principal Act,—

(i) in sub-section (1), for the words "every listed company", the words "every listed public company" shall be substituted;

(ii) in sub-section (4), in clause (iv), after the proviso, the following provisos 25
shall be inserted, namely:—

"Provided further that in case of transaction, other than transactions referred to in section 188, and where Audit Committee does not approve the transaction, it shall make its recommendations to the Board:

Provided also that in case any transaction involving any amount not 30
exceeding one crore rupees is entered into by a director or officer of the company without obtaining the approval of the Audit Committee and it is not ratified by the Audit Committee within three months from the date of the transaction, such transaction shall be voidable at the option of the Audit Committee and if the 35
transaction is with the related party to any director or is authorised by any other director, the director concerned shall indemnify the company against any loss incurred by it:

Provided also that the provisions of this clause shall not apply to a transaction, other than a transaction referred to in section 188, between a holding company and its wholly owned subsidiary company." 40

Amendment of section 178. **58.** In section 178 of the principal Act,—

(i) in sub-section (1), for the words "every listed company", the words "every listed public company" shall be substituted;

(ii) in sub-section (2), for the words "shall carry out evaluation of every director's performance", the words "shall specify the manner for effective evaluation of 45
performance of Board, its committees and individual directors to be carried out either by the Board, by the Nomination and Remuneration Committee or by an independent external agency and review its implementation and compliance" shall be substituted;

(iii) in sub-section (4), in clause (c), for the proviso, the following proviso shall be substituted, namely:—

5 "Provided that such policy shall be placed on the website of the company, if any, and the salient features of the policy and changes therein, if any, along with the web address of the policy, if any, shall be disclosed in the Board's report.";

(iv) in sub-section (8), in the proviso, for the words "non-consideration of resolution of any grievance", the words "inability to resolve or consider any grievance" shall be substituted.

10 **59.** In section 180 of the principal Act, in sub-section (1), in clause (c), for the words "paid-up share capital and free reserves", the words "paid-up share capital, free reserves and securities premium" shall be substituted. Amendment of section 180.

60. In section 184 of the principal Act,—

15 (i) in sub-section (4), the words "shall not be less than fifty thousand rupees but which" shall be omitted; Amendment of section 184.

(ii) in sub-section (5), for clause (b), the following clause shall be substituted, namely:—

20 "(b) shall apply to any contract or arrangement entered into or to be entered into between two companies or between one or more companies and one or more bodies corporate where any of the directors of the one company or body corporate or two or more of them together holds or hold not more than two per cent. of the paid-up share capital in the other company or the body corporate."

61. For section 185 of the principal Act, the following section shall be substituted, namely:— Substitution of section 185.

25 '185. (1) No company shall, directly or indirectly, advance any loan, including any loan represented by a book debt to, or give any guarantee or provide any security in connection with any loan taken by,— Loans to directors, etc.

(a) any director of company, or of a company which is its holding company or any partner or relative of any such director; or

30 (b) any firm in which any such director or relative is a partner.

(2) A company may advance any loan including any loan represented by a book debt, or give any guarantee or provide any security in connection with any loan taken by any person in whom any of the director of the company is interested, subject to the condition that—

35 (a) a special resolution is passed by the company in general meeting:

40 Provided that the explanatory statement to the notice for the relevant general meeting shall disclose the full particulars of the loans given, or guarantee given or security provided and the purpose for which the loan or guarantee or security is proposed to be utilised by the recipient of the loan or guarantee or security and any other relevant fact; and

(b) the loans are utilised by the borrowing company for its principal business activities.

Explanation.—For the purposes of this sub-section, the expression "any person in whom any of the director of the company is interested" means—

45 (a) any private company of which any such director is a director or member;

(b) any body corporate at a general meeting of which not less than twenty-five per cent. of the total voting power may be exercised or controlled by any such director, or by two or more such directors, together; or

(c) any body corporate, the Board of directors, managing director or manager, whereof is accustomed to act in accordance with the directions or instructions of the Board, or of any director or directors, of the lending company. 5

(3) Nothing contained in sub-sections (1) and (2) shall apply to—

(a) the giving of any loan to a managing or whole-time director—

(i) as a part of the conditions of service extended by the company to all its employees; or 10

(ii) pursuant to any scheme approved by the members by a special resolution; or

(b) a company which in the ordinary course of its business provides loans or gives guarantees or securities for the due repayment of any loan and in respect of such loans an interest is charged at a rate not less than the rate of prevailing yield of one year, three year, five year or ten year Government security closest to the tenor of the loan; or 15

(c) any loan made by a holding company to its wholly owned subsidiary company or any guarantee given or security provided by a holding company in respect of any loan made to its wholly owned subsidiary company; or 20

(d) any guarantee given or security provided by a holding company in respect of loan made by any bank or financial institution to its subsidiary company:

Provided that the loans made under clauses (c) and (d) are utilised by the subsidiary company for its principal business activities. 25

“(4) If any loan is advanced or a guarantee or security is given or provided or utilised in contravention of the provisions of this section,—

(i) the company shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees;

(ii) every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees; and 30

(iii) the director or the other person to whom any loan is advanced or guarantee or security is given or provided in connection with any loan taken by him or the other person, shall be punishable with imprisonment which may extend to six months or with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees, or with both. 35

Amendment of section 186.

62. In section 186 of the principal Act,—

(i) in sub-section (2), the following *Explanation* shall be inserted, namely:— 40

Explanation.—For the purposes of this sub-section, the word "person" does not include any individual who is in the employment of the company.;

(ii) for sub-section (3), the following sub-section shall be substituted, namely:—

'(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 proposed to be 45

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:

5 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:

10 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).”.

(iii) for sub-section (11), the following sub-section shall be substituted, namely:—

15 "(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;

20 (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;

25 (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.”;

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30 (iv) in the *Explanation*, in clause (a), after the words "other securities" the following shall be inserted, namely:—

 "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 fifty per cent. as a proportion of its gross income.”.

63. In section 188 of the principal Act,—

Amendment of section 188.

(i) in sub-section (1), after second proviso, the following proviso shall be inserted, namely:—

40 "Provided also that nothing contained in the second proviso shall apply to a company in which ninety per cent. or more members, in number, are relatives of promoters or are related parties:";

45 (ii) in sub-section (3), for the words "shall be voidable at the option of the Board", the words "shall be voidable at the option of the Board or, as the case may be, of the shareholders" shall be substituted.

64. Section 194 of the principal Act shall be omitted.

Omission of section 194.

Omission of section 195.

65. Section 195 of the principal Act shall be omitted.

Amendment of section 196.

66. In section 196 of the principal Act,—

(a) in sub-section (3), in clause (a), after the proviso, the following proviso shall be inserted, namely:—

“Provided further that where no such special resolution is passed but votes cast in favour of the motion exceed the votes, if any, cast against the motion and the Central Government is satisfied, on an application made by the Board, that such appointment is most beneficial to the company, the appointment of the person who has attained the age of seventy years may be made.”;

(b) in sub-section (4), for the words “specified in that Schedule”, the words “specified in Part I of that Schedule” shall be substituted.

Amendment of section 197.

67. In section 197 of the principal Act,—

(a) in sub-section (1),—

(i) in the first proviso, the words "with the approval of the Central Government," shall be omitted;

(ii) in the second proviso, after the words "general meeting," the words "by a special resolution," shall be inserted;

(iii) after the second proviso, the following proviso shall be inserted, namely:—

"Provided also 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 the approval in the general meeting.”;

(b) in sub-section (3), the words "and if it is not able to comply with such provisions, with the previous approval of the Central Government" shall be omitted;

(c) for sub-section (9), the following sub-section shall be substituted, namely:—

"(9) 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.”;

(d) in sub-section (10),—

(i) for the words "permitted by the Central Government", the words "approved by the company by special resolution within two years from the date the sum becomes refundable" shall be substituted;

(ii) the following proviso shall be inserted, namely:—

"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.”;

(e) in sub-section (11), the words "and if such conditions are not being complied, the approval of the Central Government had been obtained" shall be omitted;

(f) after sub-section (15), the following sub-sections shall be inserted, namely:—

5 "(16) 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.

10 (17) 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."

15 **68.** In section 198 of the principal Act,—

Amendment of section 198.

(i) in sub-section (3),—

(a) in clause (a), after the words "sold by the company", the words and figures "unless the company is an investment company as referred to in clause (a) of the *Explanation* to section 186" shall be inserted :

20 (b) after clause (e), the following clause shall be inserted, namely:—

"(f) any amount representing unrealised gains, notional gains or revaluation of assets."

(ii) in sub-section (4), in clause (1), the words "which begins at or after the commencement of this Act" shall be omitted.

25 **69.** In section 200 of the principal Act, the words "the Central Government or" appearing at both the places shall be omitted.

Amendment of section 200.

70. In section 201 of the principal Act,—

Amendment of section 201.

(a) in sub-section (1), for the words "this Chapter", the word and figures "section 196" shall be substituted;

30 (b) in sub-section (2), in clause (a), for the words "any of the sections aforesaid", the word and figures "section 196" shall be substituted.

71. In section 216 of the principal Act, in sub-section (1),—

Amendment of section 216.

(i) in clause (b), for the word "company", the words "company; or" shall be substituted;

35 (ii) after clause (b), the following clause shall be inserted, namely:—

"(c) who have or had beneficial interest in shares of a company or who are or have been beneficial owners or significant beneficial owner of a company."

40 **72.** In section 223 of the principal Act, in sub-section (3), after the words "may be obtained", the words "by members, creditors or any other person whose interest is likely to be affected" shall be inserted.

Amendment of section 223.

73. In section 236 of the principal Act, in sub-sections (4), (5) and (6), for the words, "transferor company", wherever they occur, the words "company whose shares are being transferred" shall be substituted.

Amendment of section 236.

45 **74.** In section 247 of the principal Act, in sub-section (2), in clause (d), for the words "during or after the valuation of assets", the words "during a period of three years prior to

Amendment of section 247.

his appointment as valuer or three years after the valuation of assets was conducted by him" shall be substituted.

Amendment of section 366.

75. In section 366 of the principal Act, in sub-section (2),—

(i) for the words "seven or more members", the words "two or more members" shall be substituted;

(ii) in the proviso, after clause (vi), the following clause shall be inserted, namely:—

"(vii) a company with less than seven members shall register as a private company."

Amendment of section 374.

76. In section 374 of the principal Act, *after* clause (d), the following proviso shall be inserted, namely:—

"Provided that upon registration as a company under this Part a limited liability partnership incorporated under the Limited Liability Partnership Act, 2008 shall be deemed to have been dissolved under that Act without any further act or deed."

Amendment of section 379.

77. Section 379 of the principal Act shall be renumbered as sub-section (2) thereof and before sub-section (2) as so renumbered, the following sub-section shall be inserted, namely:—

"(1) Sections 380 to 386 (both inclusive) and sections 392 and 393 shall apply to all foreign companies:

Provided that the Central Government may, by Order published in the Official Gazette, exempt any class of foreign companies, specified in the Order, from any of the provisions of sections 380 to 386 and sections 392 and 393 and a copy of every such order shall, as soon as may be after it is made, be laid before both Houses of Parliament."

Amendment of section 384.

78. In section 384 of the principal Act, in sub-section (2), after the word and figures "section 92", the words and figures "and section 135" shall be inserted.

Amendment of section 391.

79. In section 391 of the principal Act, *for* sub-section (2), the following sub-section shall be substituted, namely:—

"(2) Subject to the provisions of section 376, the provisions of Chapter XX shall apply *mutatis mutandis* for closure of the place of business of a foreign company in India as if it were a company incorporated in India in case such foreign company has raised monies through offer or issue of securities under this Chapter which have not been repaid or redeemed."

Amendment of section 403.

80. In section 403 of the principal Act,—

(i) in sub-section (1), for the first and second provisos, the following provisos shall be substituted, namely:—

"Provided that where any document, fact or information required to be submitted, filed, registered or recorded, as the case may be, under section 92 or 137 is not submitted, filed, registered or recorded, as the case may be, within the period provided in those sections, without prejudice to any other legal action or liability under this Act, it may be submitted, filed, registered or recorded, as the case may be, after expiry of the period so provided in those sections, on payment of such additional fee as may be prescribed, which shall not be less than one hundred rupees per day and different amounts may be prescribed for different classes of companies :

Provided further that where the document, fact or information, as the case may be, in cases other than referred to in the first proviso, is not submitted, filed, registered or recorded, as the case may be, within the period provided in the

relevant section, it may, without prejudice to any other legal action or liability under this Act, be submitted, filed, registered or recorded as the case may be, on payment of such additional fee as may be prescribed and different fees may be prescribed for different classes of companies:

5 Provided also that where there is default on two or more occasions in submitting, filing, registering or recording of the document, fact or information, it may, without prejudice to any other legal action or liability under this Act, be submitted, filed, registered or recorded, as the case may be, on payment of a higher additional fee, as may be prescribed and which shall not be lesser than
10 twice the additional fee provided under the first or the second proviso as applicable.”;

(ii) for sub-section (2), the following sub-section shall be substituted, namely:—

15 “(2) Where a company fails or commits any default to submit, file, register or record any document, fact or information under sub-section (1) before the expiry of the period specified in the relevant section, the company and the officers of the company who are in default, shall, without prejudice to the liability for the payment of fee and additional fee, be liable for the penalty or punishment provided under this Act for such failure or default.”.

20 **81.** For section 406 of the principal Act, the following section shall be substituted, namely:— Substitution of section 406.

 '406. (1) In this section, "*Nidhi*" or "Mutual Benefit Society" means a company which the Central Government may, by notification in the Official Gazette, declare to be a *Nidhi* or Mutual Benefit Society, as the case may be. Provision relating to *Nidhis* and its application, etc.

25 (2) The Central Government may, by notification in the Official Gazette, direct that any of the provisions of this Act specified in the notification—

 (a) shall not apply to any *Nidhi* or Mutual Benefit Society; or

 (b) shall apply to any *Nidhi* or Mutual Benefit Society with such exceptions, modifications and adaptations as may be specified in the notification.

30 (3) A copy of every notification proposed to be issued under sub-section (2), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days, and if, both Houses agree in disapproving the issue of notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses.

35 (4) In reckoning any such period of thirty days as is referred to in sub-section (3), no account shall be taken of any period during which the House referred to in sub-section (3) is prorogued or adjourned for more than four consecutive days.

 (5) The copies of every notification issued under this section shall, as soon as may be after it has been issued, be laid before each House of Parliament.'

40 **82.** In section 409 of the principal Act, in sub-section (3),— Amendment of section 409.

 (i) in clause (a), for the words "out of which at least three years shall be in the pay scale of Joint Secretary to the Government of India or equivalent or above in that service", the words "and has been holding the rank of Secretary or Additional Secretary to the Government of India" shall be substituted;

45 (ii) for clause (e) the following clause shall be substituted namely:—

 "(e) is a person of proven ability, integrity and standing having special knowledge and professional experience of not less than fifteen years in industrial finance, industrial management, industrial reconstruction, investment and accountancy."

- Amendment of section 410. **83.** In section 410 of the principal Act, for the words, "orders of the Tribunal", the words "orders of the Tribunal or of the National Financial Reporting Authority" shall be substituted.
- Amendment of section 411. **84.** In section 411 of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely:— 5
 "(3) A technical member shall be a person of proven ability, integrity and standing having special knowledge and professional experience of not less than twenty-five years in industrial finance, industrial management, industrial reconstruction, investment and accountancy."
- Amendment of section 412. **85.** In section 412 of the principal Act, for sub-section (2), the following sub-sections shall be substituted, namely:— 10
 "(2) The Members of the Tribunal and the Technical Members of the Appellate Tribunal shall be appointed on the recommendation of a Selection Committee consisting of—
 (a) Chief Justice of India or his nominee - Chairperson; 15
 (b) a senior Judge of the Supreme Court or Chief Justice of High Court - Member;
 (c) Secretary in the Ministry of Corporate Affairs - Member; and
 (d) Secretary in the Ministry of Law and Justice - Member.
 (2A) Where in a meeting of the Selection Committee, there is equality of votes on any matter, the Chairperson shall have a casting vote." 20
- Amendment of section 435. **86.** For section 435 of the principal Act, the following shall be substituted, namely:—
 "435.(1) The Central Government may, for the purpose of providing speedy trial of offences under this Act, by notification, establish or designate as many Special Courts as may be necessary. 25
 (2) A Special Court shall consist of—
 (a) a single judge holding office as Session Judge or Additional Session Judge, in case of offences punishable under this Act with imprisonment of two years or more; and 30
 (b) a Metropolitan Magistrate or a Judicial Magistrate of the First Class, in the case of other offences,
 who shall be appointed by the Central Government with the concurrence of the Chief Justice of the High Court within whose jurisdiction the judge to be appointed is working." 35
- Amendment of section 438. **87.** In section 438 of the principal Act, for the words "deemed to be a Court of Session", the words "deemed to be a Court of Session or the court of Metropolitan Magistrate or a Judicial Magistrate of the First Class, as the case may be," shall be substituted.
- Amendment of section 439. **88.** In section 439 of the principal Act, in sub-section (2), after the words "a shareholder", the words "or a member" shall be inserted. 40
- Amendment of section 440. **89.** In section 440 of the principal Act, for the words "Court of Session", at both the places, the words "Court of Session or the court of Metropolitan Magistrate or a Judicial Magistrate of the First Class, as the case may be" shall be substituted.
- Amendment of section 441. **90.** In section 441 of the principal Act, in sub-section (1), for the words "with fine only", the words "not being an offence punishable with imprisonment only, or punishable with imprisonment and also with fine" shall be substituted. 45

91. After section 446 of the principal Act, the following sections shall be inserted, namely:—	Insertion of new section 446A.	
"446A. The court or the Special Court, while deciding the amount of fine or imprisonment under this Act, shall have due regard to the following factors, namely:—	Factors for determining level of punishment.	
5	<p>(a) size of the company;</p> <p>(b) nature of business carried on by the company;</p> <p>(c) injury to public interest;</p> <p>(d) nature of the default; and</p> <p>(e) repetition of the default.</p>	
10	<p>446B. Notwithstanding anything contained in this Act, if a One Person Company or a small company fails to comply with the provisions of sub-section (5) of section 92, clause (c) of sub-section (2) of section 117, sub-section (3) of section 137, such company and officer in default of such company shall be punishable with fine or imprisonment or fine and imprisonment, as the case may be, which shall not be more than one-half of the fine or imprisonment or fine and imprisonment, as the case may be, of the minimum or maximum fine or imprisonment or fine and imprisonment, as the case may be, specified in such sections."</p>	Lesser penalties for One Person Companies or small companies.
15	92. In section 447 of the principal Act,—	Amendment of section 447.
20	<p>(i) after the words "guilty of fraud", the words "involving an amount of at least ten lakh rupees or one percent. of the turnover of the company, whichever is lower" shall be inserted;</p>	
	<p>(ii) after the proviso, the following proviso shall be inserted, namely:—</p>	
25	<p>"Provided further that where the fraud involves an amount less than ten lakh rupees or one per cent. of the turnover of the company, whichever is lower, and does not involve public interest, any person guilty of such fraud shall be punishable with imprisonment for a term which may extend to five years or with fine which may extend to twenty lakh rupees or with both."</p>	
93. In section 458 of the principal Act, in sub-section (1), the proviso shall be omitted.	Amendment of section 458.	

LOK SABHA

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BILL

further to amend the Companies Act, 2013.

(As passed by Lok Sabha)