

Ministry of Corporate Affairs

Subject:- Amendments in the Companies Act, 2013

NOTICE INVITING COMMENTS

Pursuant to the recommendations made by “Committee to review the offences under the Companies Act, 2013”, the Companies (Amendment) Ordinance, 2018 has been promulgated on 2nd November, 2018. During examination of such recommendations, the Ministry of Corporate affairs noted that certain other amendments of urgent nature would be required to strengthen the corporate governance & enforcement framework. The amendments so noted have been formulated and are given in the Annexure to this Notice.

Suggestion/Comments on the proposed amendments alongwith justification in brief may be sent latest by 20th November, 2018 through email at comments_rbcao@mca.gov.in

It is requested that the name, contact number, email address and postal address of the sender may be indicated clearly at the time of sending suggestions/comments in the following format:-

Format for sending suggestions/comments

1. Name, contact number, email address and postal address of stakeholder
2. Suggestions/comments as under:-

Serial Number	Clause/Sub- Clause	Suggestion/comments	Justification

ANNEXURE

List of proposed amendments to the Companies Act, 2013

1. In section 8 of the principal Act, for sub-section (4), the following sub-section shall be substituted, namely:—

“(4) A company registered under this section shall not alter the provisions of its memorandum or articles except with the previous approval of the Central Government.”.

Amendment of
section 8.

2. In section 26 of the principal Act,—

Amendment of
section 26.

(i) in sub-sections (4), (5) and (6), for the word “registration”, the word “filing” shall be substituted;

(ii) sub-section (7) shall be omitted.

3. In section 29 of the principal Act, in sub-section (1)—

Amendment of
section 29.

(i) in clause (b), the word “public” shall be omitted.

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

“Provided that in such class or classes of unlisted companies as may be prescribed, the securities shall be held or transferred only in dematerialised form in the manner laid down in the Depositories Act, 1996 and the regulations made thereunder for such dematerialisation.”.

22 of
1996.

4. In section 90 of the principal Act,—

Amendment of
section 90.

(i) after sub-section (4), the following sub-section shall be inserted, namely:—

“(4A) Every company shall take all necessary

steps to find out if there is any individual who is a significant beneficial owner in relation to the company and if so, to identify him and require him to comply with the provisions of this section.”;

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

(9A) The Central Government may make rules for the purposes of this section.”;

(iii) in sub-section (11), after the words, brackets and figure “sub-section (4)”, the words, brackets, figure and letter “or required to take necessary steps under sub-section (4A)” shall be inserted.

5. In section 124 of the principal Act, in sub-section (6) —

Amendment of
section 124.

(a) for the words “All shares”, the words “Notwithstanding anything contained in sub-section (5), all shares” shall be substituted;

(b) after the words “transferred by the company”, the words “along with any dividend, which has not been paid or claimed, in such shares, together with interest, if any, accrued thereon” shall be substituted.

6. In section 125 of the principal Act,—

Amendment of
section 125.

(a) in sub-section (2), in clause (c), after the word, brackets and figure “sub-section (5)”, the words, brackets and figure “or sub-section (6)” shall be inserted;

(b) in sub-section (3), in clause (a), after the words “matured debentures,”, the words “redemption amount towards unpaid or unclaimed preference shares,” shall be inserted;

(c) after sub-section (11), the following sub-section shall be inserted, namely:—

“(12) The authority may, by general or special order in writing delegate to any member, officer or any other person subject to such conditions, if any, as may be specified in the order, such of its powers and functions under this Act as it deems necessary.”.

7. In section 132 of the principal Act,—

Amendment of
section 132.

(a) after sub-section (1), the following sub-section shall be inserted, namely:—

“(1A) The National Financial Reporting Authority shall perform its functions through such divisions as may be prescribed.”.

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

(3A) Each division of the National Financial Reporting Authority shall be presided over by the Chairperson or a full-time Member authorised by the Chairperson.”.

“(3B) There shall be an executive body of National Financial Reporting Authority consisting of the Chairperson and full-time Members for the efficient discharge of functions of the National Financial Reporting Authority.

8. In section 135 of the principal Act, —

Amendment of
section 135.

(a) in sub-section (5), after the words “three immediately preceding financial years,”, the words “or where the company has not completed the period of three financial years since its incorporation, during such period,” shall be inserted;

(b) after sub-section (5), the following sub-sections shall be inserted, namely:—

“(6) Any amount remaining unspent under sub-section (5) shall be transferred by the company within thirty days from the end of the financial

year to a special account to be opened by the company in that behalf for that financial year in any scheduled bank to be called the Unspent Corporate Social Responsibility Account, and such amount shall be spent by the company in pursuance of its Corporate Social Responsibility Policy within a period of three financial years from the date of such transfer.

(7) The Central Government may give such general or special directions to a company or class of companies as it considers necessary to ensure compliance of provisions of this section and such company or class of companies shall comply with such directions.”.

9. In section 149 of the principal Act,—

Amendment of
section 149.

(i) in sub-section (6),—

(a) in clause (c), the following provisos shall be inserted, namely:—

“Provided that the total pecuniary relationship with the company, its holding, subsidiary or associate company, or their promoters or directors, shall not exceed twenty-five per cent. of his total income, of which, professional or any services rendered by him, other than such services, as may be prescribed, shall not account for more than ten per cent. of his total income:

Provided further that the remuneration received under sub-section (5) of section 197 and expenses incurred for participation in the Board and other meetings shall not be accounted for determining the total pecuniary relationship, unless otherwise provided.”;

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

“(ea) who completes such assessment, conducted by such body or institute, as may be

prescribed:

Provided that the Central Government may, by order, exempt an individual or any class of individuals from the requirement of completing such assessment.”;

(ii) in sub-section (7), after the word, brackets and figure “sub-section (6)” occurring at the end, the words “and file such other return with the Registrar, containing such particulars of his independence, as may be prescribed.” shall be inserted.

10. In section 168 of the principal Act,—

Amendment of
section 168.

(i) in sub-section (1), —

(a) in the proviso, after the word “director”, the words “other than an independent director” shall be inserted;

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

“Provided further that an independent director shall forward a copy of his resignation along with detailed reasons for the resignation to the Registrar within seven days of giving notice under sub-section (1), in such form and manner as may be prescribed:

(ii) in sub-section (2), in the proviso, for the words “Provided that”, the following shall be substituted, namely:—

“Provided that resignation of an independent director shall take effect on the thirtieth day from the date of receipt of notice by the company under sub-section (1) or such later date as may have been specified in the said notice:

Provided further that”.

11. In section 169 of the principal Act, in sub-section (1), in the first proviso, the words, brackets and figures

Amendment of
section 169.

“re-appointed for second term under sub-section (10) of section 149” shall be omitted.

12. In section 212 of the principal Act,—

Amendment of
section 212.

(a) in sub-section (8), for the words “If the Director, Additional Director or Assistant Director”, the words “If any officer not below the rank of Assistant Director” shall be substituted;

(b) in sub-section (9), for the words “The Director, Additional Director or Assistant Director of Serious Fraud Investigation Office”, the words “The officer authorised under sub-section (8)” shall be substituted;

(c) in sub-section (10), for the words “Judicial Magistrate”, the words “Special Court or Judicial Magistrate” shall be substituted;

(d) after sub-section (14), the following sub-section shall be inserted, namely:—

“(14A) Where the report under sub-section (14), states that fraud has taken place in a company and due to such fraud any director, key managerial personnel, other officer of the company or any other person or entity, has taken undue advantage or benefit, whether in the form of any asset, property or cash or in any other manner, the Central Government may file an application before the Tribunal for appropriate orders with regard to disgorgement of such asset, property or cash, as the case may be, and also for holding such director, key managerial personnel, officer or other person liable personally without any limitation of liability.”.

13. In section 233 of the principal Act, for sub-section (12), the following sub-section shall be substituted, namely:—

Amendment of
section 233.

“(12) The Central Government may make rules for allowing compromise or arrangement in respect

of any company specified under sub-section (1), and

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- (a) its creditors or any class of them; or
 - (b) its members or any class of them; or
 - (c) any other company specified therein".

14. In section 241 of the principal Act,—

Amendment of
section 241.

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

“Provided that applications under this sub-section in respect of such company or class of companies, as may be prescribed, shall be made before the Principal Bench of the Tribunal which shall be dealt with by such Bench.”;

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

(3) While making an application under sub-section (2), where in the opinion of the Central Government there are circumstances suggesting—

(a) that any person concerned in the conduct and management of the affairs of a company is or has been in connection therewith guilty of fraud, misfeasance, persistent negligence or default in carrying out his obligations and functions under the law, or breach of trust;

(b) that the business of a company is not or has not been conducted and managed by such person in accordance with sound business principles or prudent commercial practices;

(c) that a company is or has been conducted and managed by such person in a

manner which is likely to cause, or has caused, serious injury or damage to the interest of the trade, industry or business to which such company pertains; or

(d) that the business of a company is or has been conducted and managed by such person with intent to defraud its creditors, members or any other person or otherwise for a fraudulent or unlawful purpose or in a manner prejudicial to public interest,

the Central Government may state a case against the person aforesaid and refer the same to the Tribunal with a request that the Tribunal may inquire into the case and record a decision as to whether or not such person is a fit and proper person to hold the office of director or any other office connected with the conduct and management of any company.

(4) The person against whom a case is referred to the Tribunal under sub-section (3), such person shall be joined as a respondent to the application.

(5) Every application under sub-section (3)—

(a) shall contain a concise statement of such circumstances and materials as the Central Government may consider necessary for the purpose of the inquiry; and

(b) shall be signed and verified in the manner laid down in the Code of Civil Procedure, 1908, for the signature and verification of a plaint in a suit by the Central Government.”.

5 of 1908.

15. In section 242 of the principal Act, after sub-section (4), following sub-section shall be inserted, namely:—

“(4A) At the conclusion of the hearing of the case in respect of sub-section (3) of section 241, the Tribunal shall record its decision in order stating therein specifically as to whether or not the

Amendment of
section 242.

respondent is a fit and proper person to hold the office of director or any other office connected with the conduct and management of any company.”.

16. In section 243 of the principal Act,—

Amendment of
section 243.

(a) after sub-section (1), the following sub-sections shall be inserted, namely:—

“(1A) The person against whom an order has been made under sub-section (4A) of section 242 shall not hold the office of a director or any other office connected with the conduct and management of the affairs of any company for a period of five years from the date of the said order:

Provided that the Central Government may, with the leave of the Tribunal, permit such person to hold any such office before the expiry of the said period of five years.

(1B) Notwithstanding anything contained in any other provision of this Act, or any other law for the time being in force or any contract, memorandum or articles, on the removal of a person from the office of a director or, as the case may be, any other office connected with the conduct and management of the affairs of the company, that person shall not be entitled to, or be paid, any compensation for the loss or termination of office.”;

(b) in sub-section (2), after the word, brackets and figure “sub-section (1)”, the words, brackets, figures and letter “or sub-section (1A)” shall be inserted.

17. Section 250 of the principal Act shall be numbered as sub-section (1) thereof and after sub-section (1) as so numbered, the following sub-sections shall be inserted and shall be deemed to have been inserted with effect from the 26th December, 2016, namely:—

Amendment of
section 250.

“(2) All property and any rights whatsoever vested in or held on trust for the company (excluding property held by the company on trust for another person), immediately before the dissolution of the company under section 248, shall vest absolutely in the Central Government free from all encumbrances and be administered through a Board of Administrators to be constituted or designated for this purpose and in such manner as may be prescribed.

(3) The composition, powers and functions of the Board of Administrators and the manner of administration and disposal of, property or rights, by such Board shall be such as may be prescribed.

(4) The Board of Administrators shall, on disposal of property, immediately deposit the sale proceeds into the Consolidated Fund of India and intimate the details thereof to the Central Government.

(5) Where any person, without reasonable cause, fails to co-operate or interferes in the functions being discharged by the Board of Administrators, he shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to fifty thousand rupees, or with both.”.

18. In section 252 of the principal Act, after sub-section (3), the following sub-section shall be inserted, namely: —

Amendment of
section 252.

“(4) Subject to the provisions of sub-section (3), the Tribunal may also order that on the restoration of the company in the register of companies, all property or rights vested in the Central Government pursuant to sub-section (2) of section 250 shall vest in the company as if the company had not been removed from the register:

Provided that any property disposed of by the Board of Administrators in accordance with the provisions of section 250 shall not vest with the

company after its restoration, but the proceeds so deposited in the Consolidated Fund of India, net of costs, if any, shall be refunded to the company, if so ordered by the Tribunal.”.

19. In section 271 of the principal Act, clause (a) shall be omitted.

Amendment of
section 271.

20. In section 375 of the principal Act, in sub-section (3), clause (b) shall be omitted.

Amendment of
section 375.