



The proposed Companies (Amendment) Bill, 2016

31 March 2016

First Notes on

Financial reporting

Corporate law updates

Regulatory and other information

Disclosures

Sector

All

Banking and insurance

Information, communication, entertainment

Consumer and industrial markets

Infrastructure and government

Relevant to

All

Audit committee

CFO

Others

Transition

Immediately

Within the next 3 months

Post 3 months but within 6 months

Post 6 months

Background

On 1 February 2016, the Companies Law Committee (CLC) submitted its recommendations to the government.

New developments

Based on the recommendations of the CLC report, on 16 March 2016, the government proposed the Companies (Amendment) Bill 2016, (the Bill) on issues arising on account of implementation of the Companies Act, 2013 (2013 Act) in the Lok Sabha to amend the 2013 Act. The Bill considered the suggestions made by the CLC as well as the comments received from the stakeholders and ministries/departments.

The Bill proposes changes that are broadly aimed at addressing difficulties in implementation and are expected to help with the following objectives:

- Facilitate the ease of doing business in order to promote growth
- Harmonise with accounting standards, the Securities and Exchange Board of India Act, 1992 and the regulations made thereunder, and the Reserve Bank of India Act, 1934 and the regulations made thereunder; rectifying omissions and inconsistencies in the 2013 Act, and
- Carry out amendments in the provisions relating to qualifications and selection of members of the National Company Law Tribunal and the National Company Law Appellate Tribunal in accordance with the directions of the Supreme Court.

Recommendations of the Bill

The recommendations cover significant areas of the 2013 Act, including definitions, raising of capital, accounts and audit, Corporate Social Responsibility (CSR), managerial remuneration, companies incorporated outside India and offences/penalties.

This issue of First Notes summarises key recommendations of the Bill 2016, which are listed in the table below:

Sr. No.	Description of changes recommended to the 2013 Act
	Definitions
1	<p><i>Associate company, subsidiary, joint venture, holding company, related party and financial year:</i> The Bill has accepted the recommendations of the CLC and modified the definitions of associate company, subsidiary, joint venture, holding company and financial year. Following are the main changes to the definitions:</p> <ul style="list-style-type: none"> • Subsidiary: The term 'total share capital' (i.e. equity and preference share capital) would be replaced with the term 'total voting power' (i.e. equity share capital) as the basis for deciding holding/subsidiary relationship. • Holding company: The definition of 'company' would include 'any body corporate'. This change would widen the scope of the term 'holding company, by including, body corporates (foreign companies)' too. • Associate company: In the definition of an associate company 'significant influence would mean control of at least 20 per cent of the total voting power, or control of or participation business decisions under an agreement'. • Joint venture: The definition of 'joint venture' would be in accordance with Ind AS 28, <i>Investments in Associates and Joint Ventures</i>. • Related party: The definition of the related party would include an investing company and the venture partners. • Financial year: The Bill proposes that associates (and joint ventures) of a company incorporated outside India to apply for a different financial year to the National Company Law Tribunal (NCLT). (Section 2)
	Incorporation of companies
2	<p><i>Incorporation of companies:</i> The Bill has accepted the CLC recommendations and proposes to make the incorporation process easier and allow greater flexibility to companies. It proposes that an unrestricted objects clause would be allowed in the Memorandum of Association dispensing the detailed listing of objects, self-declarations to replace affidavits from subscribers to the memorandum and first directors and also changes in various forms. (Section 4, 7)</p>
	Prospectus and allotment of securities
3	<p><i>Matters to be stated in the prospectus:</i> The Bill has accepted the recommendations of the CLC and proposed to amend Section 26(1) of the 2013 Act to empower SEBI to prescribe the contents of a prospectus. (Section 26)</p>
4	<p><i>Civil liability for mis-statement in the prospectus:</i> The Bill has accepted the recommendation of the CLC and proposed to incorporate a provision to hold experts liable for statements prepared by them and which the directors relied upon, provided such experts¹ are identified in the prospectus. (Section 35)</p> <p>¹ The 2013 Act states that an 'expert' includes an engineer, a valuer, a chartered accountant, a company secretary, a cost accountant and any other person who has the power or authority to issue a certificate in pursuance of any law for the time being in force.</p>
5	<p><i>Private placement:</i> The Bill has accepted the recommendations of the CLC and proposed to substantially simplify the private placement process by amending Section 42 and allowing private placement to be made to a selected group identified by the board. (Section 42)</p>
	Acceptance of deposits by companies
6	<p><i>Acceptance of deposits by companies:</i> The Bill incorporated the proposal of the CLC to reduce the requirement for maintaining a deposit repayment reserve account in a scheduled bank from 15 per cent each for the last two years to 20 per cent during the maturing year. Further the Bill proposes to omit the requirement for deposit insurance.</p> <p>Additionally, the Bill proposes to amend Section 73(2)(e) to enable companies which have made good on a default committed in the past to accept deposits after five years from the date of the default remediation. (Section 73)</p>

Sr. No.	Description of changes recommended to the 2013 Act
	Management and administration
7	<i>Declaration of beneficial ownership:</i> The Bill has recognised the concept of beneficial owner of a company based on the suggestions of the CLC and proposed a new Section in the 2013 Act. This Section requires that a register of the beneficial owners should be maintained by a company, and filed with the Registrar. The new Section would substitute the Section on 'Investigation of beneficial ownership of shares in certain cases'. (Section 90)
8	<i>Postal ballot:</i> The Bill has accepted the recommendation of the CLC to allow any item of business required to be transacted by means of a postal ballot to be transacted through electronic voting at the general meetings. (Section 110)
	Declaration and payment of dividend
9	<i>Declaration of dividend:</i> The Bill considered the recommendation of the CLC and proposes to amend the provision relating to declaration of dividend. It proposes that interim dividend can be declared out of the profits of the current financial year till the quarter preceding the date of declaration and the same can be declared any time till the date of the annual general meeting. Additionally, the Bill proposes that if the company has incurred losses during the current financial year, then it should not declare dividend at the rate higher than the average dividends declared by the company during the immediately preceding three financial years. (Section 123)
	Accounts of companies
10	<i>Re-opening of accounts:</i> The Bill proposes that re-opening of accounts should be limited to eight years, accepting the recommendation made by the CLC. (Section 130)
11	<i>Financial statements, board's report, etc:</i> The Bill accepts the recommendations of the CLC and proposes to simplify the disclosures in the board's report and avoid duplications with SEBI's disclosure requirements. (Section 134)
12	<i>Consolidated Financial Statements (CFS) :</i> The Bill proposes the following: <ul style="list-style-type: none"> • Provide relief to unlisted companies by proposing that only listed companies having a subsidiary/subsidiaries would be required to place separate audited accounts in respect of each of its subsidiary on its website (currently this requirement is for every company with a subsidiary). <p>In relation to placement of separate audited accounts of overseas subsidiaries, the Bill proposes that the attachment of standalone financial statements would not be required when such foreign subsidiaries:</p> <ul style="list-style-type: none"> – Consolidate financial statements as per the law of the jurisdiction in which they are established, and – Place their financial statements on the website in the statutory format. <p>The Bill further proposes that every company having a subsidiary or subsidiaries, would provide a copy of their 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. (Section 129, 136)</p>
13	<i>CSR:</i> The Bill similar to the CLC proposes the following items: <ul style="list-style-type: none"> • Composition of the CSR committee for 'companies not required to appoint independent directors' should be prescribed as 'having two or more directors'. • For determining the threshold of the specified net worth, turnover, or net profit to constitute a CSR committee, the words 'any financial year' should be replaced by the words 'immediately preceding financial year'. • Insert an explanation to provide powers to the MCA to prescribe any exclusions from net profit in Section 135(1) of the 2013 Act. • Section 135(3)(a) is modified to refer to 'in areas or subjects specified in Schedule VII to the 2013 Act' within which CSR activities could be taken up by an eligible company.

Sr. No.	Description of changes recommended to the 2013 Act
	<p>Further, the Bill has not taken the recommendation of CLC regarding:</p> <ul style="list-style-type: none"> • The term 'average net profit' in Section 135(5) should be replaced with the words 'net profit' • Granting prescriptive powers for specifying the manner of calculation of 'net profits' of a foreign company through the Rules. (Section 135)
	Audit and auditors
14	<p><i>Appointment of auditors:</i> The Bill has accepted the recommendation of the CLC and proposed to remove the requirement for annual ratification of appointment/continuance of an auditor.</p> <p>Further, the Bill proposes no change to Section 139(8) i.e. the government has not taken the suggestion of modification of Section 139(8) which provided that if an auditor is unwilling to continue at any stage before the completion of his/her five year term, it should be treated as a case of resignation, and the provisions of Section 139(8) for filling up such a casual vacancy arising due to resignation should apply. (Section 139)</p>
15	<p><i>Powers and duties of auditors and auditing standards:</i> The Bill has accepted the recommendation of the CLC and has proposed the following:</p> <ul style="list-style-type: none"> • An auditor would report on internal financial controls with regards to financial statements. • An auditor of the holding company to have a right to access the accounts and records of a subsidiary and an associate company (and joint venture). (Section 143)
16	<p><i>Disqualification of auditors:</i> The Bill has proposed to modify the definition of the term 'relative' for determining disqualification of an auditor by restricting it to a financially dependent relative i.e. the term 'relative' means the spouse of a person; and includes a parent, sibling or child of such a person or of the spouse, financially dependent on such a person, or who consults such a person while taking decisions in relation to his/her investments. (Section 141)</p>
	Appointment and qualifications of directors
17	<p><i>Independent directors:</i> The Bill proposes the following:</p> <ul style="list-style-type: none"> • Introduces a test of materiality, for the purpose of determining whether pecuniary relationships could impact the independence of an individual for becoming an independent director. • Section 149(6)(d) to be amended with respect to the scope of restriction on a 'pecuniary relationship or transaction' entered into by a relative and proposed to be made more specific by clearly categorising the types of transactions. • Currently, an individual is restricted to be appointed as an independent director in case his/her relative is a Key Managerial Personnel (KMP) or an employee in the company, its holding, subsidiary or associate company during any of the preceding three years. The Bill adds an explanation that the scope of the restriction should not apply to employment of a relative during the preceding three financial years. (Section 149)
	Meeting of Board and its powers
18	<p><i>Audit committee, Nomination and Remuneration Committee (NRC):</i> The Bill accepts recommendations of the CLC and proposes the following:</p> <ul style="list-style-type: none"> • The existing requirement for the audit committee to pre-approve all related party transactions, subject to the approval of the board or shareholders as required by Section 188 should continue. For transactions not covered under Section 188, the audit committee may give its recommendation to the board, in case it is not approving a particular transaction. • Subject to safeguards, the audit committee may ratify within three months such transactions that have been entered into without obtaining its prior approval (inadvertently) subject to an upper threshold of INR1 crore.

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	<ul style="list-style-type: none"> Section 177 to be amended to provide that related party transactions between a holding company and its wholly owned subsidiaries that do not require board approval under Section 188, need not require an approval of the audit committee. Amendment to Section 178(2) to enable the NRC to prescribe 'a methodology for the evaluation of performance of individual directors, committee(s) of the board and the board as a whole', and the board to carry out performance evaluation as per the methodology approved by the board. Companies to be allowed to place the remuneration policy on their websites, if any, and to disclose only the salient features of the policy, along with the weblink in their Boards' report. (Section 149, 177, 178)
19	<p><i>Loans to directors, etc:</i> The Bill proposes that companies may give a loan to any person in whom the director is interested, subject to a prior approval of the company by a special resolution and loans extended to persons, including subsidiaries, falling within the restrictive purview of Section 185. Such loans should be used by the subsidiary for its principal business activity only. The Bill also specifies the definition of 'any person in whom the director is interested'.</p> <p>Further the Bill prohibits companies to give loans to the director of a company or holding company, or any partner or his/her relative and firms in which the director and his/her relatives are partners. (Section 185)</p>
20	<p><i>Loans and investment by the company:</i> The Bill proposed to remove restrictions on layers of subsidiaries and investment companies in line with the recommendation made by the CLC report (Section 186(1))</p>
21	<p><i>Related party transactions:</i> The Bill proposes to relax stringent requirements of Section 188. It proposes that second proviso of Section 188 would not be applicable to cases where 90 per cent or more members, in number, are relatives of promoters or are related parties. (Section 188)</p>
22	<p><i>Prohibition on forward dealing and insider trading of securities:</i> The Bill proposes that the provisions relating to forward dealing and insider trading are to be omitted from the 2013 Act. Listed companies are covered under the SEBI's Act/Regulations. (Section 194, 195)</p>
Appointment and remuneration of managerial personnel	
23	<p><i>Managerial remuneration:</i> The Bill proposes that if managerial remuneration exceeds specified limits, the same should be approved by the shareholders in the general meeting through a special resolution. Further, the requirement for a government approval should be omitted. Additionally the Bill recommends safeguard in the form of auditor reporting requirement, an auditor is to comment stating that the remuneration is paid in accordance with the prescribed provisions. (Section 197)</p>
24	<p><i>Calculation of profits:</i> The Bill proposes amendment of Section 198(4)(1), to include brought forward losses of the years before the commencement of the 2013 Act. Additionally, it has recommended that investment companies should include profits, by way of premium on shares or debentures of the company, which are issued or sold by the company.(Section 198)</p>
Companies incorporated outside India	
25	<p><i>Foreign company:</i> The Bill proposes to give powers to the central government to prescribe the class of foreign companies exempt from provisions of Section 380 to 386 and Section 392 and 393. (Section 379)</p>
Penalties	
26	<p><i>Punishment for fraud:</i> The Bill proposes that frauds which involve at least INR10 lakh or 1 per cent of the turnover of the company, whichever is lower, may be considered as punishable under Section 447. Frauds below these limits which do not involve public interest, should be punishable with imprisonment for a term which may extend to five years or with fine which may extend to INR20 lakh or both. (Section 447)</p>

Our comments

Post the recommendations made by the CLC, the speed at which the government has started the process to amend the 2013 Act is laudable.

The proposals would certainly help ease of doing business and provided the much needed relief, especially in the following areas:

- **Definitions:** Alignment of the definition of subsidiary, associate and joint venture with the accounting standards was much needed. Additionally amending the definition of a holding company i.e. including foreign companies, addresses the debate whether foreign companies meet the definition of holding companies under the 2013 Act.
- **Inter corporate loans:** Companies would now be able to lend to group companies in which directors interested, subject to prior approval of the shareholders by a special resolution. This is expected to help provide significant relief and groups could benefit from centralised fund raising by their corporate office.
- **Related party transactions:** The relief from stringent requirements of Section 188 to cases where 90 per cent or more members, in number, are relatives of promoters or are related parties, would help joint venture companies and closely held public companies.
- **Managerial remuneration:** The omission of the requirement for the central government approval for companies having no or inadequate profits, could help companies attract talent and is in line with principle of corporate democracy.
- **Independent directors:** Introduction of the test of materiality for determining pecuniary relationships is a welcome step and could help with incentivising individuals to be directors and independent directors.
- **Disclosure duplications:** There are numerous disclosure requirements in the board's report, financial statements, CSR policy, remuneration policy, etc. The proposals to simplify the disclosures in the board's report and avoid duplications with SEBI's disclosure requirements are welcome steps and help rationalise the board's reporting and financial statements.

However, not every CLC recommendation has been accepted by the government. Some of the important ones not incorporated in the Bill are:

- **CSR:** The CLC had recommended to replace the term 'average net profit' with 'net profit' and providing prescriptive power for specifying the manner of calculation of 'net profits' of a foreign company through the Rules.
- **CFS and audit opinion –** The CLC recommended that the auditor should express a true and fair opinion on the consolidated financial statements and report on the relevant and significant matters concerning subsidiaries/associates rather than the entire reporting requirements of Section 143(3) of the 2013 Act.
- **Deposits –** The CLC recommended that the limits with regard to raising of deposits from members for 'start-ups' which are private companies, should be removed for the first five years from their incorporation. Additionally CLC had recommended to allow exemptions to such private companies from the upper limit, as promoters or their relatives or 'Qualified Institutional Buyers' (QIB), who had invested in the risk capital would already be aware of the business prospects of the company.
- **Loan and investment by a company –** The CLC recommended that a loan given to a foreign entity should be at the effective yield, which should not be less than the rate provided under Section 186(7).

The bottom line

These proposals indicate that authorities continue to address practical challenges being faced by companies while implementing the 2013 Act.

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KPMG in India's IFRS institute



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The website provides information and resources to help board and audit committee members, executives, management, stakeholders and government representatives gain insight and access to thought leadership publications that are based on the evolving global financial reporting framework.

IFRS Notes

The IRDA issues directions to insurers on Ind AS implementation

4 March 2016



The Ministry of Corporate Affairs (MCA) notified the Ind AS road map for corporates on 16 February 2015. The Insurance Regulatory and Development Authority of India (IRDA), through its order on 17 November 2015 stated that the insurance sector in India would be converging with International Financial Reporting Standards (IFRS) and subsequently on 7 December 2015, IRDA had also issued a discussion paper on Ind AS implementation in the insurance sector with key recommendations.

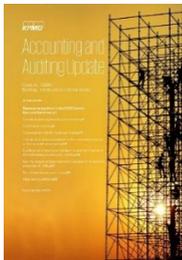
The IRDA circular issued on 1 March 2016 to provide certainty on the mandate for implementation of Ind AS for all insurers.

This circular requires all insurers to comply with the Ind AS for financial statements for accounting periods beginning on or after 1 April 2018, with comparatives for the periods ending 31 March 2018. Early adoption is not permitted. Ind AS will be applicable to both separate and consolidated financial statements.

Our issue of IFRS Notes provides overview of the recent circular.

Missed an issue of Accounting and Auditing Update or First Notes?

Issue no. 7/2016 – BCRE



This month the Accounting and Auditing Update focusses on the Building, Construction and Real Estate (BCRE) sector and highlights key matters relating to accounting, financial reporting and regulatory areas relevant to this sector.

In this publication, we highlight current Indian GAAP guidance on revenue recognition by the sector and the guidance under IFRS. The Institute of Chartered Accountants of India is expected to issue a guidance note to provide direction on the accounting of the revenue recognition from the sale of real estate under Ind AS and we have highlighted potential challenges due to adoption of Ind AS.

The publication also features an interaction with Mr. Govinder Singh, International Business Head and Ex-Chief Financial Officer, Tata Housing Development Company Limited, and explores some key accounting, reporting and other topical matters relevant to the industry.

The publication also carries number of other accounting issues in detail relevant to this sector. Additionally, our publication carries a regular synopsis of regulatory updates

SEBI issues a Discussion Paper (DP) on 'bright-line tests for acquisition of control' under SEBI Takeover Regulations, 2011

23 March 2016



Regulation 2(e) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (SEBI Takeover Regulations, 2011) defines 'control'. The definition of control in the SEBI Takeover Regulations, 2011 is a principle-based definition rather than rule-based. The assessment of control requires a consideration of the facts and circumstances of each case.

SEBI issued a DP on 14 March 2016 seeking comments from the general public on its proposals defining the bright-line tests for the acquisition of control under the SEBI Takeover Regulations, 2011. The DP broadly lists down two options to determine 'control' and also highlights the advantages and disadvantages of both the options.

Our issue of First Notes provides an overview of the DP.

Voices on Reporting



KPMG in India is pleased to present Voices on Reporting – a monthly series of knowledge sharing calls to discuss current and emerging issues relating to financial reporting.

In our next call, on 5 April 2016, we will cover key financial reporting and regulatory matters that are expected to be relevant for stakeholders as they approach the quarter ending 31 March 2016.

Our call will include updates from the Ministry of Corporate Affairs (MCA), the Securities and Exchange Board of India (SEBI), the Reserve Bank of India (RBI), the Institute of Chartered Accountants of India (ICAI), the Insurance Regulatory and Development Authority of India (IRDA), etc.

Our Voices on Reporting conference call will be held on Tuesday, 5 April 2016 between 04:00 – 05:00 PM.

Feedback/queries can be sent to aaupdate@kpmg.com

Previous editions are available to download from: www.kpmg.com/in

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