



The central government constitutes NCLT and NCLAT and notifies the related sections of the Companies Act, 2013

22 June 2016

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Transition

Immediately

Within the next 3 months

Post 3 months but within 6 months

Post 6 months

Background

The Companies Act, 2013 (2013 Act) proposed the constitution of the National Company Law Tribunal (NCLT) to replace the erstwhile Company Law Board (CLB). The National Company Law Appellate Tribunal (NCLAT) was proposed under the 2013 Act as the appellate authority for appeals against the order of the NCLT, instead of the High Court. While the 2013 Act is already operational and became largely effective from 1 April 2014, the sections relating to NCLT and NCLAT and corresponding rules were not notified pending their constitution. Until the NCLT and the NCLAT were constituted, the CLB and the High Court continued to exercise their powers under the Companies Act, 1956 (1956 Act).

New development

On 1 June 2016, the Ministry of Corporate Affairs (MCA) notified the following:

- The constitution of the NCLT and NCLAT to exercise and discharge the powers and functions as conferred on it under the 2013 Act. For this purpose, the central government constituted 11 benches of the NCLT consisting of a principal bench at New Delhi and one each at 10 different locations including New Delhi.¹
- Certain sections of the 2013 Act enabling the exercise of power by the NCLT and NCLAT have also been notified.²
- With the constitution of the NCLT, the CLB constituted under the 1956 Act stands dissolved and all matters or proceedings pending before the CLB would be transferred to NCLT, which shall dispose such matters or proceedings in accordance with the provisions of the 2013 Act or 1956 Act.³

These notifications are effective from 1 June 2016 (being the date they are published in the official gazette).

This First Notes provides an overview of the MCA notifications.

¹ S.O. 1932/1933 and S.O. 1935

² S.O. 1934

³ S.O. 1936

Overview of notified sections

The following table provides a brief description of the new sections notified by MCA.

Sections notified	Overview
Section 7(7) except clauses (c) and (d)	<p>Incorporation of company: NCLT to pass orders such as for regulation of management of the company, direct that the liability of the members be unlimited or pass an order for winding up in cases where a company has been incorporated by furnishing any false or incorrect information or suppressing any material fact or information or by any fraudulent action.</p> <p>Sections 7(7)(c) and (d) of the 2013 Act which provide powers to NCLT to remove the name of the company from the Register of Companies and order for winding up have still not been notified.</p>
Second proviso to Section 14(1) and Section 14(2)	<p>Alteration of articles: If a company passes a special resolution to alter the articles that has the effect of converting a public company into a private company, this would require approval of the NCLT. A copy of the order approving the change shall be filed together with a printed copy of the altered articles within a period of 15 days in the manner prescribed.</p>
Section 55(3)	<p>Issue and redemption of preference shares: NCLT to approve issue of new redeemable preference shares against unredeemed preference shares when a company is not in a position to redeem such preference shares or to pay dividend and the company has obtained the consent of the holders of three-fourths in value of such preference shares.</p>
Proviso to Section 61(1)(b)	<p>Power of limited company to alter its share capital: NCLT to approve consolidation and division of share capital which results in changes in the voting percentage of shareholders.</p>
Section 62(4) to (6)	<p>Further issue of share capital: Company to appeal to the NCLT in case of conversion of debentures issued or loan obtained, from any government by a company, into shares of the company where the terms and conditions of such conversion are not acceptable to the company.</p>
Section 71(9) to (11)	<p>Debentures: Debenture holders/trustees to file a petition to the NCLT in case a company fails to redeem debentures or pay interest thereon, or in cases where the trustees feel the company has insufficient funds and it is unlikely that the company would be able to discharge the principal amount, when due. Further it grants power to the NCLT to order the company to redeem the debentures forthwith on payment of principal and interest due thereon or impose restrictions on the incurring of further liability. If any default is made in complying with the order of the NCLT, then the 2013 Act specifies penalties including imprisonment of officers of the company.</p>
Section 75	<p>Damages for fraud: In case the company fails to repay the deposit or part thereof of any interest within the specified time as per Section 74* of the 2013 Act (extension if any granted by the NCLT) and it is proved that the deposit had been accepted to defraud the depositor or for fraudulent purposes, Section 75 of the 2013 Act provides that every officer of the company who was responsible for acceptance of such deposits will be personally responsible without any limitation of liability for the losses/damages incurred by the depositors.</p> <p><i>*Section 74 of the 2013 Act is not yet notified</i></p>
Section 97, 98 and 99	<p>Power of Tribunal to call annual general meeting and meeting of members: NCLT to call an annual general meeting or meeting of members in the specified cases. Further, in case where a company fails to comply with directions of the NCLT, Section 99 of the 2013 Act grants power to the NCLT to punish the company and every officer who was responsible for such default with a fine as prescribed.</p>
Section 119(4)	<p>Inspection of minute-books of general meeting: Under the 2013 Act, any member is entitled to request a copy of any minutes of general meeting of a company. If any such request is refused by the company, NCLT can, by order direct an immediate inspection of the minute-books of general meeting or direct that the copy required should be sent to the person requiring it.</p>
Section 130 and 131	<p>Re-opening of accounts or voluntary revision of financial statements or Board's report: Re-opening of accounts can be done based on order of court of competitive jurisdiction or the NCLT on request of the statutory regulatory body or any person in case the earlier accounts were prepared in a fraudulent manner or affairs of the company were mismanaged during the relevant period, casting a doubt on the reliability of financial statements.</p> <p>Section 131 of the 2013 Act allows voluntary revision of financial statements or Board's report based on the NCLT order if directors of the company are of the view that financial statements/Board's report does not comply with the requirements of the 2013 Act.</p>

Sections notified	Overview
Second proviso to Section 140 (4) and Section 140(5)	Removal, resignation of auditor and giving of special notice: NCLT to order removal of an auditor of a company either through suo moto or an application made by central government or any other person concerned, if he/she had committed any fraud. Such an auditor would not be eligible for appointment as an auditor of any company for a period of five years against whom order has been passed by NCLT for his/her removal from any company and he/she would also be liable for action under Section 447.
Section 169(4)	Removal of directors: A director who is removed from a company may make representation to the company in the manner prescribed in this Section. The NCLT has been granted powers to restrict such representations in cases where this option has been abused by the director or for needless publicity for defamatory matters, etc.
Section 213	Investigation into company's affairs in other cases: NCLT can order an investigation into the affairs of company based on request by shareholders or any other person in specified circumstances.
Section 216(2)	Investigation of ownership of company: NCLT to order investigation into the affairs of the company with regards to the membership of the company and any other matters relating to the company.
Section 218	Protection of employees during investigation: An approval of the NCLT is required by the company for any action proposed against an employee during the course of any investigation of the affairs/other matters or during any proceedings under Section 210, 212, 213, 216, 219 and Chapter XVI of the 2013 Act.
Section 221 and 222	Freezing of assets of company on inquiry and investigation and imposition of restriction upon securities: NCLT to pass orders for freezing of assets of a company or to order investigation and imposition of restriction upon certain securities.
Section 224(5)	Actions to be taken in pursuance of inspector's report: In case a fraud has taken place in the company and any director, key managerial personnel, other officer of the company or any other person of the company or entity has taken advantage due to such fraud, then the central government may file an application to the NCLT for passing appropriate orders with regard to disgorgement of such asset, property, or cash, as the case may be.
Section 241 to 244 [except Section 242(1)(b) and 242(2)(c) and (g)]	Prevention of oppression and mismanagement: NCLT to pass orders for prevention of oppression and mismanagement by a company.
Section 245	Class action: Members or depositors can file an application before NCLT and seek order on matters specified in Section 245.
Section 415 to 433	NCLT and NCLAT: Provisions relating to operations, functioning and constitution of members of the NCLT/NCLAT.
Section 434(1)(a) and (b) and 434(2)	Transfer of certain pending proceedings: The CLB stands dissolved and proceedings/cases pending before the CLB will stand transferred to the NCLT from the appointed date (1 June 2016).
Section 441	Compounding of offences: The 2013 Act provides powers to the NCLT relating to compounding of offences.
Section 466	Dissolution of CLB and consequential provisions: Constitution of NCLT and NCLAT and transfer of employees of CLB to the NCLT/NCLAT.

Our comments

The constitution of NCLT and NCLAT and notification of related sections is an important and much awaited step from the government. The NCLT can help streamline and fast track of civil cases related to companies as there would be dedicated Tribunals looking at company law matters to make the process more efficient.

New sections and sub-sections notified

The MCA notified certain new sections and sub-sections such as:

- Section 245 which provides that members or depositors could initiate class action suits through which they can seek to restrain the company from committing an act which is ultra vires the articles or memorandum.
- Section 130 and 131 relating to reopening of accounts/voluntary revision of financial statements or Board's report.

- Section 140(5) relating to powers of NCLT to order removal of an auditor of a company either through suo moto or an application made by central government or any other person concerned if he had committed any fraud.
- Section 97, 98 and 99 relating powers of NCLT to call annual general meeting and meeting of members.

Area of uncertainty

- **Status of cases transferred from CLB to NCLT:** Consequent to the NCLT being constituted and the relevant provisions of the 2013 Act having been notified, the CLB stands dissolved and the current cases or proceedings will be transferred to NCLT. Our understanding is that the pending cases pertaining to the 1956 Act would be evaluated by NCLT instead of CLB.

Way forward

- **Rules related to NCLT not yet notified:** The MCA is yet to notify the rules relating to procedures to be followed by NCLT and NCLAT. Rules are subordinate legislation to respective sections of the 2013 Act which provide better clarity regarding the provisions. The notification of these rules is pivotal for effective transition from CLB to NCLT. Companies would need to evaluate related rules to understand the implication of the newly notified sections.
- **Companies (Amendment) Bill 2016:** The government would have to analyse/consider the impact of amendments relating to constitution of NCLT/NCLAT as proposed in the Companies (Amendment) Bill 2016 which is pending in the Parliament. These include appointment of members and technical members of the NCLT and NCLAT, eligibility for technical members and constitution of selection committee.
- **The Insolvency and Bankruptcy Code 2016 (the Code):** The Code creates a framework to help resolve insolvency in India and applies to companies, partnerships, limited liability partnerships, individuals and any other body specified by the central government. The Code has revamped the insolvency resolution processes for companies and proposes NCLT as Tribunal who will adjudicate cases for companies. The code provides that all cases of Board for Industrial and Financial Reconstruction (BIFR) and Appellate Authority for Industrial and Financial Reconstruction (AAIFR) are expected to be transferred to NCLT. The code has been passed by both houses of Parliament and Presidential assent is pending.
- **Remaining sections of the 2013 Act:** The constitution of NCLT is expected to pave way to the notification of remaining sections relating to compromises, arrangement and amalgamation. These sections deal with mergers, restructuring, etc.

The bottom line

The constitution of NCLT/NCLAT is a step in the right direction and represents the beginning of a new phase for corporate India. This has allowed notification of some of the important sections of the 2013 Act. Additionally, it signifies government's efforts to reduce the burden of courts and streamline efforts for a faster resolution of corporate disputes. This can help improve the ease of doing business in India.



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New launch - The Ind AS Accounting and disclosure guide



6 June 2016

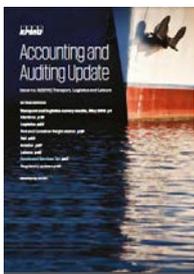
Ind AS comprises 40 accounting standards that provide extensive guidance and entail a significant change in the financial reporting framework used by Indian companies to report their financial results. Their adoption requires a detailed level of analysis for which companies may need to invest substantial amounts of time to ensure compliance.

Our publication 'Ind AS – Accounting and disclosure guide (the guide)' is an extensive tool designed to assist companies in preparing financial statements in accordance with Ind AS by identifying the potential accounting considerations and disclosure requirements that are applicable to them. It covers key recognition, measurement and disclosure requirements for each standard along with some additional considerations.

The guide is available for download from our website [click here](#).

Missed an issue of Accounting and Auditing Update or First Notes

Issue no. 9/2016 – Transport, Logistics and Leisure



This month the Accounting and Auditing Update focusses on the transport, logistics and leisure sector and highlights key matters relating to accounting, financial reporting and regulatory areas relevant to this sector. This sector encompasses various sub-sectors. In this edition, we cast our lens on six sub-sectors: maritime, logistics, ports, rail, aviation and leisure. For the sub-sectors discussed in this publication, the Ind AS guidance relevant to revenue recognition and property, plant and equipment is likely to throw up potential challenges following the adoption of Ind AS and our articles elaborate those implementation challenges. The publication carries the results of a survey that we ran with a number of leading transport and logistics companies on the key regulatory changes that they face. These include Ind AS, the Companies Act, 2013, Income Computation and Disclosure Standards (ICDS) and proposed Goods and Services Tax (GST).

This publication also highlights direct and indirect tax issues, such as the treatment of service tax collected as part of gross income, ports facing ambiguity on claiming tax holiday and certain withholding tax issues, etc. Additionally, the article on GST highlights its expected impact on the supply chain, shipping, and logistics sub-sectors.

Finally, our publication carries a regular synopsis of regulatory updates including the guidance note on CARO 2016 issued by the Institute of Chartered Accountants of India and a summary of the clarifications given by the Ind AS Transition Facilitation Group in its second bulletin.

SEBI revises the process for listed entities to disclose the impact of audit qualifications

7 June 2016



With a view to streamlining the existing process for review of audit qualifications contained in the audit reports of the listed entities, the Securities and Exchange Board of India (SEBI), in consultation with SEBI Advisory Committees, the Institute of Chartered Accountants of India (ICAI), stock exchanges and industry bodies, has notified the SEBI (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2016 on 25 May 2016.

In addition, on 27 May 2016 SEBI issued a circular, CIR/CFD/CMD/56/2016 which prescribes operational details to be followed by listed entities for implementing this process.

This issue of First Notes provides an overview of the revised procedure.

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



In our recent call, on 22 June 2016, we covered key financial reporting and regulatory matters that are expected to be relevant for stakeholders as they approach the quarter ending 30 June 2016.

Our call included updates from the Ministry of Corporate Affairs (MCA), the Securities and Exchange Board of India (SEBI), the Institute of Chartered Accountants of India (ICAI), etc.

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

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

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