HIGHLIGHTS ON ANOMALIES AND CHANGES TO COMPANIES AMENDMENT ACT, 2017????

(A Step of Government towards Ease of Doing Business and Better Compliance)

Companies Amendment Act, 2017 has brought in place approx. 90 Amendments on which assent of president has received the assent, however the effective date of amendment(s) will be notified from time to time.

Some of the changes, impact thereon and anomaly, if any have been enumerated herein below:

Section / Clause / Rule	**Existing Provision**	**Amended Provision**	**Impact / Change / Action Required**	**Anomaly / Suggestion / Remark, if any**
2(*87*)	subsidiary company or —subsidiary, in relation to any other company (that is to say the holding company), means a company in which the holding company— (*i*) controls the composition of the Board of Directors; or (*ii*) exercises or controls more than one-half of the total share capital either at its own or together with one or more of its subsidiary companies: Provided that such class or classes of holding companies as may be prescribed shall not have layers of	in sub-clause (ii), for the words "total share capital", the words "total voting power" shall be substituted	This a yet another required change as Paid up Share Capital Includes Equity Shares and Convertible Preference Shares.	The same is not in alignment with Ind AS.

	subsidiaries beyond such numbers as may be prescribed.			
2(6)	"significant influence" means control of at least twenty per cent of total share capital, or of business decisions under an agreement;	"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;	Same as in the case of Subsidiary Company.	The definition should provide for participation in business decisions only instead of Control. Because where Control is exercised it becomes a subsidiary not an associate.
2(30)	-	(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;";	The definition of Debentures will now not include money market instruments, which are already being well regulated under RBI Regulations.	The change has brought clarity.
185	Whole section has been replaced.		A Company will not provide loan, guarantee or security in connection	This change was a much needed change, as the same created

		with any director of company, or of a company which is its holding company or any partner or relative of any such director. Or any firm in which any such director or relative is a partner. Further Loan to other parties or person tin whom director is interest can be given, if following conditions are met: (*a*) a special resolution is passed by the company in general meeting: 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.	challenges for many group Companies.
186	-	"person" does not include any individual who is in the employment of the company.';	The occurrence of the word person included employees too, which was not the object of the Act. The object

			was to cover inter-corporate loans and not loan to employees.
		The Limits as provided under Section 186 of the Companies Act did not initially included exemption with respect to wholly owned Subsidiary Companies. Though the rules were notified to exclude the loans / guarantee / securities provided to WOS from the calculation.	The change has been made to remove the ambiguity w.r.t. prevailing of Act over the Rules.
180	The Borrowing powers under Section 180 specified only for paid up share Capital and Free Reserves and did not include Securities Premium.	"paid-up share capital and free reserves", the words "paid-up share capital, free reserves and securities premium" shall be substituted.	Calculation perspective is enhanced.
2(76) read with 188	The definition of related Party did not include the term Body Corporate. Also the term did not include investors for being classified as related party.	Subsequent to change in the definition of Holding Company to include Body Corporate instead of Company, to have a proper alignment, the term Body Corporate has been included in the definition of related party, thereby the Holding Companies incorporated outside India will now come under the purview of Related Party. Further, the investors whose investment would make the Company as Associate Company will now be classified as Related Party.	The Change is made to include Companies incorporated outside India as Related Party. The Related Party Transaction will now take into account investors. This is to remove the anomaly between the Associate Company which is an investor too.

Section 47 read with Section 188	The Section 188 of the Companies Act prohibits on voting on the related party resolution. However Section 47 which is principal section which provides for voting rights of members did not restrict the same.	To align the provisions, the Section 47 will now be subject to Section 188(1).	Clarificatory change and basically alignment of provisions.
177	Every Listed Company (whether public or private) was required to constitute an Audit Committee.	Every Listed Public Company will only be required to constitute a Audit Committee.	The change can be considered good for Debt Listed private Companies.
	The Audit Committee's approval was required for related party transactions.	The Audit Committee will now have to make recommendations for transaction other than that specified in Section 188, which implies that prior approval will now be required.	The Audit Committee shall never be responsible for approving the transactions, because of the fact that ACB comprises of Independent Directors and Independent Directors not being involved in day to day affairs should not be held with Executive responsibilities. They should only review the RPT's.
		The amendment provides relaxation for the prior approval of the transaction (if transaction value does not exceed INR 1 Crore) entered by the Company and its directors or officers of the Company, however the same needs to be ratified by the AC within 3 months and if not ratified the same shall be voidable at the option of the Audit Committee.	The Change is welcomed.
135	The CSR applicability was applicable if any of the conditions of Networth, turnover and Net profit are met during any of the three immediately preceding Financial year	The CSR shall be applicable only if any of the conditions of Networth, turnover and Net profit are met during immediately preceding financial year.	The Change is welcomed.

384 & 135	Section 384 provides for applicability of provisions applicable on Foreign Companies and did not specifically provided for applicability of Section 135.	To bring absolute clarity, section 384 has been amended to include the compliance of Section 135, if conditions are met for Indian Business.	Promotion of CSR is the motive and object of the Government.
149	Requirement of atleast One Director who has stayed in India for 182 days or more.	The Requirement shall apply proportionately incase of newly incorporated Company.	Easing Incorporate Process.
	The Pecuniary Relationship of relatives of Director's criteria was limited to transaction only, with Holding Subsidiary, or associate company, or their promoters, or directors with such amount as specified therein.	The Criteria has been broadened to include that relatives of the ID of the Company should not be indebted, have given guarantee or have provided any security to Holding Subsidiary, or associate company, or their promoters, or directors with such amounts as specified in the amendment act	Easing the deciding factors of the Company. Debentures subscribed by the Directors or their relatives needs to be monitored, as the same is indebtness.
	Relative, if was employee of the Company during any three immediately preceding Financial year was not eligible for being appointed as Independent Director.	The restriction will not apply.	The onerous of proving Independence is eased. However one's own employment issue has not been addressed.
178	The Act provided that NRC shall carry out the evaluation process.	The Amendment seeks to provide that evaluation could be done either by the NRC or by the Board or by External Independent Agency, however manner of evaluation has to be specified by the Committee and ensure compliance thereof.	Evaluation mechanism made easy.
134	CEO was not required to mandatorily Sign financial statements.	CEO, if any will have to mandatorily sign Financial Statements.	CEO being involved in day to day affairs of the Company, shall sign and not escape from the responsibility of presenting correct and true financial statements.

	Policies like CSR and NRC were to be made part of Boards Report	Policies not required to be part of Boards Report, only the updates / changes, if any in the policies and web-address to be provided in the Board's Report.	Green Revolution.
	Extract of Annual Return to be part of Boards Report	Done away with requirement of Extract of Annual Return. However, Annual Return of the Company to be uploaded on website of the Company and web-link to be provided in the Board's Report.	
	Holding Company (whether listed or not) to mandatorily display Financial Statement of Subsidiary Companies.	Listed Indian Holding Company to place FS of its subsidiaries on its website. Unlisted Companies are not required to do so.	
139	Ratification of Appointment of Auditors to be done every year.	Ratification not required annually.	
143	Auditors of Holding Company to have access to Books of Accounts of subsidiaries.	Auditors of Holding Company can now access Books of Accounts of Subsidiary and Associate Companies.	Enhanced monitoring.
	Auditor had to report on Internal Financial Controls of the Company.	Auditor needs to report on Internal Financial Controls with respect to Financial Statements.	
167	If a Director incurred any of the disqualifications under Section 164 of the Act, the Directors vacated the office of that Company.	The amendment seeks to provide that if any director incurs any disqualification under Section 164(2) then he shall vacate the office of director in all Companies where he serves as a Director except the Company which incurred the default. Also the Director who is appointed as Director in Companies which have incurred default will not be	This change is welcomed.

		disqualified for a period of Six Months.	
197	Approval of central government required to provide managerial remuneration beyond 11 %.	Approval of central government has been done away with.	Schedule V has not been amended and until Schedule V is amended the Company will have to obtain the approval of Central Government.
	Approval by way of Ordinary Resolution in general meeting required as per proviso of Section 197(1)	Approval by way of Special Resolution and also approval of lenders required for payment, who have not been re-paid their amounts on time. .	
	The director which withdrew the excess remuneration was required to hold the money in trust of the Company and did not provide for time limit within which the amount should be refunded.	The director shall refund the amount / excess money within a period of two years or such lesser period as allowed by the Company and until that period should hold the money in trust of the Company.	
	-	Auditor to report whether remuneration paid by the Company to its directors is in accordance with provisions of Section 197.	There is duplicacy in reporting, as the Companies (Auditors Report) Order, 2015 provides for the same.
89	Beneficial Interest in shares not defined.	Beneficial Interest in shares defined.	-