2013

Summarized amendments of Company Law 2013

About article :

This article intends to throw some light upon the Top amendments brought in by this act for the benefit of our profession. –Pardeep Rohilla

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Preface

Dear Friends,

Companies Act'2013 has been the key point of discussion in the field of law in the recent times and has successfully become a flora of the immense corporate world. In spite of the ongoing debate about few of its provisions being contradictory with the other existing rules and regulations across India, this law is heading towards gaining acceptability throughout.

This article intends to throw some light upon the Top amendments brought in by this act for the benefit of our profession. The amendments have been segregated below as per their relevant Section in the said act. Dear friends, I am clarifying that I don't have any right on the contents of this file. I checked this file anywhere and it seems a good content so, I refer this file at my CA Club "notes by pardeep rohilla/page".These are only for the helping purpose to our CA fraternity...

Wish you all the best for your studies.

-Pardeep Rohilla

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Amendment 1: Section 2 (68)

The private companies incorporated in India could have up to 50 members as per the erstwhile Companies Act'1956. However, the new act has raised this bar from 50 members to 200 members and has incorporated this change in the definition of a Private Company under the said section. This shall increase the growth opportunities for the private companies and expand their shareholder base.

Amendment 2: Section 3 [Formation of Company read with Rule No. 3(1)]

A new concept of One Person Company (OPC) has also been introduced which shall be a private company. A natural person who is a citizen of India and a resident in India (in the year of formation of the company) is eligible to incorporate such a company by subscribing his name to a memorandum and complying with all the requirements of the Act.

This concept has opened new doors for individuals who are interested in going for a corporate set up from a sole-proprietorship model. Also, by giving such an option to only natural persons (this implies companies are not eligible) has also curbed the possibility of utilizing this structure for tax evading schemes.

Amendment 3: Section 3 [Formation of Company read with Rule No. 3(2)]

In order to protect the interest of the government tax laws, the above mentioned One Person Company can be opened by only one time per natural person. This implies that a single person shall not be eligible to incorporate more than one OPC or even become a nominee in more than one OPC.

Amendment 4: Section 3 [Formation of Company read with Rule No. 6(1)]

Along with providing an avenue for growth for individual business owners by giving them an option for OPC, the interest of small business owners has also been protected. Therefore, upper turnover limits have been defined for an OPC.

The point in time where such a company exceeds a paid up capital of 50 lakhs or an average annual turnover during the said period by more than Rs. Two Crore, it shall cease to exist as an OPC.

Also, as per Section 3 [Formation of Company read with Rule No. 6(6)], a provision has been provided that in case the above circumstances exist, an OPC can get itself converted into a private or a public company after meeting the minimum requirement with respect to numbers of directors and members.

Amendment 5: Section 4 [Memorandum read with Rule Number 8 (3)]

In order to ensure that a name of a company reflects on its activities undertaken, it has been provided that wherever a company changes its activities which are not reflected in the name of the company, the name of the company has to be changed to reflect its new activities as well. This change has to be given effect within six months from the change of such activities.

Amendment 6: Section 4 [Memorandum]

The Memorandum also states that the Objects Section in the Memorandum of Association is no longer required to be segregated into the Main, Ancillary and Other Objects. Also, the company shall not be permitted to provide for other Objects as well.

Amendment 7: Section 5 [Articles]

The act has brought about a flexibility in provisions of the Articles of Association. The AOA of a company are now permitted to contain provisions with respect to entrenchment whereby the specified provisions of the AOA can be altered only in case the conditions or procedures which are more restrictive than those which are applicable in case of special resolution are met.

Amendment 8: Section 11 [Commencement of Business read with Rule No. 24]

There has been There has been an addition in the document submission requirements [to be filed with ROC] at the time of commencement of business. This amendment to both public as well as private companies. The additional documents are:-

a. A declaration by a director in a prescribed form stating that the subscribers to the memorandum have paid the value of shares agreed to be taken up by them;

b. A confirmation that the company has filed a verification of its registered office with the Registrar;

c. In case a company which requires registration from the sectorial regulators like RBI, SEBI, etc. such an approval shall be required.

Amendment 9: Section 13 [Alteration of Memorandum Read with Rule No. 32]

This section is for companies which raise money through going public via a prospectus and have some unutilized amount from the raised money. The section specifies that such companies shall not change its objects unless a special resolution is passed through postal ballot and the dissenting members have been given an exit option by the Promoters [SEBI Regulation].

The rules further provide for certain disclosures which issuing the notice for a general meeting. Such disclosures include justification for the alteration or any change in the object, cash flow of the company etc.

Amendment 10: Section 2(42) [Foreign Company Rule 2 (h)]

The definition of a Foreign Company has been altered and a phrase “electronic mode” has been incorporated. This shall include all such business activities which are carried electronically through a mobile device, website, email, social media, cloud computing etc. The business activity shall be included even in case the main server of such a business is not installed in India.

Amendment 11: Section 2 (87) [Definition of Subsidiary Company or Subsidiary read with Rule No. 2(r)]
The term "Total Share Capital" with respect to a definition of an Associate Company and Subsidiary Company or even all the Subsidiaries of a company collectively have been defined. The term now shall now mean an aggregate of the paid up equity share capital and even the convertible preference share capital. This has brought in immense clarity on defining the term of "Total Share Capital" which was always a point of discussion lacking clarity on the subject.

Amendment 12: Section 2(76) [Related Party read with Rule No. 3]
Related party amendments have been always a key attraction as well as an indispensable amendment to look for. This act has made the Related Party definition even stronger to protect the interests of the stakeholders. The term now includes a director or a key managerial personnel of the holding company or his relative to be deemed related party. This has been an addition to the existing definition of related party.

Amendment 13: Section 2(76) [Related Party read with Rule No. 3]
The rule further provides a comprehensive list of the persons who shall be considered a relative of another for the purposes of the term "Relatives" under the act. In comparison with the former act this act has excluded 14 kinds of relationships from its perspective.

Amendment 14: Section 27 [Variation in terms of Contract or Objects in prospectus read Rule No. 7]
This rule is in respect of money of a scenario wherein a company raises money from public via prospectus and still has some utilized money out of the money so raised. In such a case, the terms of contracts mentioned in the prospectus shall be altered. Also, the objects of such a prospectus which had been issued only by passing a special resolution via postal ballot shall be altered in such a case. Also, such money shall not be utilized by the company for buying, trading or otherwise dealing in equity shares of any other listed company. The dissenting shareholders (who do not agree to such a variation) shall be provided an exit opportunity.

Amendment 15: Section 29 [Rule No. 9]
Dematerialization has been given a more strong existence in this act. All the convertible securities of a company which are held by the promoters in physical form up to the date of IPO have to be converted into DEMAT form before making such an offer and thereafter they have to be held in such form only. Also, new securities to be issued in DEMAT form only.

Amendment 16: Section 39 [Allotment of Securities by a Company]
Filing requirements have been made more demanding. The section specifies that along with the shares (existing requirements), return of allotment also needs to be filed for all the type of securities in the prescribed manner. In case of default, the company and every officer in default shall be liable to pay a penalty, for each penalty, a sum of Rs. 1000 per day of continuing default or Rs. 1, 00,000 whichever is less.

Amendment 17: Section 41: [Global Depository Receipt read Rule No. 3]
As per this rule, companies have been permitted to issue depository receipts provided they are eligible to do so in accordance with the Scheme & relevant provisions of Foreign Exchange Management Rules and Regulations.

Amendment 18: Section 42: [Offer or invitation for subscription of Securities on Private Placement]
The rules for making an offer or allotment have been made more stringent. Whenever a company makes an offer to allot/ invites subscriptions/allots/ enters into an agreement to allot; securities to more than 200 persons, irrespective of actual payment received or not and irrespective or intentions of a Company to go for listing on a recognized stock exchange in or outside India, the same shall be deemed to be an offer to public and accordingly SEBI and other provisions governing Public Offer shall apply.

Amendment 19: Section 42 [Offer or invitation for subscription of Securities on Private Placement read with Rule No. 14]
There has been an amendment with respect to key proisions on private placement which are enumerated below:-
a. A company is not permitted to make any private placement unless the same is approved via a special resolution (which is required for each offer/invitation).
b. The said offer can't be made to > 200 persons in total in one FY. QIB's and ESOPs are an exclusion.
c. The minimum investment size to be not < Rs. 20,000 of face value of the securities per person. Payment for subscription to be made via bank account of subscriber only.
d. Some of the provisions shall not apply to NBFC and Housing Finance companies in case comply with RBI or NHB regulations in respect of offer/invitation to be issued on private placement basis.
e. Allotment under each such private placement to be done within 60 days of receipt of application dues from the subscribers.

Amendment 20: Section 47 [Voting Rights]
In the former Companies Act'1956, the preference shareholders were not given an opportunity of being heard. Now in case any preference share dividend is in area for > 2 years, then the preference shareholders shall be eligible to vote on all the resolutions of the company.

Amendment 21: Section 53 [Prohibition on issue of shares at a discount]
The privilege of issuing shares at a discount has been removed. Shares issued at a discount shall be void and company shall face heavy penalties if found in default. Going forward, only sweat equity shares can be issued at a discount.

Amendment 22: Section 55 [Issue and Redemption of Preference Shares read with Rule 10]
The companies operating in the sector of infrastructure projects have now been empowered to issue preference shares for a period > 20 years but < 30 years. This is subject to redemption of a minimum 10% of issued preference shares per from 21st year or even earlier on proportionate basis, at the option of preference shareholders.

Amendment 23: Section 62 [Further Issue of Share Capital]
Earlier the application of provisions of further issue of shares was for only 2 years from the date of allotment or 1 year from allotment of shares for the first time under the old act. This provision has now been removed. Now such provisions shall apply to all kinds of companies.

Amendment 24: [Section 70: Prohibition on buy back in specific circumstances]
Provisions in respect of Buyback of shares have been made more flexible. Companies can now buy back its shares even if it has defaulted in repayment of deposit/ interest payable thereon/ redemption of debentures or preference shares / payment of dividend/ repayment of any term loan/ interest payable to any financial institution or bank, provided such default is made good and 3 years have elapsed after default is remedied.

Amendment 25: Section 71 (5) [Debentures]
No company is permitted to issue a prospectus/make an offer or invitation to the public or even to its members exceeding 500 for the subscription of its debentures till the time it appoints one or more debenture trustees & follow the prescribed conditions for such an appointment.

Amendment 26: Section 73 [Prohibition on acceptance of deposits from public read with Rule No. 3(4)]
With the definition of eligible companies, limits of borrowing deposits for such companies have also been defined:-
a. Deposits from members: 10% of [Paid up Share Capital+ Free Reserves]
b. Other Deposits: 25% [Paid up Share Capital+ Free Reserves]

Amendment 27: Section 73 [Prohibition on acceptance of deposits from public read with Rule No. 5]
A new provision for seeking for the deposit insurance at least 30 days before the issue of circular or advertisement or at least 30 days before the date of renewal has

been introduced. Further, the issuer shall have to bear the cost of seeking such an insurance & to maintain an effective contract. In case of an ineffective contract, company rectify the same or enter into a fresh contract within a span of 30 days. Noncompliance has effects like repayment of such deposits mandatorily.

Amendment 28: Section 73 [Prohibition on acceptance of deposits from public read with Explanation II to Rule No. 6 (1)]
This rule specifies that till the time the finalization & notification of the qualifications & experience of valuers is not done as per Section 247 (1) [Valuation by registered valuers], the valuation of stocks/shares/ debentures/ securities etc. is to be done by an independent merchant banker registered with SEBI or an independent CA in practice [having a minimum experience of 10 years].

Amendment 29: Section 73 [Prohibition on acceptance of deposits from public read with Rule No. 13]
All the companies [including eligible companies] shall on/before the 30 April each year deposit a sum not < than 15% of the amount of deposits [Both secured & unsecured] which are due to mature in the current FY+ next FY in a deposit repayment reserve account with any schedule bank [Bank shall keep it free from charge/lien].

Amendment 30: Section 73 [Prohibition on acceptance of deposits from public read with Rule No. 19]
Under this Law, all the companies which are “not eligible” under this act have to make a repayment of all the existing Public Deposits accepted by such companies. However, an explanation to the Rule also provides that companies which had accepted/invited deposits under the erstwhile Act and its Rules and has been repaying such deposits + interest in accordance with those provisions shall be deemed to comply with this new rule.

Amendment 31: Section 73 [Prohibition on acceptance of deposits from public] + Section 76 [Acceptance of deposits from public by certain companies read with Rule No. 2 (1) (e)
A public company other than eligible company [which has a net worth of not less than 100 crores or a turnover of not less than 500 crores] shall not accept deposits from the public. In case it wishes to do so, it can do so only from its members after taking an approval from the shareholders in the general meeting. This permission clause has given the shareholders more strength in contrast to Companies Act’1956.

Amendment 32: Section 92 [Annual Return]
The Annual Return of the Companies shall now require additional information to be included. Particulars like details of its holding, subsidiary and associate companies, certification of compliances, remuneration of directors as well as key managerial personnel etc.

Amendment 33: Section 92 [Annual Return read with Rule No. 11 (2)]
A company which is either listed or has a paid-up share capital of Rs. 10 crores or more and a turnover of > 50 crores shall get their annual returns certified by a CS in practice.

Amendment 34: Section 92[Annual Return]
The former Companies Act'1956 required the companies to provide information up to the date of AGM. This requirement has been ceased and now information only up to date of closure of FY needs to be provided.

Amendment 35: Section 93 [Return to be filed with the Registrar in case Promoter's stake changes]
In case there is a change in the promoter's stake then all the listed companies are required to file a return in the prescribed form (within 15 days of change) with the Registrar regarding the change in the number of shares held by the promoters along with the top 10 shareholders of the company.

Amendment 36: Section 93[Return to be filed with the Registrar in case Promoter's stake changes read with Rule No. 13]
In continuation of the above amendment, such a return shall be filed with respect to changes relating to either increase or decrease of > 2% either in value or volume of the shares within 15 days of such a change.

Amendment 37: Section 96 [Annual General Meeting]
The first AGM of a company has to be held within 9 months (instead of 18 months earlier) from the closure of its financial year.

Amendment 38: Section 100 [Calling of extraordinary general meeting read with explanation to Rule No. 18]
The extraordinary meeting held, if any, shall be held at a place within India only.

Amendment 39: Section 103 [Quorum for Meetings]
A quorum for a general meeting for a public company is now dependent upon the number of members of the company whereas the former act prescribed a fixed quorum of 5 persons only. Also, for companies having > 5000 members, at least 30 have to be present personally.

Amendment 40: Section 105 [Proxies read with Rule No. 19(1)]
Provisions regarding Proxies have been strengthened to avoid misuse of voting rights. A person who is appointed as a proxy member has to be a member of the company. Also, such proxy can become so on behalf of 50 members only not and holding in total not > 10% of total share capital of company carrying voting rights.

Amendment 41: Section 108 [Voting through electronic means read with Rule No. 20 (1)]
This rule specifies the detailed procedure, requirements with reference to the notice, advertisement modes, time period of voting, scrutinizing etc. with respect to companies (Only Listed companies or a company >1000 shareholders) which have been now permitted to provide their members a facility to vote at general meetings by electronic means.

Amendment 42: Section 108 [Voting through electronic means read with Rule No. 20 (3) (ix)]
In case the option of e-voting is exercised, the act has laid rules for a fair and transparent purpose. The Board shall have to appoint a scrutinizer who may be a Chartered Accountant or Cost Accountant or CS or an advocate in practice. The scrutinizer can't be in employment of the company and should be a person (in the opinion of the Board) who shall scrutinize the process in a fairly.

Amendment 43: Section 110 [Postal Ballot read with Rule No. 22(16) proviso]
The provisions of postal ballot is applicable to all Companies (listed/unlisted). The items of business which can be transacted only through postal ballot are specifically provided. Further, OPC and companies having members up to 200 aren't required to transact any business via this method.

Amendment 44: Section 115 [Resolutions requiring Special Notice]
Unlike provisions of Companies Act'1956, now a special notice to move a resolution can be moved only by such number of members who hold not less than 1% of total voting power or holding shares aggregating to a sum of not less than Rs. 5 lakh (paid up).

Amendment 45: Section 118 [Minutes of proceedings of General Meeting, Meeting of Board of Directors & other meetings & resolutions passed by Postal ballot]
Secretarial Standards have to be complied with by all the companies while preparation of the minutes of the board/general meeting.

Amendment 46: Section 120 [Maintenance and inspection of documents in electronic form read with Rule No. 27 (1)]
Every listed company or a company with not less than 1000 shareholders, debenture holders and other security holders shall have to abide by the provisions with respect to the maintenance & inspection of a document in electronic form wherein the term "record" is also defined. Also, in case the data is held in physical mode by such existing companies, the data has to be converted to electronic mode within 6 months from the date of notification.

Amendment 47: Section 128 [Books of accounts, etc., to be kept by the company read with Rule No. 3(1) & 3(2)]
Rules have been specified for the books of accounts or any other relevant books along with papers maintained in an electronic mode. They need to remain accessible in India so that it can be used for subsequent referencing. Also, such information has to remain complete and unaltered.

Amendment 48: Section 128 [Books of accounts, etc., to be kept by the company read with Rule No. 4(1)]
In case summarized books of accounts of a company are maintained outside India, then the same has to be sent to the registered office at India quarterly. The same shall be kept & maintained at such registered office and shall be open to the directors for inspection.

Amendment 49: Section 2(41) [Definitions] + Section 129 [Financial Statements]
The flexibility of having any 12 month period as a FY and extension of FY has been removed. All companies to now have uniform FY (April- March).

Amendment 50: Section 129 [Financial Statements read with Rule No. 5]
Along with own Financial Statements, consolidated Financial Statements for all the subsidiaries (inclusive of associates and joint ventures) have to be prepared and laid before the AGM. Also, a statement containing the salient feature of the financial statement of such consolidated "subsidiaries" to be included.

Amendment 51: Section 129 [Financial Statements]
The earlier requirement of attaching the Balance Sheet, P & L A/c and Director's Report, Auditor's Report along with a statement of holding company's interest in its subsidiary & all other reports required u/s 212 of Companies Act'1956 has been ceased.

Amendment 52: Section 134 [Financial Statement, Board's report, etc. read with Rule No. 8(4)]
Every listed public company and other public companies (which have a paid up share capital of Rs. 25 crores or more calculated at the end of the preceding FY) shall include in the report by its Board of Directors, a statement with respect to the manner in which formal annual evaluation has been made by the Board or their own performance including that of the committees and individual directors as well.

Amendment 53: Section 134 [Financial Statement, Board's report, etc. read with Rule No. 8(5)]
The Director's Report of every company [excluding OPC] shall now provide additional information such as number of meetings of the board, policy of the company on

director's appointment & remunerations, explanations or comments by the board on every qualification, reservation or adverse remarks or disclaimer made by the CS in his secretarial audit report etc. The rules also specify the requirement of additional disclosures to be made. For example:-

• Change in the nature of the business (if any)

• Details of the directors/key managerial personnel who were appointed/have resigned during the FY.

• Names of the companies which have added/deducted as a subsidiary, JV or associate company during the year with reasons for change.

• Details of the Deposits as specified under Chapter V of the Act.

• Details of the significant/material orders passed by the Regulators/ Courts/ tribunals which have an impact on the going concern assumption and the future operations of the company.

Amendment 54: Section 134 [Financial Statement, Board's report, etc.]

The Director's Responsibility Statement shall also include additional statements on compliance with all the applicable laws & also, in case of listed companies, it is also required to include a statement that adequate internal finance controls were in place.

Amendment 55: Section 136 [Right of member to copies of audited financial statements read with Rule No. 11]

In case of listed companies as well as public companies which have a net worth of > Rs. 1 crore and turnover of > Rs. 10 crores, the financial statements can be sent:-

• By an electronic mode to all such members whose shareholding is in DEMAT format and whose email IDs have been registered with the Depository for communication purposes.

• Where shareholding is in any other form, then to such members' e-mode can be used in case they have positively consented in writing for receiving via electronic mode.

• In all other cases, by dispatch of physical copies via any recognized mode of delivery as specified under Section 20 of the Act.

Amendment 56: Section 138 [Internal Audit read with Rule No. 13]

The rules regarding appointment of internal auditors have been strengthened. All the following class of companies shall be required to appoint an internal auditor or a firm of internal auditors:-

i. Every listed company

ii. Every unlisted company having

• Paid up share capital of Rs. 50 crores or more during previous FY or

• Turnover of Rs. 200 crores or more during previous FY or

• Outstanding loans / Borrowings from Banks or Public Financial Institutions in excess of Rs. 100 crores or more at any point of time during previous FY or

• Outstanding deposits of Rs. 25 crores or more at any point of time during previous

FY.

iii. Every private company having

• Turnover of Rs. 200 crores or more during previous FY or

• Outstanding loans / Borrowings from Banks or Public Financial Institutions in excess of Rs. 100 crores or more at any point of time during previous FY.

A transition period of 6 months has been given to the existing companies meeting the above criteria.

Amendment 57: Section 139 [Appointment with auditors]

All the companies at their first AGM shall appoint an individual/firm as an auditor who shall hold office from the conclusion of that meeting up to conclusion of the 6th AGM and thereafter till the conclusion of every 6th meeting. The Company shall have to place the matter relating to such an appointment for ratification by members at every AGM. Appointment also includes re-appointment. Also, a transition period of 3 years from the commencement of this Act has been prescribed.

Amendment 58: Section 139 [Appointment with auditors read with Rule No. 5]

Rotation of auditors have been introduced. The Auditors of the following classes of companies (excluding OPC and smaller companies) shall retire by rotation as follows:-

• All the unlisted public companies having a paid up share capital of > Rs. 10 crores.

• All the private limited companies having a paid up capital of > Rs. 20 crores.

• All companies not meeting the above thresholds, but having public borrowings from financial institutions, banks or public deposits of > Rs. 50 crores.

Amendment 59: Section 139 [Appointment with auditors read with Rule No. 6 (6)]

Rules have also been defined for the purpose of rotation of auditors:-

• In case of an auditor, the period for which such an auditor (both individual / firm) has held the office as an auditor prior to the commencement of the Act shall be taken into account for the purpose of calculating 5 or 10 consecutive years, as per the applicability.

• The incoming auditor shall be prohibited to act as an auditor if such individual or firm is associated with the outgoing auditor or firm under the same network of audit firms. Same network includes the firms using the same brand name, operating or functioning hitherto or in future, trade name or common control.

Amendment 60: Section 141 [Eligibility, Qualifications and Disqualification of auditors read with Rule 10 (1) & 10 (2)]

The act has enforced certain new disqualifications for the Auditors. For instance:

• An auditor can't audit a company if his relative holds securities of FV > 1 lakh.

• An auditor can't audit a company if he or his relative/partner is indebted to the company/its subsidiary/ its holding/ associate company or a subsidiary of such holding company for more than Rs. Lakhs.

Amendment 61: Section 143 [Power & Duties of auditors and auditing standards read with Rule No. 13]
A statutory duty has now been enforced on the Auditor that in case he comes to know about any fraud committed or being committed against a company by its officers/employees, then he needs to report the same to the Central Government immediately within a period of 60 days. The same duties shall apply mutatis mutandis to Cost Accountants for Cost Audit and CS in Practice for Secretarial Audit.

Amendment 62: Section 144 [Auditor not to render certain services]
The Auditors are now prohibited to provide either directly or indirectly certain specified services to the company, its holding and its subsidiary company.

Amendment 63: Section 147 [Punishment for contravention]
If it is proved at any point in time that partner/partners in an audit firm have acted in a manner which is fraudulent or have abetted/colluded in any fraud in relation to the company or its directors or officers, then such partner (s) shall be punishable as well.
Amendment 64: Section 149 (Companies to have Board of Directors)
Unlike the upper limit of 12 Directors as per Companies Act'1956, now companies can have a maximum of 15 directors and this limit can be further increased after passing a special resolution.

Amendment 65: Section 149 (Companies to have Board of Directors read with Rule No. 3)
In order to protect the interest of working women and to give an equal hand to the feminine talent, it has been provided that the following class of companies shall have to appoint at least one woman director:-
a. Every listed company
b. Every other public company which has a paid up share capital of > Rs. 100 crores or a turnover of > Rs. 300 crores.
The law provides for a one year period to comply with this law in case of existing companies. However, all the companies incorporated under the new law shall have a period of six months to comply with this law.

Amendment 66: Section 149 (Companies to have Board of Directors)
This rule specifies that one director in a company should be such who has stayed in India for not less than 182 days in the previous calendar year.

Amendment 67: Section 149 (Companies to have Board of Directors read with Rule No. 4)
At least 1/3 of the Board of every listed pubic company should consist of independent directors. The existing companies have been provided 1 year transition period to comply with the provisions of this act (from the date of commencement of the Act).
Also, the following class or classes of companies shall have at least two directors as independent director:-

a. Public companies having paid up share capital of > Rs. 10 crores or more or
b. Public companies having a turnover of > Rs. 100 crores or more or
c. Public companies which have in an aggregate, outstanding loans/ debentures & deposits, exceeding Rs. 50 crores.

Amendment 68: Section 149 (Companies to have Board of Directors)
Independent directors are now not permitted to have any stock option. However, they are permitted to receive remuneration by ways of fees/ profit related commission; as approved by the members.

Amendment 69: Section 165 (Number of directorships)
Under the former Companies Act'1956 a person was permitted to become a director only in 15 companies. Now the bar has been raised to 20; provided that out of 20; a person can be a director only in 10 public companies and includes private companies as well (Number of directorships in private companies was unlimited earlier).
Transition period of 1 year has been allowed to comply with the above and each of company names wherein the person intends to continue as a director has to be intimated to the Registrar.
Amendment 70: Section 168 (Rule No. 16)
Where in a director resigns from his office, then within 30 days from such resignation, he has to forward a copy of his resignation with reasons thereof to the Registrar.

Amendment 71: Section 173 (Meetings of the Board)
A director can participate in a board meeting via video conferencing/audio visual mode or other modes as may be prescribed. A director who intends to participate via such means shall communicate his intention to the Chairperson/CS of the company. Certain conditions and safeguards have been prescribed provided for meeting through video conferencing.

Amendment 72: Section 177 (Audit Committee read with Rule No. 6)
The Board of Directors of every listed companies and the following classes of companies shall have to constitute an Audit Committee and a Nomination & Remuneration Committee of the Board:
i. All public companies with a paid up capital Rs. 10 crores or more;
ii. All public companies having turnover of > Rs. 100 crores or more and
iii. All public companies having in an aggregate, outstanding loans/ borrowings/ debentures /deposits exceeding Rs. 50 crores or more.

Amendment 73: Section 177 (Audit Committee read with Rule No. 7)
Every listed company along with the companies which belong to the following class or classes shall establish a vigil mechanism for their directors/employees to report their genuine concerns/grievances:-
a. Companies which accept deposits from the public and
b. Companies who have borrowed money from the banks & public financial

institutions in excess of Rs. 50 crores.

Amendment 74: Section 178 (Nomination and Remuneration Committee and Stakeholders Relationship Committee)
Every company with more than 1000 shareholders/ debenture-holders/ deposit holders & any other kind of security holders at any time during a FY shall have to constitute a Stakeholders Relationship Committee consisting of a chairperson who shall be a non-executive director & such members as may be decided by the board.

Amendment 75: Section 179 (Powers of the Board read with Rule No. 8)
The board of directors can exercise; few specified additional businesses; only by means of a resolution passed at meetings of Board. A list of certain such businesses shall be:-
a. To make political contributions
b. To appoint or remove KMP (Key Managerial Personnel)
c. To appoint internal auditors and secretarial auditor
d. To buy/sell investments held by the company (other than trade investments) constituting 5% or more of the paid- up share capital and free reserves of the investee company.
e. To invite/accept or renew public deposits & related matters.
f. To approve quarterly, half yearly and annual FS or financials.

Amendment 76: Section 184 (Disclosure of interest by Directors)
In a private company, an interested director can't vote or take part in the discussion relating to any matter in which he is interested, whereas under the former Companies Act'1956, there was no such restriction.

Amendment 77: Section 185 (Loans to Directors Etc.)
The grant of loans/giving of guarantee/providing of any security to the directors or any other person in whom the director is interested is now prohibited (Certain exemptions have been specified). There is no concept of seeking the approval of the Central Government for the same as well.

Amendment 78: Section 185 (Loans to Directors Etc. Read with Rule No. 10)
Exemption for Loan to Directors, is provided to following transactions:-
a. Any loan made by a holding company to its wholly owned subsidiary or any guarantee/security given by a holding company in respect of any loan made to its wholly owned subsidiary.
b. 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 is exempted from the requirements under this section.
Primarily, the exemptions are with respect to the loans utilized by subsidiary for its principal business activity.

Amendment 79: Section 186 (Loan and Investment by Company)
The provisions under Section 372A of Companies Act'1956 regarding inter-corporate loans and investments has now been extended to include loans & investments to any person.

Amendment 80: Section 186 (Loan and Investment by Company)
A company (unless prescribed otherwise), can't make investment through more than 2 layers of investment companies; subject to certain exemptions.

Amendment 81: Section 188 (Related Party Transaction)
Unlike Section 297 of Companies Act'1956, no approval of the central government is now required for entering into any related party transactions. However, for certain new (not existing ones) transactions, board approval shall be required.

Amendment 82: Section 188 [Related Party Transaction read with Rule No. 15 (3) (ii)]
A company which has a paid up share capital of > Rs. 10 crores is not permitted to enter into a contract or arrangement with any related party for the below mentioned transactions unless a prior approval of the company via a special resolution:-
a. Sale/ Purchase or supply of any goods or material directly or via appointment of agents exceeding 25% of the annual turnover as mentioned in clause (a) and clause (e) respectively of sub-section (1) of Section 188.
b. Selling or otherwise disposing/buying property of any kind directly/via appointing agent; which exceeds 10% of net worth as mentioned in clause (b) & clause (e) respectively of sub section(1) of Section 188.
c. Leasing of property of any kind exceeding 10% of the net worth or exceeding 10% of the turnover as mentioned in clause (c) of sub-section (1) of Section 188.
d. Availing or rendering of any services directly/ via appointment of agents exceeding 10% of the net worth as mentioned in clause (d) and clause (e) of Section 188.
e. Appointment to any office or place of profit in the company/its subsidiary/associate at a monthly remuneration which exceeds Rs. 2.5 lakhs.
f. Remuneration for underwriting the subscription of any securities or derivatives thereof of the company exceeding 1% of the net worth as mentioned in clause (g) of sub-section (1) of Section 188.

Amendment 83: Section 196 (Appointment of Managing Director, Whole Time Director or Manager)
Provisions relating to the appointment of MD/ WTD/Manager shall now apply to a private company as well.

Amendment 84: Section 197 (Overall maximum Managerial Remuneration and Managerial Remuneration in case of absence or inadequacy of profits read with Rule No.4)
The sitting fees amount payable to a director for attending meetings of the Board/

Committees shouldn't exceed a sum of Rs. 1 lakh per meeting of the Board/ Committee. However, it has been specified that the sitting fees for Independent & Women Directors, shall not be less than the sitting fee payable to other directors.

Amendment 85: Section 204 (Secretarial Audit for Bigger Companies Read with Rule No. 9)

Apart from every listed company/ every public company having a paid-up share capital of Rs. 50 crores or more OR turnover of Rs. 250 crores or more; shall annex with its Board Report; a Secretarial Audit Report.

Amendment 86: Section 205 (Functions of Company Secretary read with Rule No. 10)

The Act & rules prescribes the functions of a CS like:-

a. To provide to the directors of the company, collectively & individually; such guidance as they may require; with regard to their duties, responsibilities as well as powers.

b. To facilitate the convening of meetings & attend Board, committee & general meetings & maintain the minutes of these meetings.

c. To obtain approvals from the Board, general meeting, Government & such other authorities as required under the provisions of the Act.

d. To represent before various regulators & other authorities under the said Act in connection with discharge of various duties thereunder.