

Key proposals of the Companies (Amendment) Bill 2016: Several ICAI Suggestions Accepted



The Companies Act 2013 was enacted to improve corporate governance and to further strengthen regulations for the companies, keeping in view the changing economic environment as well as the growth of our economy. The Ministry of Corporate Affairs has notified 284 Sections of the Act. However, there were difficulties in smooth implementation of the Companies Act 2013. The Ministry of Corporate Affairs has issued various notifications, circulars, Removal of difficulty orders and amendment in Rules for resolving the issues and to help in smooth implementation. Further, certain amendments were also brought through the Companies (Amendment) Act 2015.

While presenting the Companies (Amendment) Act 2015 to the Rajya Sabha, the Finance Minister mentioned that various queries were received that are being addressed through issuance of Notifications/Amendment in Rules and some of them have been addressed through these amendments. However, these 16 amendments are not enough to cover everything. The Finance Minister stated that “a broad-based committee will continue to go into this question for the next few months as to where the shoe pinches, and this may not be the last amendments which we are bringing in.”

Consequently, the Government of India constituted The Companies Law Committee in June 2015 for making recommendations on the issues arising out of implementation of the Companies Act 2013 and the ICAI was actively represented in this committee. The Committee submitted its Report to the Government on 1st February 2016.

Based on the report of the Companies Law Committee and comments received from the stakeholders and Ministries/Departments, it has been decided by the Government to amend the Companies Act, 2013 and to bring out another Amendment

Bill, 2016. A number of ICAI suggestions have been accepted and incorporated in this Bill.

Through the Companies (Amendment) Bill 2016 which was introduced in the Lok Sabha on 16th March, 2016, around 100 amendments have been proposed. The proposed changes are broadly aimed at addressing difficulties in implementation owing to stringency of compliance requirements; facilitating ease of doing business in order to promote growth with employment; harmonisation 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 Act.

(Contributed by the Corporate Laws & Corporate Governance Committee of the ICAI. Comments may be sent to clgc@icai.in.)

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Important amendments proposed in the Companies (Amendment) Bill 2016

S. No.	Section	Proposal in the Companies Law Committee Report	Provision in the Companies (Amendment) Bill 2016	Remarks
1.	Section 2 (6)- Definition of Associate company	The Committee recommended that the Explanation to Section 2(6) should read as "For the purposes of this clause, 'significant influence' means control of at least twenty per cent of the total voting power, or control of or participation in taking business decisions under an agreement." The Committee recommended that the term "joint venture" may be assigned the same meaning as under Indian Accounting Standard (Ind AS) 28 as part of the Explanation to Section 2(6) itself.	(i) in clause (6), for the <i>Explanation</i> , the following <i>Explanation</i> shall be substituted, namely:— ' <i>Explanation</i> .—For the purpose of this clause— (a) the expression "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; (b) the expression "joint venture" means a joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement;'	An explanation has been added for significant influence to mean control of at least twenty per cent of total voting power instead of total share capital. Further the definition of Joint Venture is also proposed now.
2.	Section 2 (30)- Definition of Debenture	The Committee felt that an exception be made for instruments covered under Chapter III D of the RBI Act, 1934 in the term 'debenture' as defined in Section 2 (30) of the Companies Act, 2013. In addition, an exception may also be made for deposits accepted by banking companies, and flexibility be given to the Central Government, in consultation with RBI and SEBI, as applicable, to carve out other instruments from the definition, as may be required.	(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 Reserve Bank of India, issued by a company, shall not be treated as debenture;"	The amendment has been proposed as phrase "any other instrument of a company evidencing a debt" appearing in the definition made it very broad and included, by implication, instruments like commercial papers and other money market instruments, which were often used as an important short-term fund raising source by eligible companies; and were well regulated under RBI regulations.
3.	Section 2 (41)- Definition of financial year	The Committee recommended that the first proviso to Section 2(41) be expanded to also allow associates and joint ventures of a company incorporated outside India to apply for a different financial year to the NCLT.	(iv) in clause (41), in the first proviso, after the word "subsidiary", the words "or associate company" shall be inserted;	The amendment has been proposed as the NCLT should have similar powers (to allow a different financial year) for associates and joint ventures of a company incorporated outside India, since the financial statements of associates and joint ventures were also taken into consideration in the preparation of 'consolidated financial statements' (CFS), if required.
4.	Section 2 (46)- Definition of Holding Company	The Committee recommended that an Explanation (on the lines of Explanation (c) to Section 2(87) to mean that expression "company" includes any body corporate) be included in Section 2 (46).	(v) in clause (46), the following <i>Explanation</i> shall be inserted, namely:— ' <i>Explanation</i> .—For the purposes of this clause, the expression "company" includes any body corporate;'	The amendment has been proposed to remove an anomaly which could lead to uncertainties in ascertaining the status of a company, in case of a foreign holding company; and also in determining the applicability of the Act to such a company.

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5.	Section 2 (57)- Definition of Net Worth	The Committee recommended for the phrase 'debit or credit balance of the profit and loss account' to be included in the definition.	(viii) in clause (57), for the words "and securities premium account", the words ", securities premium account and debit or credit balance of profit and loss account," shall be substituted;	The amendment has been proposed as the net worth of a company reflects its intrinsic value and it does not include the 'debit or credit balance of the profit and loss account'.
6.	Section 2 (76)- Definition of Related Party	The Committee, therefore, recommended that Section 2 (76) (viii) be amended to substitute 'company' with 'body corporate' and should also include investing company or the venturer of a company in sub-clause (viii) (A) thereof. In addition, the Committee also felt that the fifth and sixth Removal of Difficulty Orders of 2014, issued to plug unintentional loopholes be brought into the Act through an amendment.	(x) in clause (76), for sub-clause (viii), the following sub-clause shall be substituted, namely:— "(viii) any body corporate which is— (A) a holding, subsidiary or an associate company of such company; (B) a subsidiary of a holding company to which it is also a subsidiary; or (C) an investing company or the venturer of a company;"	The amendment has been proposed as the term "related party", as currently defined, used the word "company" meaning thereby that those entities that were incorporated in India would come in the purview of the definition. This resulted in the impression that companies incorporated outside India (such as holding/ subsidiary/ associate/fellow subsidiary of an Indian company) were excluded from the purview of related party of an Indian company.
7.	Section 2 (85)- Definition of Small Company	The Committee recommended the replacement of the words "last profit and loss account" with the words "last audited profit and loss account", to take care of what seemed to be an inadvertent drafting error. It also recommended the Removal of Difficulty Order to be given effect to through an amendment to the Act itself. Further, it was noted that a review of the thresholds for small companies would be done by MCA, at an appropriate time.	(xi) in clause (85),— (a) in sub-clause (i), for the words "five crore rupees", the words "ten crore rupees" shall be substituted; (b) in sub-clause (ii),— (A) for the words "as per its last profit and loss account", the words "as per profit and loss account for the immediately preceding financial year" shall be substituted; (B) for the words "twenty crore rupees", the words "one hundred crore rupees" shall be substituted;	The amendment has been proposed to remove inadvertent drafting error. Also, the thresholds have been revised. The maximum paid up capital has now been increased from ₹ 5 crore to ₹ 10 crore. The maximum turnover requirement has now been increased from ₹ 20 crore to ₹ 100 crore.
8.	Section 2 (87)- Definition of Subsidiary Company	The Committee recommended that the term "total share capital" be replaced with the term 'total voting power', as equity share capital should be the basis for determining holding/subsidiary status. Consequential changes in the Rules may also be required.	(xii) in clause (87),— (a) in sub-clause (ii), for the words "total share capital", the words "total voting power" shall be substituted;	The amendment has been proposed in order to address the practical problems
9.	Proviso to Section 2 (87)	The Committee felt that while the proviso to Section 2(87) has not yet been notified, it was likely to have a substantial bearing on the functioning, structuring and the ability of companies to raise funds when so notified and hence recommended that the proviso be omitted.	(xii) in clause (87),— (b) the proviso shall be omitted; (c) in the Explanation, item (d) shall be omitted;	The amendment has been proposed as imposing restrictions on layers could be construed as restrictive for conduct of businesses.

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10.	Section 2 (91)- Definition of turnover	The Committee recommended that the definition of the term 'turnover' be revised to read "turnover" means the gross amount of revenue recognised in the profit and loss account from the sale, supply or distribution of goods or on account of services rendered, or both, by the company during a financial year'.	(xiii) for clause (91), the following clause shall be substituted, namely:— '(91) "turnover" means the gross amount of revenue recognised in the profit and loss account from the sale, supply, or distribution of goods or on account of services rendered, or both, by a company during a financial year;'	The Institute of Chartered Accountants of India (ICAI) suggested that the definition of turnover should mean the amount of revenue recognised as per the applicable Accounting Standards followed by the company.
11.	Section 42- Private Placement	Section 42 of the Act, in conjunction with Section 62, lays down the framework for private placement of securities. Further, while Section 62 governs preferential allotment; Rule 13 of the Companies (Share Capital and Debentures) Rules, 2014, cross-refers to the procedure under Section 42. A few of the issues raised were with regard to the compliance with some of the requirements provided under Section 42 of the Act, and Rule 14 of Companies (Prospectus and Allotment of Securities) Rules, 2014. These requirements, it was suggested, were cumbersome, time consuming; requiring elaborate, sensitive and significant public disclosures. Difficulties had been expressed with regard to the offer letter, opening of a separate account, time period for allotment of shares, size of minimum investment, making of a fresh offer etc. The Committee noted that changes had been made in the current provisions to check the gross misuse of earlier provisions relating to private placement under the Companies Act, 1956, and felt that such requirements, which were procedural in nature and did not cause great difficulty, ought to be retained.	Section amended	The amendments have been proposed for simplification of the private placement process by doing away with separate offer letter, by making filing of details or records of applicants to be part of return of allotment only, and reducing number of filings to Registrar
12.	Section 73- Prohibition on acceptance of deposits from public	Keeping an amount not less than fifteen percent of the amount of its deposits maturing during a financial year and the next financial year, deposited and kept in a scheduled bank in a separate bank account to be called as the deposit repayment reserve account.	In section 73 of the principal Act, in sub-section (2),— (i) for clause (c), the following clause shall be substituted, namely:— "(c) depositing, on or before the 30 th day of April each year, such sum which shall not be less than twenty per cent of the amount of its deposits maturing during the following financial year and kept in a scheduled bank in a separate bank account to be called deposit repayment reserve account;"	The amendment has been proposed as it would increase the cost of borrowing for the company as well as lock-up a high percentage of the borrowed sums.

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		The Committee recommended that the requirement for the amount to be deposited and kept in a scheduled bank in a financial year should be changed to not less than twenty percent of the amount of deposits maturing during that financial year, which would mitigate the difficulties of companies, while continuing with reasonable safeguards for the depositors who have to receive money on maturity of their deposits.		
13.	Section 73- Prohibition on acceptance of deposits from public- Requirement of Deposit insurance omitted	The Committee felt that the provisions of Section 73(2) (d) with regard to providing deposit insurance along with relevant Rules be omitted.	In section 73 of the principal Act, in sub-section (2),— (ii) clause (d) shall be omitted;	The amendment has been proposed taking into account the fact that at as on date none of the insurance companies is offering such insurance products.
14.	Section 73- Prohibition on acceptance of deposits from public- Deposit can be accepted after 5 years of making the default good	The Committee recommended that the prohibition on accepting further deposits should apply indefinitely only to a company that had not rectified/made good earlier defaults. However, in case a company had made good an earlier default in the repayment of deposits and the payment of interest due thereon, then it should be allowed to accept further deposits after a period of five years from the date it repaid the earlier defaulting amounts with full disclosures.	In section 73 of the principal Act, in sub-section (2),— (iii) in clause (e), for the words "such deposits;", the following shall be substituted, namely:— "such deposits and where a default had occurred, the company made good the default and a period of five years had lapsed since the date of making good the default;"	The amendment has been proposed as imposing a lifelong ban for a default anytime in the past would be harsh.
15.	Section 76A- Punishment for contravention of Section 73 to 76	The Committee recommended that 'minimum fine to be modified to Rs 1 crore or twice the amount of deposit accepted, whichever is lower, and the maximum amount to be as already provided	In section 76A of the principal Act, in clause (a), for the words "one crore rupees", the words "one crore rupees or twice the amount of deposit accepted by the company, whichever is lower" shall be substituted.	The amendment has been proposed as Penalty prescribed was very high
16.	Section 92-Annual Return	The Committee recommended that the requirement for filing extract of annual return may be omitted, and instead the web address/link of the Annual Return filed by the company and hosted on its website, if any, should be provided in the Board's Report and information with regard to shareholding pattern be provided as part of section 134 requirements.	(i) in sub-section (1),— (a) clause (c) shall be omitted; (b) in clause (j), the words "indicating their names, addresses, countries of incorporation, registration and percentage of shareholding held by them" shall be omitted; (c) after the proviso, the following proviso shall be inserted, namely:— "Provided further that the Central Government may prescribe abridged form of annual return for One Person Company and small company;"	The amendment has been proposed as this requirement was leading to duplication of information being reported to the shareholders under other provisions of the Act or mandated to be made available on the website of the companies.

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			(ii) for sub-section (3), the following sub-section shall be substituted, namely:— "(3) Every company shall place a copy of the annual return on the website of the company, if any, and the web-link of such annual return shall be disclosed in the Board's report."	
17.	Section 93-Return to be filed with Registrar in case promoters' stake changes	The Committee recommended that the requirement be omitted altogether.	Section 93 of the principal Act shall be omitted.	The amendment has been proposed as this requirement led to an increase in the amount of filings being made under the Act.
18.	Section 96-Annual General meeting	The Committee recommended to allow private limited companies and wholly owned subsidiaries of unlisted companies to convene the AGMs at any place in India provided approval of 100% shareholders is obtained in advance with a view to ease doing business. This would require amendment to Section 96(2) so that exemption can be provided to such class of companies.	In section 96 of the principal Act, in sub-section (2), in the proviso, for the words "Provided that", the following shall be substituted, namely:— "Provided that annual general meeting of an unlisted company may be held at any place in India if consent is given in writing or by electronic mode by all the members in advance:	The amendment has been proposed with a view to ease doing business.
19.	Section 100-Calling of Extraordinary general meeting	The Committee recommended that the explanation to Rule 18(3) be deleted and an explanation be incorporated at the end of Section 100 mandating that EGM shall be held only in India, as well as provide for exemptions to wholly owned subsidiaries of companies incorporated outside India.	In section 100 of the principal Act, in sub-section (1), the following proviso shall be inserted, namely:— "Provided that an extraordinary general meeting of the company, other than of the wholly owned subsidiary of a company incorporated outside India, shall be held at a place within India."	The amendment has been proposed to provide relaxation for wholly owned subsidiaries of companies incorporated outside India and certain other cases.
20.	Section 123-Declaration of Dividend	The Committee recommended that the provisions of section 123(3) be amended in such a way as to allow declaration of interim dividend from out of the profits of the current financial year, generated till the date of declaration, including brought forward surplus in the Profit & Loss Account, and the same could be declared anytime up to convening of AGM for the said financial year.	In section 123 of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely:— "(3) The Board of Directors of a company may declare interim dividend during any financial year or at any time during the period from closure of financial year till holding of the annual general meeting out of the surplus in the profit and loss account or out of profits of the financial year for which such interim dividend is sought to be declared or out of profits generated in the financial year till the quarter preceding the date of declaration of the interim dividend: Provided that in case the company has incurred loss during the current financial year up to the end of the quarter immediately preceding the date of declaration of interim dividend, such interim dividend shall not be declared at a rate higher than the average dividends declared by the company during immediately preceding three financial years."	The amendment has been proposed as a measure of good corporate governance, a company should not declare interim dividend out of the projected profits for the full year.

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21.	129 (3)- Consolidation to be in accordance with applicable accounting standards	The Committee recommended that that to ensure the same treatment for the consolidation of accounts under the Accounting Standards and the Act, the reference to 'associates' and 'joint ventures' under Section 129 ought to be amplified/ clarified, to be in accordance with the applicable Accounting Standards.	Where a company has one or more subsidiaries or associate companies, it shall, in addition to financial statements provided under sub-section (2), prepare a consolidated financial statement of the company and of all the subsidiaries and associate companies in the same form and manner as that of its own and in accordance with applicable accounting standards, which shall also be laid before the annual general meeting of the company along with the laying of its financial statement under sub-section (2): Provided that the company shall also attach along with its financial statement, a separate statement containing the salient features of the financial statement of its subsidiary or subsidiaries in such form as may be prescribed: Provided further that the Central Government may provide for the consolidation of accounts of companies in such manner as may be prescribed."	It has been proposed that Consolidated Financial Statements shall be prepared as the Standalone Financial Statements are prepared and in accordance with applicable accounting standards
22.	Section 130- Opportunity of being heard not available with the auditor in case Reopening of accounts on Court's/ tribunal's Order	The Committee proposed that it would be appropriate if a provision was specifically made in the section enabling the Court/ Tribunal to give notice to any other party/ person concerned.	After the words "regulatory body or authorities concerned", the words "or any other person concerned" shall be inserted;	Enabling provisions have been provided for opportunity of being heard in Section 130 for auditor/ Chartered Accountant of the Company.
23.	Section 130- Books could be reopened for any number of years	The Committee recommended that the applicability of provisions of Section 130 for the re-opening of accounts could be restricted to eight years, unless a longer period is required through a specific direction issued by Central Government, under Section 128(5).	No order shall be made under sub-section (1) in respect of re-opening of books of account relating to a period earlier than eight financial years immediately preceding the current financial year: Provided that where a direction has been issued by the Central Government under the proviso to sub-section (5) of section 128 for keeping of books of account for a period longer than eight years, the books of account may be ordered to be re-opened within such longer period."	Applicability of provisions of Section 130 for the re-opening of accounts restricted to eight years unless an order has been given by the Central Government for longer period.
24.	Section 135- Corporate Social Responsibility	The Committee recommended the following: 1. The words "any financial year" be replaced by the words 'preceding financial year' 2. Composition of CSR Committee for companies not required to appoint Independent Directors be prescribed as 'having two or more Directors.' 3. The Committee felt that it would be appropriate for the said clause to be modified to refer to subjects in Schedule VII within which CSR activities could be taken up by an eligible company.	(i) in sub-section (1),— (a) for the words "any financial year", the words "the immediately preceding financial year" shall be substituted; (b) the following proviso shall be inserted, namely:— "Provided that where a company is not required to appoint an independent director under sub-section (4) of section 149, it shall have in its Corporate Social Responsibility Committee two or more directors."; (ii) in sub-section (3), in clause (a), for the words and figures "as specified in Schedule VII", the words and figures "in areas or subject, specified in Schedule VII" shall be substituted; (iii) in sub-section (5), for the Explanation, the following Explanation shall be substituted, namely:— 'Explanation.—For the purposes of this section "net profit" shall not include such sums as may be prescribed, and shall be calculated in accordance with the provisions of section 198.'	The amendments have been proposed to incorporate suggestions of High Level Committee of CSR

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		4. The High Level CSR Committee has recomm-ended in para 4.16 of the report for the term " <i>average net profit</i> " to be replaced with the words " <i>net profit</i> "; to remove any ambiguity. The Committee also agreed with the recommendation. Further, prescriptive powers were also recommended to be introduced for specifying the manner of calculation of 'net profits' of a foreign company, through Rules, while referring to Section 381.		
25.	Section 136- Right of member to copies of audited financial statements	The Committee felt that it would be appropriate that clarity allowing financial statements to be circulated at a shorter period in accordance with the provision for shorter notice meeting under Section 101 be provided in Section 136.	"Provided that if the copies of the documents are sent less than twenty-one days before the date of the meeting, they shall, notwithstanding that fact, be deemed to have been duly sent if it is so agreed by ninety-five per cent of the members entitled to vote at the meeting:	It has been proposed that the Financial Statements can be circulated at a shorter period, if it is agreed by ninety-five per cent. of the members entitled to vote at the meeting.
26.	Section 136- Placing the Financial Statements of Foreign Subsidiary	The Committee recommended that requirement should be limited to listed companies in view of their dispersed shareholding and the need for greater regulatory oversight as compared to unlisted companies. However, the Committee did not agree to the suggestion that for listed companies, item (a) would apply only in respect of its Indian subsidiaries. Further, the Committee felt that the requirements under item (b) of the 4 th proviso to Section 136 ought to continue to be applicable to all companies, including unlisted companies.	Provided also that a listed company which has a subsidiary incorporated outside India (herein referred to as "foreign subsidiary")— (a) where such foreign subsidiary is statutorily required to prepare consolidated financial statement under any law of the country of its incorporation, the requirement of this proviso shall be met if consolidated financial statement of such foreign subsidiary is placed on the website of the listed company; (b) where such foreign subsidiary is not required to get its financial statement audited under any law of the country of its incorporation and which does not get such financial statement audited, the holding Indian listed company may place such unaudited financial statement on its website and where such financial statement is in a language other than English, a translated copy of the financial statement in English shall also be placed on the website.";	It has been proposed that where foreign subsidiary is not required to get its financial statement audited under any law of the country of its incorporation and which does not get such financial statement audited, the holding Indian listed company may place such unaudited financial statement on its website.
27.	136 (2)- Providing copies of financial statements to members		Provided that every company having a subsidiary or subsidiaries shall provide a copy of 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.	It has been proposed that that the accounts of subsidiaries companies may be provided to the member who asks for it.
28.	Section 137- Copy of Financial Statements to be filed with ROC	Corresponding to proposal in 4 th proviso to Section 136	Provided also that in the case of a subsidiary which has been incorporated outside India (herein referred to as "foreign subsidiary"), which is not required to get its financial statement audited under any law of the country of its incorporation and which does not get such financial statement audited,	A foreign subsidiary company whose accounts are not required to be audited under the country of incorporation, it has been proposed that the holding company can even file unaudited statements to ROC with declaration.

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			the requirements of the fourth proviso shall be met if the holding Indian listed company files such unaudited financial statement along with a declaration to this effect and where such financial statement is in a language other than English, along with a translated copy of the financial statement in English.'	
29.	1 st proviso to Section 139 (1) with regard to ratification of appointment of auditor in every AGM by the shareholders	The Companies Law Committee felt that it would be advisable to omit the provisions with respect to ratification, as it defeats the objective of giving five year term to the auditors. So the Committee proposes that the provisions with respect to ratification of appointment of auditor to be omitted.	1 st proviso to Section 139 (1) shall be omitted	The proposal here is that auditor's appointment need not be ratified by the shareholders at every AGM
30.	Section 140(3)- Minimum Penalty for non filing of Resignation by auditor linked to audit fees	The Committee recommended that minimum fine may be reduced to Rupees fifty thousand or the audit fees, whichever is less.	In sub section 140 (3), the words fifty thousand shall be replaced with fifty thousand rupees or the remuneration of the auditor, whichever is less,	It has been proposed that fines for auditor default linked with audit fees with minimum amount. As per the provision now, if the auditor does not file resignation within a period of thirty days from the date of resignation, he shall be punishable with fine; minimum- Rupees fifty thousand and maximum Rupees five lakhs.
31.	Definition of relative w.r.t disqualification of auditors as per Section 141(3)(d)	The Committee proposed that for the purpose of section 141(3) (d), the term relative should be suitably modified.	An Explanation has been added to Section 141(3)(d) <i>Explanation.</i> —For the purposes of this clause, the term "relative" means the spouse of a person; and includes a parent, sibling or child of such person or of the spouse, financially dependent on such person, or who consults such person in taking decisions in relation to his investments	Definition of relative w.r.t disqualification of auditors as per Section 141(3) (d) is being relaxed.
32.	Section 141 (3) (i)- Clarity with regard to language of the section which was very wide and enhancing the disqualification of auditors to even totally unconnected entities	The Committee noted that any relaxation to section 141(3) (i) read with Section 144 would compromise independence of auditors. However, clarity needs to be provided by suitably amending the clause.	Section 141(3)(i) provides that a person who, directly or indirectly, renders any service referred to in section 144 to the company or its holding company or its subsidiary company. <i>Explanation.</i> —For the purposes of this clause, the term "directly or indirectly" shall have the meaning assigned to it in the <i>Explanation</i> to section 144.	The amendment has been proposed to provide clarification.
33.	1 st Proviso to Section 143 (1)- Right of access by the auditor of a holding company to the accounts and records of the associate company, whose accounts are required to be consolidated	The Committee recommends that this provision may be extended even to associate company, whose accounts are required to be consolidated.	The words subsidiaries shall be substituted with its subsidiaries and associates.	As of now the auditor of a holding company has a right to access the books of accounts of subsidiary companies in connection to the consolidation of accounts. This right has been extended to associates also by this proposal

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34.	Section 143 (3) (i) Reporting on Internal Financial Control Framework by the auditors limited to financial statements	The Committee recommended that the reporting obligations of auditors on internal financial controls to be with reference to the financial statement	The words "internal financial controls system", shall be substituted by the words "internal financial controls with reference to financial statements".	It has been proposed that reporting on Internal Financial Control Framework limited to reporting on Internal Financial Control with reference to financial statements.
35.	Section 147 (2)- Punishment for contravention by auditors	The Committee recommended that under sub-section (2), minimum fine as specified may be retained and maximum fine may extend to rupees five lakh or four times the audit fees, whichever is less	after the words "five lakh rupees", the words "or four times the remuneration of the auditor, whichever is less" shall be inserted.	It has been proposed that maximum fine for contravention of section 139, 143, 144 or 145 to be linked to audit fees or ₹ 5 lakhs whichever is less.
36.	Section 147 (2)- Punishment for contravention by auditors knowingly or willingly	The Committee recommended that under the proviso to sub-section (2), the minimum fine should be rupees fifty thousand and which may extend to rupees twenty-five lakh or eight times the audit fees, whichever is less.	For the words "and with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees", the words "and with fine which shall not be less than fifty thousand rupees but which may extend to twenty-five lakh rupees or eight times the remuneration of the auditor, whichever is less" shall be substituted;	It has been proposed that minimum fine for contravention by the auditor knowingly or wilfully to be reduced from ₹ 1 lakh to ₹ 50000 and maximum fine to be linked to audit fees
37.	Section 147 (3)- in case of conviction the auditor was liable to any other person	The Committee proposes that the term 'any other persons' in Section 147(3) to be replaced with the phrase 'shareholder or creditor'	for the words "or to any other persons", the words "or to members or creditors of the company" shall be substituted;	In case of conviction, liability of an auditor has been proposed to be limited to shareholder or creditor'
38.	Section 147 (5)-Joint and severally liability of audit firm	The Committee recommended that the Provisions with regard to liability of a partner not to be extended to the firm shall be brought in the Act.	Provided that in case of criminal liability of an audit firm, in respect of liability other than fine, the concerned partner or partners, who acted in a fraudulent manner or abetted or, as the case may be, colluded in any fraud shall only be liable	Provisions of Rule brought to Act
39.	Section 188-Related Party Transactions	The Committee noted that the circular no. 30/2014 issued by the MCA, clarifying requirements of second proviso to Section 188(1) had been misinterpreted, and hence, should be withdrawn. Further, as all parties in case of joint ventures and closely held public companies may be related parties, not allowing them to vote may be impractical and such cases may be specifically excluded from the requirements of the second proviso.	In section 188 of the principal Act,— (i) in sub-section (1), after second proviso, the following proviso shall be inserted, namely:— "Provided also that nothing contained in the second proviso shall apply to a company in which ninety per cent. or more members, in number, are relatives of promoters or are related parties"; (ii) in sub-section (3), for the words "shall be voidable at the option of the Board", the words "shall be voidable at the option of the Board or, as the case may be, of the shareholders" shall be substituted.	The amendment has been proposed with a view to ease of doing business

Corporate & Allied Laws

S. No.	Section	Proposal in the Companies Law Committee Report	Provision in the Companies (Amendment) Bill 2016	Remarks
40.	Section 447- Punishment for fraud	The Committee observed that the provision has a potential of being misused and may also have a negative impact on attracting professionals in the post of directors etc. and, therefore, recommends that only frauds, which involve at least an amount of rupees ten lakh or one percent of the turnover of the company, whichever is lower, may be punishable under Section 447 (and non-compoundable). Frauds below the limits, which do not involve public interest, may be given a differential treatment and compoundable since the cost of prosecution may exceed the quantum involved.	(i) after the words "guilty of fraud", the words "involving an amount of at least ten lakh rupees or one per cent of the turnover of the company, whichever is lower" shall be inserted; (ii) after the proviso, the following proviso shall be inserted, namely:— "Provided further that where the fraud involves an amount less than ten lakh rupees or one per cent. of the turnover of the company, whichever is lower, and does not involve public interest, any person guilty of such fraud shall be punishable with imprisonment for a term which may extend to five years or with fine which may extend to twenty lakh rupees or with both."	It has been proposed that punishment u/s 447 would be attracted if any person is guilty of fraud involving an amount of at least ten lakh rupees or one percent of the turnover of the company, whichever is lower. If the fraud involves an amount less than that and does not involve public interest, then there is no minimum penalty prescribed. Any person guilty of such fraud shall be punishable with imprisonment for a term which may extend to five years or with fine which may extend to twenty lakh rupees or with both.

To conclude, the amendments that have been brought through the Companies (Amendment) Bill 2016 propose some positive developments related to the profession. With these developments, some of the issues related to accounts and audit would be resolved. ■

Events

SAFA-IFAC Regional PAIB Forum 23rd April 2016, ICAI premises, Bandra Kurla Complex, Mumbai

International Affairs Committee	
TITLE	SAFA –IFAC Regional SMP Forum
Theme	With the aim of giving Professional Accountants in Business (PAIB), an opportunity to know the significant developments impacting the PAIB worldwide, The Institute of Chartered Accountants is hosting SAFA-IFAC Regional PAIB Forum on the theme ' The Accountancy Profession: Adding Value Globally, Regionally and Locally ' on 23 rd April 2016 at ICAI premises, Bandra Kurla Complex, Mumbai. The SAFA-IFAC Regional PAIB Forum will dwell upon some of the important issues relevant for PAIBs such as Integrated Reporting, Implementation Issues in Ind ASs (IFRS), New innovative ways in Financing, Talent Management in Finance function and alike.
Date & Time	23rd April 2016, (9.00 AM to 6.00 PM)
Venue	ICAI premises, Bandra Kurla Complex, Mumbai
CPE Hours	6 CPE Hours
Fees	INR 1500 for ICAI Member US\$ 50 for Foreign Delegates Note: All payments/remittances should be made in favour of 'Secretary, The Institute of Chartered Accountants of India.'
Contact Details	International Affairs Cell, Phone: +91 11 30110487/448; Email: safa@icai.in

* Since limited seats are available, registrations will be done on first come first serve basis.