

# Newsletter

June -2022

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# COMPANY LAW COMMITTEE REPORT 2022

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The report of the Company Law Committee (2022) (CLC-2022) recommends changes to the Companies Act, 2013. The proposed changes include recognizing new concepts, fastening the corporate processes, improving compliance requirements, and removing ambiguities from existing provisions.

The changes are aimed at facilitating and promoting greater ease of doing business in India and effective implementation of the Companies Act, 2013, the Limited Liability Partnership Act, 2008 and the Rules made thereunder.

The Report proposes amendments to bring Indian company law in tune with globally recognised best practices and improve ease of living for corporates and stakeholders.

**These recommendations of the Committee not yet effective, untill approved by the Parliament.**

S.No	Issue	Recommendations of Committee
1.	<p><b>Allowing companies to re-align their Financial Year</b> Currently contains no provision allowing such company to revert to the Financial Year required to be followed under act.</p>	Companies that cease to be associated with a foreign entity should be empowered to file a fresh application with the Central Government in a prescribed form to allow them to revert to the FY followed in India
2.	<p><b>Facilitating communication in electronic form</b> Section 20(2) stipulates that a document may be delivered to the RoC or any other member through registered post, speed post, courier or any other electronic mode as may be prescribed</p>	Certain companies should be mandated to serve certain documents in electronic mode only. The fees borne by a company's members while requesting such documents may be determined at any general meeting of the company.
3.	<p><b>Recognizing issuance and holding of fractional shares, RSUs and SARs</b> Not recognized under companies Act, 2013</p>	<p>Companies Act, 2013 should be amended to enable issuance, holding, transfer of fractional shares, in dematerialized form, for prescribed class of companies. Such issue of shares shall be in form of new issue and not for fractional shares arising due to Mergers and Amalgamations.</p> <p>RSUs and SARs should be recognized under Companies Act, 2013, and their issuance should be sufficiently encumbered.</p>
4.	<p><b>Easing the requirement of raising capital in distressed companies</b> Section 53 prohibits a company to issue shares at a discount.</p>	Distressed companies should be allowed to issue shares at a discount, notwithstanding the prohibition under Section 53 of Companies Act, 2013. For this purpose, distressed companies may be categorized as such class or classes of companies that have cash losses for previous 3 consecutive years and fulfills such terms and conditions as prescribed by the Central Government.

S.No	Issue	Recommendations of Committee
5.	<p><b>Affidavits to be replaced with the self-declaration to ease of doing business</b></p> <p>Certain section in Companies Act, mandates affidavits</p>	<p>The requirement of furnishing affidavits should be replaced with filing declarations under the provisions of the Act and Rules made thereunder, except for those provisions involving filing affidavits before the NCLT, NCLAT and RD. The Central Government may prescribe the format for filing such declarations.</p>
6.	<p><b>Clarifying provisions on buy-back of Securities</b></p> <p>Proviso to Section 68(2)(c) omits reference to “Free Reserves’ to calculate the 25% limit.</p>	<p>‘Free reserves’ should be explicitly included in calculating the buy-back of equity shares.</p> <p>For companies that grant stock options, only those options, which the shareholders have exercised, can be bought back by the company.</p>
7.	<p><b>Holding general meetings through the use of technology</b></p> <p><b>Flexibility in holding of AGM’s and EGM’s.</b></p>	<p>Companies Act, 2013 should enable companies to hold general meetings, i.e., AGMs and EGMs physically, virtually, and in hybrid mode. Where the meeting is to be conducted entirely in electronic mode, the notice period for such meetings should be reduced to such period as may be prescribed by the Central Government.</p>
8.	<p><b>Maintaining statutory registers through an electronic platform</b></p> <p>No provision for maintaining in electronic form.</p>	<p><b>Certain companies should be required to mandatorily maintain their registers on an electronic platform in the manner laid down by the Central Government. For this purpose, the Central Government may set up an electronic facility.</b></p>
9.	<p><b>Standardising qualifications by Auditors</b></p> <p>No provision to provide the negative effect on the economic health or functioning of the Company</p>	<p>There should be a format for auditors to provide the impact of every qualification or adverse remark on the company’s financial statements for circulation to the Board before the same is passed on to shareholders.</p>
10.	<p><b>Setting up of Risk Management Committees</b></p> <p>Companies Act, 2013, currently contains no provisions relating to the formation of an RMC.</p>	<p>Inclusion of new provisions in Companies Act, 2013 for constitution of RMC for such class or classes of companies, as may be prescribed by Central Government, to strengthen Board’s Power to overview and supervise risk management systems.</p>

S.No Issue

Recommendations of Committee

11.	<p><b>Clarifying the tenure of Independent Director</b></p> <p>Tenure between the Director initially appointed as Additional Director and regularization of such appointment in the subsequent General Meeting.</p> <p>Whether such period should be included in the tenure of one term of 5 years</p>	<p>The period of 5 years as under section 149(10) commences from the date the Board initially appoints the ID as an additional director. Therefore, the period during which the ID functioned as an additional director before regularization cannot be excluded while computing the total tenure of the ID.</p>
12.	<p><b>Harmonizing Sections 149(6) and 149(11)</b></p> <p>Whether the person who is an employee, proprietor or partner of a legal or consulting firm could be appointed as an ID if it is within limits provided during the cool off period.</p>	<p>Section 149(11) should be amended to allow the relevant legal or consulting firm referred above to continue to render its services as per thresholds provided. Further, the threshold of 10% should be brought down to 5% to promote flexibility and ease of doing business for concerned stakeholders.</p>
13.	<p><b>Revising provisions on disqualification and vacation of Directors Office</b></p>	<ol style="list-style-type: none"> <li>1. Under Section 167(1)(a), the vacation of directorship should be limited to disqualifications triggered due to personal incapacity.</li> <li>2. The relaxation period for new directors under Section 164(2)(b) should be extended to two years from the date of appointment.</li> <li>3. A new proviso should be inserted in Section 164(2) to provide that the disqualification referred to in clause (b) should not apply to the nominee directors appointed by debenture trustees registered with SEBI.</li> </ol>
14.	<p><b>Cooling- off period before the Independent Director becomes a Managerial Personnel</b></p> <p><b>No restriction on Independent Director becoming Managerial personnel of the Company after cessation as an ID</b></p>	<p>There should be a mandatory one-year cooling-off period, from the date of cessation of office, after which an ID may be permitted to hold the position of an MD, WTD, or manager in the same company or group of Companies.</p>
15.	<p><b>Cooling off period before Auditor becomes Director</b></p> <p>No provision prohibiting an auditor from becoming Non-executive Director, Managing Director or Whole- time Director</p>	<p>There should be a mandatory one-year cooling-off period, from the date of cessation of office, after which an auditor of a company may be permitted to hold the position of director in the same company or group of companies. In the case of an audit firm structured as a partnership/LLP, such a restriction should only operate concerning the partner that audited the company.</p>

S.No	Issue	Recommendations of Committee
16.	<b>Clarifying the manner of resignation of certain KMP's</b>	Companies should be obligated to notify the RoC of resignations tendered by certain KMPs whose appointment intimation was filed with the RoC. In cases where the company fails to intimate the RoC within 30 days, the KMPs should be allowed to file their resignations directly with the RoC. The date on which such resignation of KMPs should come into effect may be harmonised with Section 168 concerning resignation by Directors.
17.	<b>Easy restoration of Struck off companies</b> Application to be made to NCLT	Where aggrieved persons apply for restoration within 3 years, the application to be filed before RD.
18.	<b>Recognizing Special purpose Acquisition Companies</b> No provision	There should be an enabling provision under CA-13 to recognize SPACs and allow entrepreneurs to list a SPAC incorporated in India on domestic and global exchanges. Provisions on relaxing the requirement to carry out businesses before being struck off and providing exit options to the dissenting shareholders of a SPAC if they disagree with the choice of the target company identified must also be laid down in CA-13
19.	<b>Prohibiting conversion of a Cooperative society into a Company</b> Currently contains an enabling provision for conversion.	Section 366 of Companies Act should not permit the conversion of Cooperative societies into a Company.
20.	<b>Facilitating E-Enforcement and E-Adjudication</b> Contains a explanation	The Explanation under Section 398 of Companies Act, 2013 should be omitted to enable the Central Government to make Rules for electronically imposing fines, penalties, and payment of fees.
21.	Stricter regulation for Nidhi Companies	Provisions on Nidhi Company should be revised to regulate incorporation and functioning more stringently.
22.	<b>Strengthening the Audit framework</b>	<ol style="list-style-type: none"> <li>1. Companies Act, 2013 should enable the Central Government to prescribe a differential list of prohibitions on availing non-audit services for certain classes of companies.</li> <li>2. A resigning auditor should be under an explicit obligation to make detailed disclosures before resignation and should specifically mention whether such resignation is due to noncooperation from the client company, fraud or severe noncompliance, or diversion of funds.</li> <li>3. Companies Act, 2013 should enable the Central Government to mandate joint audits for such classes of companies as it may deem necessary.</li> <li>4. Companies Act, 2013 should enable the Central Government to order forensic audits in cases of investigation under Chapter XIV in such manner as may be prescribed.</li> </ol>

S.No	Issue	Recommendations of Committee
22.	<b>Strengthening the Audit framework</b>	5. Companies Act, 2013 should enable the Central Government to order forensic audits in cases of investigation under Chapter XIV in such manner as may be prescribed
23.	<b>IEPF related changes in section 124 and 125 of Companies Act, 2013</b>	<ol style="list-style-type: none"> <li>1. Inclusion of 'redemption amount towards unpaid or unclaimed preference shares' in the list of purposes for which the fund must be utilized.</li> <li>2. IEPF Authority should also be empowered to delegate its functions to its member, officer, or any other person to ease administration.</li> <li>3. Amount owed to shareholders who did not claim such amount paid to them after their shares and securities were bought back or cancelled by companies under Section 68 for seven years or more should be allowed to be transferred to the IEPF.</li> <li>4. Any money transferred to Unpaid Dividend Account of a company which remains unpaid or unclaimed for a period of seven years from the date of such transfer, is required to be transferred by the company along with interest accrued to the Investor and Education Protection Fund (IEPF). The dividend in respect of all the seven years have to be transferred to IEPF with the securities.</li> </ol>
24.	<b>Reviewing provisions on Mergers and Amalgamations</b>	<ol style="list-style-type: none"> <li>1. Inclusion of concept of treasury shares under section 232. Company holding treasury stock requires to report to CG through a declaration in the prescribed form. Such companies shall dispose of their entire treasury stock within three years. The disposal of such shares may take place in any mechanism devised by the company without the intervention of the NCLT.</li> <li>2. A twin test requiring approval by (i) majority of persons present and voting at the meeting accounting for seventy-five per cent, in value, of the shareholding of persons present and voting; and (ii) representing more than fifty per cent, in value, of the total number of shares of the company, should be mandated for approval of fast-track mergers under Section 233.</li> <li>3. Special Benches of the NCLT should be allowed to be constituted by the Central Government to deal with matters of economic importance relating to mergers and amalgamation or corporate restructuring or specialised IBC cases</li> </ol>
25.	<b>New concept of Producer LLPs</b>	<ol style="list-style-type: none"> <li>1. To enable producer institutions to take advantage of the light touch regime under the LLP Act, 2008, Producer LLPs should be allowed to be incorporated under such Act. This should be supported by a model LLP Agreement for guiding the decisions of the Producer LLP and ensuring smooth functioning. Accordingly, a new chapter is proposed to be inserted in Limited Liability Partnership Act, 2008</li> </ol>

## Companies Act amendments

Provision	Existing Provision	Amended Provision
<p><b>Clarification on holding Annual General Meeting through Video Conference (VC) or Other Audio-Visual Means (OAVM) dated 05.05.2022</b></p>	<p>To allow companies who are proposing to organize AGMs in 2022 for the Financial Year ended / ending any time before / on 31.03.2022 through VC or OAVM as per respective due dates by <b>30<sup>th</sup> June, 2022</b></p>	<p>To allow companies whose AGMs are due in the year 2022, to conduct their AGMs on or before <b>31<sup>st</sup> December, 2022</b> in accordance with the requirements laid down</p>
<p><b>Clarification on passing of Ordinary and Special resolutions by the Companies dated 05.05.2022</b></p>	<p>To allow companies to conduct their EGMs through Video Conference (VC) or Other Audio-Visual Means (OAVM) or transact items through postal ballot in accordance with framework provided in aforesaid circulars up to <b>30<sup>th</sup> June, 2022</b>, all other requirements remain unchanged.</p>	<p>To allow companies to conduct their EGMs through Video Conference (VC) or Other Audio-Visual Means (OAVM) or transact items through postal ballot in accordance with framework provided in aforesaid circulars up to <b>31<sup>st</sup> December, 2022</b>, all other requirements remain unchanged.</p>

## Compliance Calendar – June 2022

<b>Companies Act, 2013</b>			
Compliance details	Form	Applicability	Due Date
Return of Deposit	Form DPT-3 (Annually)	Every company other than Government company	30/06/2022
<b>FEMA</b>			
Compliance details	Form	Applicability	Due Date
Reporting of actual transactions of External Commercial Borrowings (ECB) through AD Bank under FEMA	Form ECB-2	All Companies having ECB	07/06/2022
<b>Labour Laws</b>			
Compliance details	Form	Applicability	Due Date
PF Payment	Monthly ECR	Entities registered with PF Authorities	15/06/2022
ESI Payment	Monthly ECR	Entities registered with ESIC Authorities	15/06/2022
<b>INCOME TAX</b>			
Compliance details	Form	Applicability	Due Date
TDS	Challan 281	Non-government deductors	07/06/2022
Advance tax		Those taxpayers who has tax payable more than of Rs.10,000/-	15/06/2022
Equalisation Levy	Form 1	Applicable tax deductors	30/06/2022
<b>GST</b>			
Compliance details	Form	Applicability	Due Date
Return of outward supplies of taxable goods and/or services	GSTR 1	GST Taxpayers who have not opted for QRMP scheme	11/06/2022
Return of outward supplies of taxable goods and/or services	GSTR 1	GST Taxpayers who opted for QRMP scheme -Optional	13/06/2022
Summary Return of Outward and Inward Supplies along with payment of Tax	GSTR 3B	GST Taxpayers who have not opted for QRMP scheme	20/06/2022
GST Challan Payment if no sufficient ITC		GST Taxpayers who opted for QRMP scheme and not having sufficient ITC	25/06/2022
Summary Return of Outward taxable supplies and tax payable	GSTR 5 & 5A	Non-Resident GST Taxpayers	20/06/2022
Return for details of ITC received and distribution	GSTR 6	Input Service Distributors	13/06/2022
Return for TDS under GST	GSTR 7	Government Authorities	10/06/2022
Return for Details of Supplies and the amount of tax collector	GSTR 8	E-commerce Operator	10/06/2022
Return for details of goods and services purchased in India	GSTR-11	Taxpayer claiming Refund & having UIN	28/06/2022