

Bill Summary

The Companies (Amendment) Bill, 2016

- The Companies (Amendment) Bill, 2016 was introduced in Lok Sabha on March 16, 2016. It seeks to amend the Companies Act, 2013 which regulates incorporation, management, functioning and winding up of companies.
- **Private placement:** Companies can raise capital by selling securities, such as shares, to a small number of select investors. This is called private placement. Under the Act, companies need to submit a separate offer letter disclosing certain information about the company, when a private placement offer is made to an investor. The Bill simplifies the process by doing away with filing of the separate offer letter.
- **Forward dealing and insider trading:** Forward dealing is the act of purchasing securities of a company for a specific price at a future date. The Act prohibits directors and key managerial personnel of a company from engaging in forward dealing. The Bill removes this provision of the Act. Similarly, the Bill seeks to remove provisions of the Act, which prohibit insider trading in companies. Insider trading is the act of publicly trading stocks of a company by a person who has information about the company, not known to the public.
- **Managerial remuneration:** The Act requires obtaining approval of the central government and the shareholders for payment of managerial remuneration in excess of prescribed limits. The Bill removes the requirement of obtaining approval of the government. Also it specifies that in some cases approval of the shareholders will be required through a special resolution.
- **Loans to directors, and other interested persons:** The Act prohibits provision of loans by a company to its directors, or its holding companies, etc. The Bill seeks to limit this prohibition by requiring passage of a special resolution in some of these cases.
- **Memorandum of company:** The Act requires that the memorandum of association of a company must state the objects behind incorporating the company. The Bill removes this requirement, and requires the companies to state that it will only engage in lawful activities or businesses. However, if the company chooses to specify its objects in the memorandum, it will not be allowed to pursue any activity outside the specified objectives.
- **Investments made to a company through investment companies:** The Act prohibits investments made to a company through layers of more than two investment companies. The Bill removes this provision.
- **Number of subsidiary companies:** The Act provides a limit on the number of subsidiary companies, some companies can have. The Bill removes this provision.
- **Significant beneficial owners:** The Bill defines a significant beneficial owner as any person who individually or collectively holds: (i) at least 25% beneficial interests in a company, or (ii) exercises significant control over the company. Beneficial interest is the right to obtain benefits while legal ownership is held by other parties (eg. trusts). The Bill requires the significant beneficial owners to provide a declaration to the company and specify the nature of interest owned by the beneficial owner. Further, a register of beneficial owners should be maintained by every company. This register may be inspected by any member of the company.
- **Ratification of auditors:** The Act requires that the appointment or continuance of auditor of a company should be ratified annually by the members of the company. The Bill seeks to omit this requirement.
- **Liability in case of fewer than required members:** The Act requires a company to have a minimum number of members to carry its functioning. The Bill provides liability when companies function with fewer than the minimum number of members required.
- **Definition:** Under the Act, an associate company is defined as one in which another company has control of: (i) at least 20% of shares, or (ii) business decisions. The Bill seeks to change this definition. It defines an associate company as one in which another company has: (i) control of at least 20% of voting power, or (ii) control or *participation* in business decisions. In addition, the Bill amends the other definitions, like ‘holding company’, key managerial personnel, etc.

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