



# news flash

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## CLB now replaced by NCLT

The Ministry of Corporate Affairs (“MCA”) has with effect from 1 July, 2016 constituted the National Company Law Tribunal (“NCLT”) and the National Company Law Appellate Tribunal (“NCLAT”) by a notification bearing number S.O. 1932(E) and 1933(E).

The NCLT would initially have eleven benches at various locations across the country, with two benches at New Delhi and one at Ahmedabad, Allahabad, Bengluru, Chandigarh, Chennai, Guwahati, Hyderabad, Kolkata and Mumbai each.

Accordingly, the Company Law Board (“CLB”) now stands dissolved and pursuant to this development all the pending matters of the CLB would be now transferred to the appropriate benches of the NCLT. As per the provisions of the Companies Act, 2013 (“Act”), the NCLT is also empowered to handle various matters currently with dealt with by the High Courts.

Additionally, in light of the constitution of the NCLT, the MCA has notified certain sections of the Act. Some of the provisions are as follows:

- A company which passes a special resolution to alter its Articles of Association having the effect of conversion of a public company into a private company; shall require the approval of the NCLT to be effective.
- Any changes in the voting percentage of shareholders will be effective only after it is approved by the NCLT.
- Where the terms and conditions of conversion of debentures issued to the Government into shares or of loan which has been obtained from the Government by the company are not acceptable to the company, it may, within sixty days from the date of communication of such order of the Government, appeal to the NCLT.
- A debenture trustee may file a petition before the NCLT for an order to impose further restrictions on the incurring of any further liabilities by the company after the debenture trustee comes to the conclusion that the assets of the company are insufficient or are likely to become insufficient to discharge the principal amount as and when it becomes due.
- The NCLT has the power to call or direct the calling of, an AGM of the company, if default is made in holding the AGM of a company.
- When a director of the company is removed, the NCLT has the power to waive the right of the director to representation in writing to the company where such a representation is an abuse to secure needless publicity for defamatory matter. Further the NCLT may order that the company’s cost of the application be paid in whole or in part by the director.
- A class action can be taken in case of oppression and mismanagement.

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- Any person aggrieved by an order of the NCLT may prefer an appeal to the NCLAT within forty-five days from the date on which a copy of the order of the tribunal is made available to the person aggrieved. Further, any person aggrieved by any order of the NCLAT may file an appeal to the Supreme Court within sixty days from the date of receipt of the order of the NCLAT on any question of law arising out of such order. Therefore, it is clear that appeal to the Supreme Court from the order of the NCLAT will lie only on any question of law arising out of order of the NCLAT.
- On such date as may be notified by the Central Government, all matters, proceedings or cases before the CLB immediately before such date shall stand transferred to the NCLT and the NCLT shall dispose of such matters, proceedings or cases in accordance with provisions of the Act. Any person aggrieved by any decision or order of CLB made before such date may file an appeal to the High Court within sixty days from the date of communication of the decision or order of CLB on any question of law arising out of such order.
- The Central Government has been given powers to make rules to ensure timely transfer of all matters, proceedings or cases pending before the CLB or the court to the NCLT.
- The NCLT has been given power to compound any offence punishable under the Act whether committed by a company or any officer thereof with fine only, either before or after institution of prosecution.

## CONCLUSION

With the constitution of the NCLT the burden on the High Courts will be reduced since appeals will directly lie to the Supreme Court and not High Court. Although the NCLT has been given wider powers, functions and jurisdiction whether the NCLT will be an effective alternative to the courts and the company law board remains to be seen.

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For further clarification and details on the above, you may write to the Corporate and Secretarial Practice team comprising of (among others) Mr. Vaishakh Kapadia (Partner) at [vkapadia@almtlegal.com](mailto:vkapadia@almtlegal.com), Ms. Manali Kshirsagar (Associate) at [mkshirsagar@almtlegal.com](mailto:mkshirsagar@almtlegal.com) and Ms. Shruti Tandon (Associate) at [standon@almtlegal.com](mailto:standon@almtlegal.com).