Companies (Amendment) Bill, 2014

Effective Date: 02.12.2014.
The Corporate Affairs Ministry has had extensive consultations with stakeholders in the matter.

The Union Cabinet, chaired by the Prime Minister Shri Narendra Modi, on 2nd December 2014 approved the introduction of the Companies (Amendment) Bill, 2014 in Parliament to make certain amendments in the Companies Act, 2013.

This would be among the first major initiatives by the government to make changes in the country's regulatory framework to improve its global ranking for ease of doing business, where India has been ranked very low at the 142nd position in the latest World Bank report and includes provision to ensure that frauds beyond a certain threshold would need to be mandatorily reported by the auditors to the government.

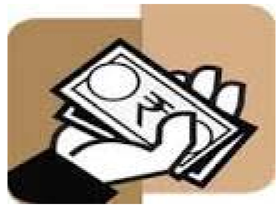
Sr No.	Types of the Changes	Amendments
1	Omission the Requirement	Omitting requirement for minimum paid up share capital, and consequential changes.
2	Optional Requirement	Making common seal optional and consequential changes for authorization for execution of documents.
3	Additional Requirement	Prescribing specific punishment for deposits accepted under the new Act. This was left out in the Act Inadvertently.
4	Additional Requirement	Prohibiting public inspection of Board resolutions filed in the Registry.
5	Additional Requirement	Including provision for writing off past losses/depreciation before declaring dividend for the year. This was missed in the Act but included in the Rules.
6	Rectification Requirement	Rectifying the requirement of transferring equity shares for which unclaimed/unpaid dividend has been transferred to the IEPF **even though subsequent dividend(s) has been claimed**.
7	Additional Requirement	Enabling provisions to prescribe thresholds beyond which fraud shall be reported to the Central Government (below the threshold, it will be reported to the Audit Committee). Disclosures for the latter Category also to be made in the Board’s Report.

8	Exemption	Exemption u/s 185 (Loans to Directors) provided for loans to wholly owned subsidiaries and Guarantees/securities on loans taken from banks by subsidiaries.
9	Amendment	Empowering Audit Committee to give omnibus approvals for related party transactions on annual basis.
10	Amendment	Replacing ‘special resolution’ with ‘ordinary resolution’ for approval of related party transactions by nonrelated shareholders.
11	Exemption	Exempt related party transactions between holding companies and wholly owned subsidiaries from the requirement of approval of non-related shareholders.
12	Amendment	Bail restrictions to apply only for offence relating to fraud u/s 447.
13	Amendment	Winding Up cases to be heard by 2-member Bench instead of a 3-member Bench.
14	Amendment	Special Courts to try only offences carrying imprisonment of two years or more.

Companies (Amendment) Bill, 2014

1.

MINIMUM PAID UP CAPITAL

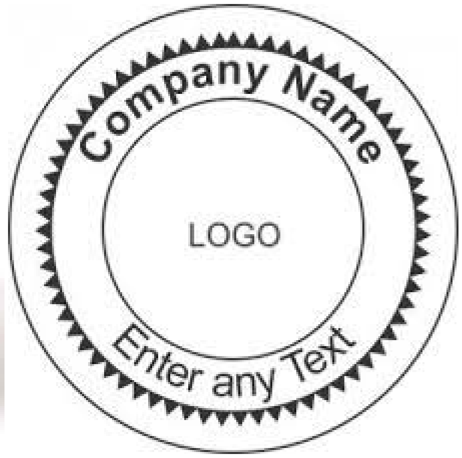


The Companies Act, 1956		The Companies Act, 2013		The Companies (Amendment) Bill, 2014	Impact after such Amendment
Sec	**Particulars**	**Sec**	**Particulars**		
3(iii)	**Definition of Pvt Co** It says: MNC require: • Rs.1 Lakh or • such higher paid-up capital as may be prescribed, and by is articles	2(68)	**Definition of Pvt Co** It says: MNC require: • Rs.1 Lakh or • such higher paid-up capital as may be prescribed, and by is articles	Omitting requirement for minimum paid up share capital, and consequential changes.	1. For ease of doing business. 2. The cost of Registration will become lower. 3. Company can be incorporated with any capital similar to LLP's
3(iv)	**Definition of Public Co** It says: MNC require: • Rs.5 Lakh or • such higher paid-up capital as may be prescribed, and by is articles	2(71)	**Definition of Public Co** It says: MNC require: • Rs.5 Lakh or • such higher paid-up capital as may be prescribed, and by is articles		

Companies (Amendment) Bill, 2014

2.

COMMON SEAL



The Companies Act, 1956	The Companies Act, 2013	The Companies (Amendment) Bill, 2014	Impact after such Amendment
Sec.	**Sec.**		
12(5)	12(3)	Making common seal optional and consequential changes for authorization for execution of documents.	It will Reduce time of Procedural Issues related to common seal.
48	22		
84	46		
176(5)	105(6)		
50	-	-	-
114	-	-	-

The Companies Act, 1956		The Companies Act, 2013	
Sec	**Particulars**	**Sec**	**Particulars**
12(5)	**<u>REGISTERED OFFICE OF COMPANY</u>**	12(3)	**<u>REGISTERED OFFICE OF COMPANY</u>**
	It Says : Every company ➢ shall have its name engraved in legible characters on its seal;—		It Says : Every company ➢ shall have its name engraved in legible characters on its seal;—

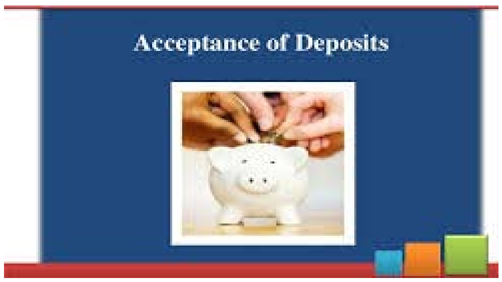
48	**<u>EXECUTION OF DEEDS</u>:**	22	**<u>EXECUTION OF BILLS OF EXCHANGE, ETC</u>**
	1. A company may, by writing under its common seal, empower any person, either generally or in respect of any specified matters, as its attorney, to execute deeds on its behalf in any place either in or outside India. 2. A deed signed by such an attorney on behalf of the company and under his seal where sealing is required, shall bind the company and have the same effect as if it were under its common seal		1. A company may, by writing under its common seal, empower any person, either generally or in respect of any specified matters, as its attorney, to execute deeds on its behalf in any place either in or outside India. 2. A deed signed by such an attorney on behalf of the company and under his seal where sealing is required, shall bind the company and have the same effect as if it were under its common seal
84	**CERTIFICATE OF SHARES**	46	**CERTIFICATE OF SHARES.**
	It says that ➢ a certificate, issued under the common seal of the company, ➢ Specifying the shares held by any person, shall be prima facie evidence of the title of the person to such shares.		It says that ➢ a certificate, issued under the common seal of the company, ➢ Specifying the shares held by any person, shall be prima facie evidence of the title of the person to such shares .
176(5)	**PROXIES**	105 (6)	**PROXIES**
	It says that the instrument appointing proxy shall ➢ be in writing and ➢ be signed by the appointer or his attorney duly authorised in writing or, if the appointer is a body corporate, ➢ be under its seal or ➢ be signed by an officer or ➢ An attorney duly authorised by it.		It says that the instrument appointing proxy shall ➢ be in writing and ➢ be signed by the appointer or his attorney duly authorised in writing or, if the appointer is a body corporate, ➢ be under its seal or ➢ be signed by an officer or ➢ An attorney duly authorised by it.

50	**POWER FOR COMPANY TO HAVE OFFICIAL SEAL FOR USE OUTSIDE INDIA**	-	**OMITTED**
	A company ➢ whose objects require or ➢ comprise the transaction of business outside India may, ➢ if authorised by its Articles-, have for use in any territory, district or place not situate in India an official seal which shall be a facsimile of the common seal of the company, with the addition on its face of the name of the territory, district or place where it isto be used.		
114	**ISSUE AND EFFECT OF SHARE WARRANTS TO BEARER**	-	**OMITTED**
	It says, A public company limited by shares, ➢ if so authorised by its articles, ➢ may, with the previous approval of the CG, with respect to any fully paid-up shares, issue under its common seal a warrant stating that the bearer of the warrant is entitled to the shares		

Companies (Amendment) Bill, 2014

3.

PUNISHMENT OF ACCEPTION OF DEPOSIT



The Companies Act, 1956		The Companies Act, 2013		The Companies (Amendment) Bill, 2014	Impact after such Amendment
Sec	Particulars	Sec	Particulars		
58AAA	**DEFAULT IN ACCEPTANCE OR REFUND OF DEPOSITS TO BE COGNIZABLE**	-	**OMITTED**		
	It says that ➢ every offence connected with or arising out of acceptance of deposits under section 58A or section 58AA shall be cognizable offence under the Code of Criminal Procedure, 1973 (2 of 1974). ➢ No court shall take cognizance of any offence under sub-section (1) except on a complaint made by the Central Government or any officer authorised by it in this behalf.			Prescribing specific punishment for deposits accepted under the new Act. This was left out in the Act Inadvertently.	It is expected that a more stringent punishment will be provided which will deter companies from making willful default.

Companies (Amendment) Bill, 2014

4.

PUBLIC INSPECTION

The Companies Act, 1956	The Companies Act, 2013	The Companies (Amendment) Bill, 2014	Impact after such Amendment
Sec.	**Sec.**		
-	117(3)	Prohibiting public inspection of Board resolutions filed in the Registry.	Now Public prohibition will maintain the confidentiality of the Board decisions.
-	399(1)(a)		

Companies (Amendment) Bill, 2014

The Companies Act, 1956		The Companies Act, 2013	
Sec	**Particulars**	**Sec**	**Particulars**
-	-	117(3)	**RESOLUTIONS AND AGREEMENTS TO BE FILED.**
			The provisions of this section shall apply to— 1. **special resolutions**; 2. Resolutions which have been agreed to by all the members of a company, but which, if not so agreed to, would not have been effective for their purpose unless they had been passed as special resolutions; 3. Any resolution of the Board of Directors of a company or agreement executed by a company, relating to the appointment, re-appointment or renewal of the appointment, or variation of the terms of appointment, of a managing director; 4. Resolutions or agreements which have been agreed to by any class of members but which, if not so agreed to, would not have been effective for their purpose unless they had been passed by a specified majority or otherwise in some particular manner; 5. All resolutions or agreements which effectively bind such class of members though not agreed to by all those members; 6. Resolutions passed by a company according consent to the exercise by its Board of Directors of any of the powers under clause (*a*) and clause (*c*) of sub-section (*1*) of section 180; 7. Resolutions requiring a company to be wound up voluntarily passed in pursuance of section 304; 8. Resolutions passed in pursuance of sub-section (*3*) of section 179; and 9. Any other resolution or agreement as may be prescribed and **placed in the public domain.**

-	-	399(1)(a)	**INSPECTION, PRODUCTION AND EVIDENCE OF DOCUMENTS KEPT BY REGISTRAR**
			It provides *that* , any person may— ➢ inspect by electronic means any documents kept by the Registrar in accordance with the rules made, ➢ being documents filed or ➢ Registered by him in pursuance of this Act, or ➢ Making a record of any fact required or authorised to be recorded or registered in pursuance of this Act, ➢ on payment for each inspection of such fees as may be prescribed;

5.

WRITING OFF PAST LOSSES/ DEPRECIATION BEFORE DECLARING DIVIDEND

The Companies Act, 1956	The Companies Act, 2013	The Companies (Declaration and payment of Dividend) Rules, 2014	The Companies (Amendment) Bill, 2014	Impact after such Amendment
Sec.	Sec.	Rule		
205	123	3	Including provision for writing off past losses/depreciation before declaring dividend for the year.	No major impact, the provision will now be part of the Act.

Companies (Amendment) Bill, 2014

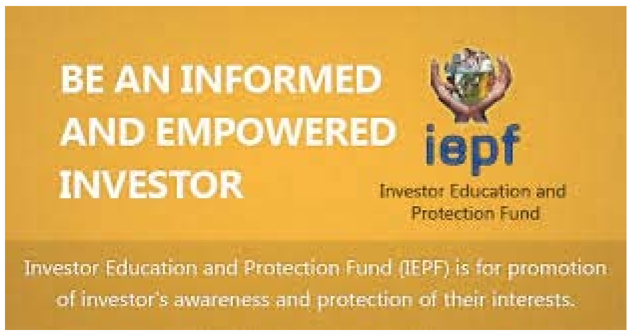
The Companies Act, 1956		The Companies Act, 2013		The Companies (Declaration and payment of Dividend) Rules, 2014	
Sec	**Particulars**	**Sec**	**Particulars**	**Rule**	**Particulars**
205	**DIVIDEND TO BE PAID ONLY OUT OF PROFITS**	123	**DECLARATION OF DIVIDEND**	3	**DECLARATION OF DIVIDEND OUT OF RESERVES**
	1. <u>Unabsorbed Depreciation:</u> ➢ if the company ➢ has not provided for depreciation for any previous financial year or years which falls or fall after the commencement of the Companies (Amendment) Act, 1960, it shall, ➢ before declaring or paying dividend for any financial year ➢ provide for such depreciation out of the profits of that financial year or ➢ out of the profits of any other previous financial year or years ; **2. <u>Unabsorbed Losses:</u>** ➢ if the company has incurred any loss in any previous financial year or years, which falls or fall after the		Provided further that where, ➢ owing to inadequacy or absence of profits in any financial year, ➢ any company proposes to declare dividend out of the accumulated profits earned by it in previous years and transferred by the company to the reserves, such declaration of dividend shall not be made except		This was missed in the Act but included in the Rules. "**No company shall declare dividend unless carried over previous losses and depreciation not provided in previous year are set off against profit of the company of the current year the loss or depreciation, whichever is less, in previous year is set off against the profit of the company for the year for which dividend is declared or paid.** "

	commencement of the Companies (Amendment) Act, 1960, then, the amount of the loss or an amount which is equal to the amount provided for depreciation for that year or those years whichever is less, ➢ shall be set off against the profits of the company for the year for which dividend is proposed to be declared or paid or against the profits of the company for any previous financial year or years.		in accordance with such rules as may be prescribed in this behalf:			

Companies (Amendment) Bill, 2014

6.

TRANSFERING EQUITY SHARES FOR WHICH UNCLAIMED/UNPAID DIVIDEND HAS BEEN TRANSFEREED TO IEPF



Companies (Amendment) Bill, 2014

The Companies Act, 1956		The Companies Act, 2013		The Companies (Amendment) Bill, 2014	Impact after such Amendment
Sec	Particulars	Sec	Particulars		
205A(5)	**UNPAID DIVIDEND TO BE TRANSFERRED TO SPECIAL DIVIDEND ACCOUNT**	124 (6)	**UNPAID DIVIDEND ACCOUNT.**		
	It says: ➢ Any money transferred to the unpaid dividend account of a company in pursuance of this section which remains **unpaid or unclaimed** ➢ for a period of **seven years from the date of such transfer shall be transferred** by the company to the Fund established under sub-section (1) of section 205C. In this section only mentioning about unclaimed or unpaid dividend transfer to IEPF Fund and not included transferring of the shares for which unclaimed/unpaid dividend has been transfer to IEPF.		The current provides for transferring equity shares for which unclaimed/ unpaid dividend has been transferred to IEPF	Rectifying the requirement of transferring equity shares for which unclaimed/ unpaid dividend has been transferred to the IEPF even though subsequent dividend(s) has been claimed. (To meet corporate demand.)	Now this amendment will rectify the anomaly of transferring the shares for which unclaimed / unpaid dividend has been transferred to the IEPF even though subsequent dividend(s) has been claimed.

Companies (Amendment) Bill, 2014

7.

FRAUD REPORTED

EXPLANATION

1. The new act, 2013 casts onerous responsibility on the part of statutory auditor/cost auditor/secretarial auditor to report fraud to Board and Central Government.
2. It would mean that even for a small fraud involving say Rs. 1,000/- in a large multi-locational enterprise would cast reporting fraud responsibility on the part of CA/CMA/CS.
3. This provision has mandated a CA/CMA/CS appointed by company under section 139/148/204 to do direct reporting of frauds (to the Central Government) in addition to their existing responsibilities of reporting requirement to the shareholder/Board of company. Section 143(12) to 143(15) of the Act contains provisions relating to reporting of fraud.
4. Overall, the new law will plug most loopholes of the old regime. It will improve corporate governance, protect the interest of minority shareholders and make it tougher for companies to hide illegal transactions or commit fraud.

Companies (Amendment) Bill, 2014

ANTICIPATION-ET BUREAU 21st OCT, 2014

- The government is likely to relax norms of corporate fraud reporting by auditors, with MCA considering a proposal
- to make reporting mandatory only if fraud involves
  - 10 per cent or more of the company's turnover or
  - it is repetitive in nature.

Companies (Amendment) Bill, 2014

The Companies Act, 1956		The Companies Act, 2013		The Companies (Amendment) Bill, 2014	Impact after such Amendment
Sec	Particulars	Sec	Particulars		
		143(12)	FRAUD REPORTING		
-			If an auditor of a company, ➢ in the course of the performance of his duties as auditor, ➢ has reason to believe that an offence involving fraud is being or has been committed against the company by officers or employees of the company, ➢ **he shall immediately report the matter to the Central Government** within such time and in such manner as may be prescribed.	Enabling provisions to prescribe thresholds beyond which fraud shall be reported to the Central Government (below the threshold, it will be reported to the Audit Committee). Disclosures for the latter Category also to be made in the Board's Report.	Quantifying the amount of Fraud which is required to be reported by Auditors to the Central Government, will enable the Government to concentrate on the important cases and rest will be taken care by the Audit Committee.

Companies (Amendment) Bill, 2014

8.

LOANS TO DIRECTORS

The Companies Act, 1956	The Companies Act, 2013	The Companies (Declaration and payment of Dividend) Rules, 2014	The Companies (Amendment) Bill, 2014	Impact after such Amendment
Sec.	Sec.	Rule		
295	185	10	Exemption u/s 185 (Loans to Directors) provided for loans to wholly owned subsidiaries and Guarantees/securities on loans taken from banks by subsidiaries.	1. The Exemption provided by way of rules seems to go beyond the restrictions provided by the Act. The purpose of Amendment might be to bring the exemptions within the Act itself. 2. No major relief if the requirement related to specific line of business is still there.

EXPLANATION

Section 185 came under heavy criticism due to its excessively onerous nature, as it did away with exemptions previously available under the Companies Act, 1956.

Companies (Amendment) Bill, 2014

The Companies Act, 1956		The Companies Act, 2013		The Companies Rules ,2014	
Sec	**Particulars**	**Sec**	**Particulars**	**Rule**	**Particulars**
295	**LOANS TO DIRECTORS, ETC**	185	**LOANS TO DIRECTOS**	10	
	1. It says: ➢ No company ➢ without obtaining the **previous approval of the Central Government** in that behalf ➢ shall, directly or indirectly, make any loan to, or give any guarantee or provide any security in connection with a loan made a) by any other person to, or to any other person by, -any director of the lending company or of a company which is its holding company or any partner or relative of any such director b) any firm in which any such director or relative is a partner c) any private company of which any such director is a director or member d) any body corporate at a general meeting of which not less than		1. It says: ➢ No company ➢ shall, directly or indirectly, advance any loan, including any loan represented by a book debt, ➢ to any of its directors or to any other person in whom the director is interested or give any guarantee or provide any security in connection with any loan taken by him or such other person: 2. **This sec. shall not apply to** - ➢ the giving of any loan to a managing or whole-time director o as a part of the		1. **Any loan made by a holding company to its wholly owned subsidiary company** or any guarantee given or security provided by a holding company in respect of any loan made to its wholly owned subsidiary company is **exempted from the requirements** under this section; and 2. **Any guarantee given or security provided by a holding**

	twenty-five per cent of the total voting power may be exercised or controlled by any such director, or by two or more such directors together ; or e) any body corporate, the Board of directors, managing director, or manager whereof is accustomed to act in accordance with the directions or instructions of the Board, or of any director or directors, of the lending company. 2. This sec. **shall not apply** to any loan made, guarantee given or security provided - ➢ by a private company unless it is a subsidiary of a public company, or ➢ by a banking company ➢ any loan made by a holding company to its subsidiary company; ➢ any guarantee given or security provided by a holding company in respect of any loan made to its subsidiary company.		conditions of service extended by the company to all its employees or o pursuant to any scheme approved by the members by a special resolution; or ➢ a company which in the ordinary course of its business provides loans or gives guarantees or securities for the due repayment of any loan and in respect of such Loan to directors, etc.		**company** in respect of loan made by any bank or financial institution to its subsidiary company is **exempted** from the requirements under this section ➢ Provided that such loans made under sub-rule(1) and (2) are utilized by the subsidiary company for its principle business activities

Companies (Amendment) Bill, 2014

9. EMPOWERING AUDIT COMMITTEE FOR REALTED PARTY TRANSACTION

The Companies Act, 1956	The Companies Act, 2013	The Companies (Amendment) Bill, 2014	Impact after such Amendment
Sec.	Sec.		
292A(6)	177(4)	Empowering Audit Committee to give omnibus approvals for related party transactions on annual basis. Presumably this is to avoid consideration of RPTs on a case-by-case basis.	1. It will reduce lot of practical difficulties. 2. Further, SEBI has introduced some changes by way of amendment in revised clause 49 and according to that related party Transactions shall require prior approval of the audit committee. However, the audit committee may grant omnibus approval for related party transactions proposed to be entered into by the company subject to the certain conditions.

Companies (Amendment) Bill, 2014

The Companies Act, 1956		The Companies Act, 2013	
Sec	**Particulars**	**Sec**	**Particulars**
292A (6)	**AUDIT COMMITTEE**	177 (4)	**AUDIT COMMITTEE**
	➢ The Audit Committee ➢ should have discussions with the auditors **periodically** about ➢ internal control systems, the scope of audit including the observations of the auditors and review ➢ the half-yearly and annual financial statements before submission to the Board and also ensure compliance of internal control systems.		➢ Every Audit Committee shall act in accordance with the terms of reference specified in writing by the Board which shall, *inter alia,* include,— o the recommendation for appointment, remuneration and terms of appointment of auditors of the company; o review and monitor the auditor's independence and performance, and effectiveness of audit process; o examination of the financial statement and the auditors' report thereon; o **approval or any subsequent modification of transactions of the company with related parties**; o scrutiny of inter-corporate loans and investments; o valuation of undertakings or assets of the company, wherever it is necessary; o evaluation of internal financial controls and risk management systems; o monitoring the end use of funds raised through public offers and related matters.

Companies (Amendment) Bill, 2014

10 & 11

RELATED PARTY TRANSACTION

The Companies Act, 1956	The Companies Act, 2013	The Companies (Amendment) Bill, 2014	Impact after such Amendment
Sec.	Sec.		
294 297 314	188	1. To give relief in regards to problems faced by large stakeholders who are related parties. Replacing 'special resolution' with 'ordinary resolution' for approval of related party transactions by nonrelated shareholders. 2. To meet corporate demand, Exempt related party transactions between holding companies and wholly owned subsidiaries from the requirement of approval of non-related shareholders (Exemption benefit available to related party transactions **only between holding companies and wholly owned subsidiaries** from the requirement of approval of non-related shareholders)	1. Since related parties were not allowed to vote on related party transactions, companies were finding it difficult to get it passed by way of special resolution. 2. With related parties now able to vote, it will be easier to pass the resolution. 3. Ordinary resolution will make the approval process easier.

Companies (Amendment) Bill, 2014

The Companies Act, 1956		The Companies Act, 2013	
Sec	**Particulars**	**Sec**	**Particulars**
294	**APPOINTMENT OF SOLE SELLING AGENTS TO REQUIRE APPROVAL OF COMPANY IN GENERALMEETING**	188	**RELATED PARTY TRANSACTIONS**
	1. No company shall, after the commencement of the Companies (Amendment) Act, 1960, ➢ appoint a sole selling agent for any area ➢ for a term exceeding five years at a time 2. After the commencement of the Companies (Amendment) Act, 1960, the Board of directors of a company shall not appoint a sole selling agent for any area except subject to the condition that the appointment shall cease to be valid if it is not approved by the company in the first general meeting held after the date on which the appointment is made.		1. **Except with the consent of the Board of Directors** given by a resolution at a meeting of the Board and subject to such conditions as may be prescribed, no company shall enter into any contract or arrangement with a related party with respect to— a) sale, purchase or supply of any goods or materials; b) selling or otherwise disposing of, or buying, property of any kind; c) leasing of property of any kind; d) availing or rendering of any services; e) appointment of any agent for purchase or sale
297	**BOARD'S SANCTION TO BE REQUIRED FOR CERTAIN CONTRACTS IN WHICH PARTICULAR DIRECTORS ARE INTERESTED**		
	1. Except with the consent of the Board of directors of a company, a director of the company or his relative, a firm in which such a director or relative is a partner, any other partner in such a firm, or a private company of which the director is a member or director, shall not enter into any contract with the company – a) for the sale, purchase or supply of any goods, materials or services ; or b) after the commencement of this Act, for underwriting the subscription of any shares in, or debentures of, the company 2. ***Provided*** that in the case of a company		

	having a paid-up share capital of not less than rupees one crore, no such contract shall be entered into except with the previous approval of the Central Government 3. Nothing contained in clause *(a)* of sub-section (1) shall affect - a) the purchase of goods and materials from the company, or the sale of goods and materials to the company, by any director, relative, firm, partner or private company as aforesaid for cash at prevailing market prices ; or b) any contract or contracts between the company on one side and any such director, relative, firm, partner or private company on the other for sale, purchase or supply of any goods, materials and services in which either the company or the director, relative, firm, partner or private company, as the case may be, regularly trades or does business : ***Provided*** that such contract or contracts do not relate to goods and materials the value of which, or services the cost of which, exceeds five thousand rupees in the aggregate in any year comprised in the period of the contract or contracts or c) in the case of a banking or insurance company any transaction in the ordinary course of business of such company with any director, relative, firm, partner or private company as aforesaid.		of goods, materials, services or property f) such related party's appointment to any office or place of profit in the company, its subsidiary company or associate company; and g) underwriting the subscription of any securities or derivatives thereof, of the company: 2. Provided that no contract or arrangement, in the case of a company having a paid-up share capital of not less than such amount, or transactions not exceeding such sums, as may be prescribed, shall be entered into except with the prior approval of the company by a **special resolution.**

			3. Provided further that no member of the company shall vote on such special resolution, to approve any contract or arrangement which may be entered into by the company, if such member is a related party.
314	**DIRECTOR, ETC., NOT TO HOLD OFFICE OR PLACE OF PROFIT**		
	1. Except with the consent of the company accorded by a **special resolution**, - a) no director of a company shall hold any office or place of profit, and b) no partner or relative of such director, no firm in which such director, or a relative of such director, is a partner, no private company of which such director is a director or member, and no director or manager of such a private company, shall hold any office or place of profit carrying a total monthly remuneration of such sum as may be prescribed.		

Companies (Amendment) Bill, 2014

12

OFFENCE REALTING TO FRUD U/S 447

<table>
<tr><th colspan="2">The Companies Act, 1956</th><th colspan="2">The Companies Act, 2013</th><th>The Companies (Amendment) Bill, 2014</th><th>Impact after such Amendment</th></tr>
<tr><th>Sec</th><th>Particulars</th><th>Sec</th><th>Particulars</th><th></th><th></th></tr>
<tr><td>-</td><td>Not Included</td><td>447</td><td><table><tr><th>Offence</th><th>Term of Imprisonment</th></tr><tr><td>any person who is found to be guilty of fraud</td><td>➢ which shall not be less than six months but which may extend to ten years and
➢ shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud:</td></tr><tr><td>Provided that where the fraud in question involves public interest</td><td>shall not be less than three years.</td></tr></table></td><td>Bail restrictions to apply only for offence relating to fraud u/s 447.</td><td>Though the section already provides for no bail in case of offences related to fraud, more clarity will be there in the blue print.</td></tr>
</table>

Companies (Amendment) Bill, 2014

EXPLANATION

- **fraud**" in relation to affairs of a
  - company or anybody corporate,
  - **includes**
    - any act, omission, concealment of any fact or abuse of position committed
- by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss
- "**wrongful gain**" means the gain by unlawful means of property to which the person gaining is not legally entitled;
- "**Wrongful loss**" means the loss by unlawful means of property to which the person losing is legally entitled.
- The Companies Act, 2013 has provided punishment for fraud as provided under section 447 in around 20 sections of the Act e.g. u/s 7(5), 7(6), 8(11), 34, 36, 38(1), 46(5), 56(7), 66(10), 75, 140(5), 206(4), 213, 229, 251(1), 266(1), 339(3), 448 etc. for directors, key managerial personnel, auditors and/or officers of company. Thus, the new Act goes beyond professional liability for fraud and extends to personal liability if a company contravenes such provisions.
- The following table includes some sections that attract liability u/s 447. These are cognizable offences and a person accused of any such offence under these sections shall not be released on bail or bond, unless subject to the exceptions provided u/s 212(6) of the Act

Sec	Fraud w.r.t	Who will be penalized
7(5)	Registration of a company	A person furnishing false information or suppressing any material information of which he or she is aware.

34	Criminal liability for misstatements in prospectus.- Where a prospectus, issued, circulated or distributed under this Chapter, includes any statement which is untrue or misleading in form or context in which it is included or where any inclusion or omission of any matter is likely to mislead	every person who authorizes The issue of such prospectus shall be liable.
36	Punishment for fraudulently inducing persons to invest money.	The person doing so
38	Punishment for personation for acquisition,etc., of securities.	The person doing so
46 (5)	If a company with intent to defraud issues a duplicate certificate of shares, the company shall be punishable with fine which shall not be less than five times the face value of the shares involved in the issue of the duplicate certificate but which may extend to ten times the face value of such shares or rupees ten crores whichever is higher and every officer of the company who is in default shall be liable for action under section 447.	Every officer of the company who is in default.
56(7)	Transfer and transmission of securities	where any depository or depository participant, with an intention to defraud a person, has transferred shares
66(10)	Reduction of share capital (a) knowingly conceals the name of any creditor entitled to object to the reduction (b) knowingly misrepresents the nature or amount of the debt or claim of any creditor (c) abets or is privy to any such concealment or misrepresentation as aforesaid,he shall be liable under sec 447.	Every officer of the company who is in default
75(1)	Acceptance of deposit with intent to	Every officer of the company

	defraud depositors or for any fraudulent purpose.	who accepted the deposit.
140 (5)	Removal, resignation of auditor and giving of Special notice.	1. An auditor, whether individual or firm, against whom final order has been passed by the Tribunal under this section shall not be eligible to be appointed as an auditor of any company for a period of five years from the date of passing of the order and the auditor shall also be liable for action under section 447. 2. "An auditor" includes a firm of auditors.
206(4)	Conducting business of a company for a fraudulent or unlawful purpose -	Every officer of the company who is in default.
213	Other cases: Business of a company being conducted with intent to defraud its creditors Fraud, misfeasance or other misconduct of the company or any of its members Company withholding information from members with respect to its affairs, which they may reasonably expect	Every officer of the company who is in default and the person(s) concerned in the formation of the company or management of its affairs.
229	Furnishing false statement or mutilation or destruction of documents	Person required providing an explanation or making a statement during the course of inspection, inquiry or investigation, or the officer or other employees, as required.
251(1)	Application for removal of name from register with the object of evading liabilities/intent to deceive	Persons in charge of management of the company.
339(3)	Conducting business of company with intent	Every person who was

	to defraud its creditors, any other persons or for any fraudulent purpose	knowingly a party to the business in the aforesaid manner.
448	Making a false statement in any return, report, certificate, financial statement, prospectus, statement or other document required by or for the purpose of any of the provisions of this Act or the rules made There under	Person making such a statement etc.

Companies (Amendment) Bill, 2014

13.

WINDING UP CASES TO BE HEARD

The Companies Act, 1956		The Companies Act, 2013		The Companies (Amendment) Bill, 2014	Impact after such Amendment
Sec	Particulars	Sec	Particulars		
10FL(2)	**BENCHES OF TRIBUNAL**	419 (4)	**BENCHES OF TRIBUNAL**		
	The President of the Tribunal shall, ➢ For the disposal of any case relating to rehabilitation, restructuring or winding up of the Companies, ➢ constitute one or more Special Benches consisting of **three or more Members** for the disposal of any		The President shall ➢ for the disposal of any case relating to rehabilitation, restructuring, reviving or winding up, of companies, ➢ constitute one or more Special Benches ➢ Consisting of **three or more Members**, majority necessarily being of Judicial Members.	To remove an inadvertent error, Winding Up cases to be heard by **2-member Bench instead of a 3-member** Bench.	Small bench can ease practical difficulties.

Companies (Amendment) Bill, 2014

14.

SPECIAL COURTS SHOULD TRY THE OFFENCES

The Companies Act, 1956		The Companies Act, 2013		The Companies (Amendment) Bill, 2014	Impact after such Amendment
Sec	Particulars	Sec	Particulars		
		436	**OFFENCES TRIABLE BY SPECIAL COURTS**		
-	Not Included		It provides that ➢ **all offences under the Act** shall be triable only by **the special court** established for the area in which the registered office of the company relation to which the offence is committed or ➢ Where there are more special courts than one for such area, by such one of them as may be specified in this behalf by the high court concerned.	Special Courts to try only offences carrying imprisonment of two years or more.	It will reduce the burden on special Courts.