# THE COMPANIES (AMENDMENT) BILL, 2014

| Section | Heading | Before Amendment | After Amendment | Purpose |
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| **Sec 2(68)** | Definition of Private Company | "Private company" means a company having a **minimum paid-up share capital of one lakh rupees** or such higher paid-up share capital as may be prescribed | Omitted | To omit the requirement for minimum paid-up share capital, and consequential changes; |
| **Sec 2(71)** | Definition of Public Company | "public company" means a company having a **minimum paid-up share capital of five lakh rupees** or such higher paid-up share capital as may be prescribed | Omitted | To omit the requirement for minimum paid-up share capital, and consequential changes; |
| **Sec 9** | Effect of Registration | From the date of incorporation mentioned in the certificate of incorporation, the subscribers to the memorandum and all other persons become member of the company and the company shall be a body corporate by the name contained in the memorandum, capable | The word **"and a common seal"** shall be omitted | Making common seal optional |

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| | | of exercising all the functions of an incorporated company under this Act and having perpetual succession **and a common seal** with power to acquire, hold and dispose of property, both movable and immovable, tangible and intangible, to contract and to sue and be sued, by the said name. | | |
| **Sec 11(1)** | Commencement of Business etc., | A company having a share capital shall not commence any business or exercise any borrowing powers unless a declaration is filed by a director in such form and verified in such manner as may be prescribed, with the Registrar that every subscriber to the memorandum has paid the value of the shares agreed to be taken by him **and the paid-up share capital of the company is not less than five lakh rupees in case of a public company and not less** | The word "**and the paid-up share capital of the company is not less than five lakh rupees in case of a public company and not less than one lakh rupees in case of a private company"** shall be omitted. | To omit the requirement for minimum paid-up share capital, and consequential changes; |

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| | | **than one lakh rupees in case of a private company** on the date of making of this declaration | | |
| **Sec 12(3)(b)** | Registered Office of Company | Every company shall—<br>(b) have its name engraved in legible characters on its seal; | Every company shall—<br>“(b) have its name engraved in legible characters on its seal, **if any**;” | Making common seal optional |
| **Sec 22** | Execution of Bills of Exchange, etc., | 22. (1) A bill of exchange, hundi or promissory note shall be deemed to have been made, accepted, drawn or endorsed on behalf of a company if made, accepted, drawn, or endorsed in the name of, or on behalf of or on account of, the company by any person acting under its authority, express or implied.<br><br>(2) A company may, by writing **under its common seal**, authorise any person, either generally or in respect of any specified matters, as its attorney to execute other deeds on its behalf in any place either in or | (i) in sub-section (2),—<br>(a) for the words **“under its common seal”**, the words **“under its common seal, if any,”** shall be substituted;<br>(b) **the following proviso shall be inserted, namely:—**<br>**“Provided that in case a company does not have a common seal, the authorization under this sub-section shall be made by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary.”;**<br><br>(ii) in sub-section (3), the words ‘‘and have the effect as if it were made | Making common seal optional, and consequential changes for authorization for execution of documents |

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| | | outside India.<br><br>(3) A deed signed by such an attorney on behalf of the company and under his seal shall bind the company **and have the effect as if it were made under its common seal.** | under its common seal", shall be omitted. | |
| **Sec 46(1)** | Certificate of Shares | (1) 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. | For the words **"issued under the common seal of the company",** the words **"issued under the common seal, if any, of the company or signed by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary"** shall be substituted. | Making common seal optional, and consequential changes for authorization for execution of documents |
| **Sec 76A** | Punishment for contravention of section 73 or Section 76. | No such section | Where a **company accepts or invites or allows** or causes **any other person** to accept or invite **on its behalf any deposit in contravention of** the manner or the conditions prescribed under **sec 73 or sec 76 or rules** made thereunder or if a | to provide for punishment for deposits accepted in violation of the provisions of the said Act |

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| | | | company **fails to repay the deposit** or part thereof **or any interest** due thereon **within the time** specified **under sec 73 or sec 76 or rules** made thereunder or such further time as may be allowed by the Tribunal under sec 73,—<br><br>(a) the **company** shall, **in addition** to the **payment of the amount of deposit** or part thereof and the interest due, be **punishable with fine** which shall **not be less than Rs. 1 crore but which may extend to Rs. 10 crore** ; and<br><br>(b) **every officer** of the company who is in default shall be **punishable with imprisonment** which **may extend to 7 years or with fine which shall not be less than Rs. 25 lakh but which may extend to Rs. 2 crore**, or with both:<br><br>Provided that if it is | |

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| | | | proved that the officer of the company who is in default, has contravened such provisions knowingly or willfully with the intention to deceive the company or its shareholders or depositors or creditors or tax authorities, he shall be liable for action under section 447.”. | |
| **Sec 117** | Resolutions and agreements to be filed. | (3) The provisions of this section shall apply to—<br>(a) special resolutions;<br>(b) resolutions which have been agreed to by all the members of a Co., but which, if not so agreed to, would not have been effective for their purpose unless they had been passed as special resolutions;<br>(c) any resolution of the BOD of a Co. or agreement executed by a Co., relating to the appointment, re-appointment or renewal of the appointment, or variation of the terms of appointment, of a MD; | in sub-section (3),<br>(i) **in clause (g), the word ‘‘and’’ occurring at the end shall be omitted**;<br>(ii) **after clause (g), the following proviso shall be inserted, namely:—**<br>**“Provided that no person shall be entitled under section 399 to inspect or obtain copies of such resolutions; and”.** | To prohibit public inspection of Board resolutions filed in the Registry |

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| | | (d) 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;<br>and all resolutions or agreements which effectively bind such class of members though not agreed to by all those members;<br>(e) 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;<br>(f) resolutions requiring a company to be wound up voluntarily passed in pursuance of section 304;<br>(g) resolutions passed in pursuance of sub-section (3) of section | | |

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| | | 179; **and** **(h) Any other resolution or agreement as may be prescribed and placed in the public domain.** | | |
| **Sec 123** | Declaration of dividend | (1) No dividend shall be declared or paid by a Co. for any FY except—<br>(a) out of the profits of the Co. for that year arrived at after providing for dep. in accordance with the provisions of sub-section (2), or out of the profits of the Co. for any previous FY year or years arrived at after providing for dep. in accordance with the provisions of that sub-section and remaining undistributed, or out of both; or<br><br>(b) out of money provided by the CG or a SG for the payment of dividend by the Co. in pursuance of a guarantee given by that Govt:<br><br>Provided that a Co. | In sub-section (1), after the third proviso, the following proviso shall be inserted, namely:—<br>**"Provided also that no company shall declare dividend unless carried over previous losses and depreciation not provided in previous year or years are set off against profit of the company for the current year."** | To include provisions for writing off past losses/depreciation before declaring dividend for the year |

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| | | may, before the declaration of any dividend in any FY, transfer such % of its profits for that FY as it may consider appropriate to the reserves of the company:<br><br>Provided further that where, owing to inadequacy or absence of profits in any FY, any Co. 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 in accordance with such rules as may be prescribed in this behalf:<br><br>Provided also that no dividend shall be declared or paid by a company from its reserves other than free reserves. | | |
| **Sec 124** | Unpaid Dividend Account. | (*6*) All shares in respect of which **unpaid or** | In section 124 of the principal Act, in sub- | For rectifying the requirement of |

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| | | **unclaimed dividend has been transferred under sub-section (*5*) shall also be** transferred by the company in the name of Investor Education and Protection Fund along with a statement containing such details as may be prescribed: | section (6),—<br>(i) **for the words, brackets and figure "unpaid or unclaimed dividend has been transferred under sub-section (5) shall also be**", the words **"dividend has not been paid or claimed for seven consecutive years or more shall be**" shall be substituted;<br><br>(ii) after the above proviso, the following explanation shall be inserted, namely:—<br>**"Explanation.—For the removals of doubts it is hereby clarified that in case any dividend is paid or claimed for any year during the said period of seven consecutive years, the share shall not be transferred to Investor Education and Protection Fund.''.** | transferring equity shares for which unclaimed/unpaid dividend has been transferred to the Investors Education and Protection Fund even though subsequent dividend(s) has been claimed |
| **Sec 134** | Financial statement, Board's report, etc | (1) The f.st., including consolidated f.st., if any, shall be approved by the BOD before they are signed on | In section 134 of the principal Act, in sub-section (3), after clause (c), the following clause shall be inserted, | To incorporate enabling provisions to prescribe thresholds beyond which fraud shall be reported to the Central Government |

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| | | behalf of the Board at least by the chairperson of the Co. where he is authorised by the Board or by two directors out of which one shall be MD and the CEO, if he is a director in the Co., the CFO and the CS of the Co., wherever they are appointed, or in the case of a OPC, only by one director, for submission to the auditor for his report thereon.<br>(2) The auditors' report shall be attached to every f.st.<br>(3) There shall be attached to statements laid before a Co. in GM, a report by its BOD, which shall include—<br>(a) the extract of the annual return as provided under sub-section (3) of section 92;<br>(b) number of meetings of the Board;<br>(c) Directors' Responsibility Statement; | namely:—<br>**"(ca) details in respect of frauds reported by auditors under sub-section (12) of section 143 other than those which are reportable 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 |

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| | | (d) a statement on declaration given by independent directors under sub-section (6) of section 149;<br>(e) in case of a Co. covered under sub-section (1) of section 178, company's policy on directors' appointment and remuneration including criteria for determining qualifications, positive attributes, independence of a director and other matters provided under sub-section (3) of section 178;<br>(f) explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made—<br>(i) by the auditor in his report; and<br>(ii) by the company secretary in practice in his secretarial audit report;<br>(g) particulars of loans, guarantees or investments under section 186; | | |

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| | | (h) particulars of contracts or arrangements with related parties referred to in sub-section (1) of section 188 in the prescribed form;<br>(i) the state of the company's affairs;<br>(j) the amounts, if any, which it proposes to carry to any reserves;<br>(k) the amount, if any, which it recommends should be paid by way of dividend;<br>(l) material changes and commitments, if any, affecting the financial position of the company which have occurred between the end of the financial year of the company to which the financial statements relate and the date of the report;<br>(m) the conservation of energy, technology absorption, foreign exchange earnings and outgo, in such manner as may be prescribed; | | |
| **Sec 143** | Powers and duties of auditors | (12) Notwithstanding anything contained in | In section 143 of the principal Act, for sub- | To incorporate enabling provisions to prescribe |

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| | and auditing Standards. | this section, if an auditor of a company, in<br>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. | section (12), the following sub-section shall be substituted, namely:—<br>**“(12) Notwithstanding anything contained in this section, if an auditor of a company in the course of the performance of his duties as auditor, has reason to believe that an offence of fraud involving such amount or amounts as may be prescribed, is being or has been committed in the company by its officers or employees, the auditor shall report the matter to the Central Government within such time and in such manner as may be prescribed:**<br>**Provided that in case of a fraud involving lesser than the specified amount, the auditor shall report the matter to the audit committee constituted under section 177 or to the Board in other cases within such time** | 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 |

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| | | | **and in such manner as may be prescribed: Provided further that the companies, whose auditors have reported frauds under this sub-section to the audit committee or the Board but not reported to the Central Government, shall disclose the details about such frauds in the Board's report in such manner as may be prescribed.”** | |
| **Sec 177** | Audit Committee | (4) Every Audit Committee shall act in accordance with the terms of reference specified in writing by the Board which shall, inter alia, include,—<br>(i) the recommendation for appointment, remuneration and terms of appointment of auditors of the company;<br>(ii) review and monitor the auditor’s independence and performance, and effectiveness of audit process; | In section 177 of the principal Act, in sub-section (4), in clause (iv), the following proviso shall be inserted, namely:—<br>**"Provided that the Audit Committee may make omnibus approval for related party transactions proposed to be entered into by the company subject to such conditions as may be prescribed;".** | To provide provision empowering Audit Committee to give omnibus approvals for related party transactions on annual basis |

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| | | (iii) examination of the financial statement and the auditors' report thereon;<br>**(iv) approval or any subsequent modification of transactions of the company with related parties;**<br>(v) scrutiny of inter-corporate loans and investments;<br>(vi) valuation of undertakings or assets of the company, wherever it is necessary;<br>(vii) evaluation of internal financial controls and risk management systems;<br>(viii) monitoring the end use of funds raised through public offers and related matters. | | |
| **Sec 185** | Loan to directors, etc. | 185. (1) Save as otherwise provided in this Act, no company shall, directly or indirectly,<br>advance any loan, including any loan represented by a book debt, to any of its directors or to any | In section 185 of the principal Act, in sub-section (1), in the proviso, after clause (b), the following clauses and proviso shall be inserted, namely:—<br>**"(c) any loan made by a holding company to its wholly owned** | To provide for exemption u/s 185 (Loans to Directors) provided for loans to wholly owned subsidiaries and guarantees/securities on loans taken from banks by subsidiaries |

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| | | 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:<br>Provided that nothing contained in this sub-section shall apply to—<br>(a) the giving of any loan to a managing or whole-time director—<br>(i) as a part of the conditions of service extended by the company to all its employees; or<br>(ii) pursuant to any scheme approved by the members by a special resolution; or<br>(b) 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 loans an interest is charged at a rate not less than the bank rate declared by the<br>Reserve Bank of India. | **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; or**<br>**(d) any guarantee given or security provided by a holding company in respect of loan made by any bank or financial institution to its subsidiary company:**<br>**Provided that the loans made under clauses (c) and (d) are utilised by the subsidiary company for its principal business activities."** | |

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| **Sec 188** | Related party transactions. | (1) Except with the consent of the BOD given by a resolution at a meeting of the Board and subject to such conditions as may be prescribed, no Co. shall enter into any contract or arrangement with a related party with respect to—<br>(a) sale, purchase or supply of any goods or materials;<br>(b) selling or otherwise disposing of, or buying, property of any kind;<br>(c) leasing of property of any kind;<br>(d) availing or rendering of any services;<br>(e) appointment of any agent for purchase or sale of goods, materials, services or property;<br>(f) such related party's appointment to any office or place of profit in the company, its subsidiary company or associate company; and<br>(g) underwriting the subscription of any | In section 188 of the principal Act, **in sub-section (1),—**<br>(i) for the words **"special resolution"**, at both the places where they occur, the word **"resolution"** shall be substituted;<br>(ii) **after the third proviso, the following proviso shall be inserted, namely:—**<br>***"Provided also that the requirement of passing the resolution under first proviso shall not be applicable for transactions entered into between a holding company and its wholly owned subsidiary whose accounts are consolidated with such holding company and placed before the shareholders at the general meeting for approval.";***<br>(iii) **in sub-section (3),** for the words **"special resolution",** the word **" resolution"** shall be substituted. | For replacing 'special resolution' with 'resolution' for approval of related party transactions by non-related shareholders |

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| | | securities or derivatives thereof, of the company:<br>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:<br>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:<br>Provided also that nothing in this sub-section shall apply to any transactions entered into by the company in its ordinary course of business other than transactions | | |

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| | | which are not on an arm's length basis.<br><br>(3) Where any contract or arrangement is entered into by a director or any other employee, without obtaining the consent of the Board or approval by a special resolution in the general meeting under sub-section (1) and if it is not ratified by the Board or, as the case may be, by the shareholders at a meeting within three months from the date on which such contract or arrangement was entered into, such contract or arrangement shall be voidable at the option of the Board and if the contract or arrangement is with a related party to any director, or is authorised by any other director, the directors concerned shall indemnify the company against any loss incurred by it. | | |

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| **Sec 212** | Investigation into affairs of Company by Serious Fraud Investigation Office. | (6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, **the offences covered under sub-sections (5) and (6) of section 7, section 34, section 36, subsection (1) of section 38, sub-section (5) of section 46, sub-section (7) of section 56, subsection (10) of section 66, sub-section (5) of section 140, sub-section (4) of section 206, section 213, section 229, sub-section (1) of section 251, sub-section (3) of section 339 and section 448 which attract the punishment for fraud provided in section 447** of this Act shall be cognizable and no person accused of any offence under those sections shall be released on bail or on his own bond unless—<br>(i) the Public Prosecutor has been given an opportunity to oppose the application | In section 212 of the principal Act, in sub-section (6), for the words, brackets and figures **"the offences covered under sub-sections (5) and (6) of section 7, section 34, section 36, sub-section (1) of section 38, sub-section (5) of section 46, sub-section (7) of section 56, sub-section (10) of section 66, sub-section (5) of section 140, sub-section (4) of section 206, section 213, section 229, sub-section (1) of section 251, sub-section (3) of section 339 and section 448 which attract the punishment for fraud provided in section 447"**, the words and figures **"offence covered under section 447"** shall be substituted. | To provide for bail restrictions to apply only for offence relating to fraud u/s 447; |

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| | | for such release; and<br>(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail: | | |
| **Sec 223** | Inspector's report. | (4) The report of any inspector appointed under this Chapter shall be authenticated either—<br>(a) **by the seal** of the company whose affairs have been investigated; or<br>(b) by a certificate of a public officer having the custody of the report, as provided under section 76 of the Indian Evidence Act, 1872,<br>and such report shall be admissible in any legal proceeding as evidence in relation to any matter contained in the report. | In section 223 of the principal Act, in sub-section (4), in clause (a), **for the words "by the seal", the words "by the seal, if any," shall be substituted.** | To provide for winding up cases to be heard by 2-member Bench instead of a 3-member Bench |
| **Sec 419** | Benches of Tribunal. | (4) The President shall, for the disposal of any case relating to | In section 419 of the principal Act, in sub-section (4), the words | |

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| | | 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. | "or winding up" shall be omitted. | |
| **Sec 435** | Establishment of Special Courts. | (1) The Central Government may, for the purpose of providing speedy **trial of offences under this Act,** by notification, establish or designate as many Special Courts as may be necessary. | In section 435 of the principal Act, in sub-section (1),—<br>(i) for the words **"trial of offences under this Act"** the words **"trial of offences punishable under this Act with imprisonment of two years or more"** shall be substituted;<br>(ii) **the following proviso shall be inserted, namely:—**<br>***"Provided that all other offences shall be tried, as the case may be, by a Metropolitan Magistrate or a Judicial Magistrate of the First Class having jurisdiction to try any offence under this Act or under any previous company law."***. | To provide for that Special Courts to try only offences carrying imprisonment of two years or more |
| **Sec 436** | Offences triable | (1) Notwithstanding | In section 436 of the | |

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| | by<br>Special Courts. | anything contained in the Code of Criminal Procedure, 1973,—<br>(a) **all offences under this Act** shall be triable only by the Special Court established for the area in which the registered office of the company in 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; | principal Act, in sub-section (1), in clause (a), for the words **"all offences under this Act"**, the words, brackets and figures **"all offences specified under sub-section (1) of section 435"** shall be substituted. | |