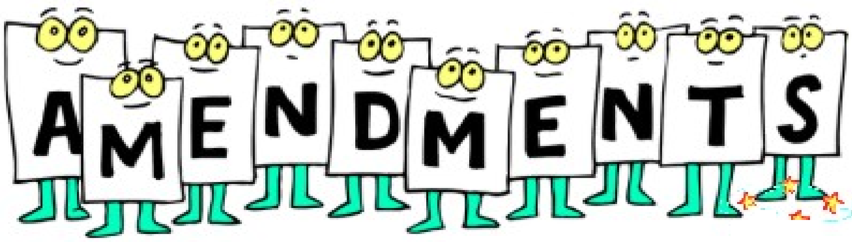
The Companies (Amendment) Bill, 2014



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COMPANIES AMENDMENT BILL 2014

A Glance at the Changes proposed!

Companies Act, 2013 (Act) which was notified on 29.08.2013 has brought about enormous changes in almost every sphere of Corporate Compliance, Management and Administration.

Out of 470 sections in the Act, 283 sections and 22 sets of Rules corresponding to such sections have so far been brought into force. Barring provisions relating to Chapters XV to XX and certain other provisions relating to setting up of/exercise of powers by National Company Law Tribunal (NCLT)/National Company Law Appellate Tribunal (NCLAT); Investor Education and Protection Fund (IEPF'); National Financial Reporting Authority (NFRA) and Special Court, all provisions of the Act have been brought into force with effect from 1st April, 2014 or wherever applicable from 12.09.2013. This indicates that many provisions of the Act are yet to be enforced.

Some of the major concerns raised by the stakeholders regarding the Act are onerous reporting requirements, practical difficulties in complying with requirements laid down in some of the commenced provisions, repeated compliance provisions in some cases and stringent provisions relating to punishment for defaults for complying with procedural laws. Another concern is withdrawal of almost all the exemptions and privileges, barring a very few, available to private companies under the six decade old Companies Act, 1956.

In order to iron out procedural issues, remove stringent laws, and to improve business sentiment in the country the Cabinet has approved some changes in the provisions of the new Companies Act, 2013.

The Lok Sabha has passed the Companies (Amendment) Bill, 2014 (the Bill) on 17.12.2014. However, the Bill is still to be passed by the Rajya Sabha and thus is still to come into force as on date!

The Bill aims at making it easier for corporates to do business in India. ***The Bill, sought to remove some "oppressive provisions" in the Companies Act, 2013 which would foster the investment climate by attracting more foreigners to open up businesses in India, Finance Minister Arun Jaitley told the Parliament.***

AMDENDMENTS AT A GLANCE

1

What's the Change?

- Dispensing with the requirement of minimum paid up share capital for companies and consequential changes

Reason for bringing the change

- For ease of doing business

Effect on Corporates

- The requirement of maintanence of minimum paid up capital of Rs. 1 Lakh by Private Companies and Rs. 5 Lakhs by Public Companies will no longer be applicable. While this may not have a significant impact on the corporates, it will lower cost of registration.

Sections likely to be amended

- Section 2(68), 2(70) and 11

2

What's the Change?	• Making common seal optional, and consequential changes for authorization for execution of documents
Reason for bringing the change	• For ease of doing business
Effect on Corporates	• Will reduce procedural time and formalities in executing documents
Sections likely to be amended	• Sections 9, 12, 22, 46 and 223

3

What's the Change?	Reason for bringing the change	Effect on Corporates	Sections likely to be amended
• Providing for punishment for deposits accepted in violation of provisions of the Act	• To remove an omission. This was left out in the Act inadvertently	• Stringent penalty prescribed for acceptance of deposits in contravention of the provisions of the Act and Rules made thereunder.	• Insertion of new Section 76A

4

What's the Change?	Reason for bringing the change	Effect on Corporates	Sections likely to be amended
Prohibiting public inspection of Board resolutions filed in the Registry.	To meet corporate demand	Board Resolutions filed through e-form MGT 14 pursuant to Section 117 r/w Section 179(3) will not be available for public inspection. Nevertheless, the requirement to file the form will still continue	Section 117(3)(g)

5

What's the Change?

Including provision for writing off past losses/depreciation before declaring dividend for the year

Reason for bringing the change

This was missed in the Act but included in the Rules

Effect on Corporates

No major impact. This was missed out in the Act but provided for in the Rules. No Company to declare dividend unless carried over previous losses and depreciation not provided in previous years are set off against profit of current year.

Sections likely to be amended

Insertion of new proviso in Section 123(1)

6

What's the Change?

- Rectifying the requirement of 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

Reason for bringing the Change

- To meet corporate demand

Effect on Corporates

- The shares on which unclaimed dividend is subsequently claimed and paid will not be required to be transferred to IEPF

Sections likely to be Amended

- Section 124(6)

7

What's the Change?

- To incorporate 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.

Reason for bringing the change

- Demand of auditors

Effect on Corporates

- The proposed amendment seeks to quantify the amount of fraud which needs to be reported to Central Government and below the said amount to the Audit Committee of the Company. These frauds will have to be disclosed in the Board's Report by the Company.

Sections likely to be amended

- Section 134 (3) and 143 (12)

8

What's the Change?	Reason for bringing the change	Effect on Corporates	Section likely to be modified
Exemption provided for loans to wholly owned subsidiaries and guarantees /securities on loans taken from banks by subsidiaries	This was provided under the Rules but being included in the Act as a matter of abundant caution	Loans /guarantees / securities permitted to be made to <u>wholly owned subsidiaries.</u> No major impact as this was already provided in the Rules and is being now included in the Act as matter of abundant precaution.	Section 185

9

What's the Change?	Reason for bringing the change	Effect on Corporates	Sections likely to be amended
• Empowering audit committee to give omnibus approvals for related party transactions on annual basis	• Align with SEBI policy and increase ease of doing business	• This amendment will help remove practical difficulties and time lags in obtaining audit commitee approval for every related party transaction individually	• Section 177(4)

10

What's the Change?	Reason for bringing the Change	Effect on Corporates	Section likely to be amended
Replacing 'special resolution' with 'ordinary resolution' for approval of related party transactions by non-related shareholders	To meet problems faced by large stakeholders who are related parties	Will simplify the procedure for obtaining approval for related party transactions. Nevertheless, listed companies will still have to comply with listing agreement requirements which requires special resolution for material transactions.	Section 188

11

What's the Change?

- Exempt related party transactions between holding companies and wholly owned subsidiaries from the requirement of approval of non-related shareholders.

Reason for bringing the change

- To meet corporate demand

Effect on corporates

- The requirement of Ordinary Resolution will not be applicable for related party transaction between a company and its WOS whose accounts are consolidated with the company.

Sections likely to be amended

- Section 188

What's the Change?	Reason for bringing the change	Effect on Corporates	Sections likely to be modified
Bail restrictions to apply only for offence relating to fraud u/s 447	Though earlier provision is mitigated, concession is made to Law Ministry & Enforcement Directorate	It is proposed to delete references to 14 sections made under section 212 for which the punishment is as provided u/s 447. These offences are proposed to be made cognizable.	Section 212

13

What's the Change?	Reason for bringing the change	Effect on corporates	Sections likely to be modified
• Winding Up cases to be heard by 2-member Bench instead of a 3-member Bench	• Removal of an inadvertent error	• Will help remove practical difficulties. But no major impact.	Provisions of Chapter XX relating to Winding Up

What's the Change?

- Special Courts to try only offences carrying imprisonment of two years or more

Reason for bringing the change

- To let magistrate try minor violations

Effect on Corporates

- Will reduce burden of special courts. No major impact on corporates.

Sections likely to be modified

- Section 435 and 436

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