COMPANIES (AMENDMENT) BILL, 2014

The lower house of Parliament passed the Companies (Amendment) Bill, 2014 but it is pending at the level of upper house and president. But the proposed changes shall come into force on such dates when Central Government may by notification in official gazette appoint such date and different dates for different provisions for their enforcement. Following changes have been proposed in the bill:

1. Omitting requirement of minimum Share Capital for ease of doing business:

a) Private Company [2(68)]: The requirement of minimum capital of ` 100,000 have been omitted in the proposal.

b) Public Company [2(71)]: The requirement of minimum share capital of ` 500,000 have been omitted as per proposal.

c) Commencement of business [sec. 11]: The consequential change by omitting the minimum capital requirement in Private and Public Company has been proposed in the section.

2. Omitting mandatory requirement of affixing common seal for ease of doing business:

a) Section 9: The mandatory requirement of affixing common seal has been omitted while doing business on behalf of the company whether its acquire, hold and dispose of property, both movable and immovable, tangible and intangible, to contract and to sue and be sued, by said name. [For ease of doing business] b) Section 12(3)

(b): The requirement of keeping common seal by the company made optional.

c) Execution of bills of exchange, etc. [Section 22]: In case of authorization to any person for execution of bills of exchange, etc., affixing of common seal on authorization letter has made optional.

One proviso has been proposed to be inserted after sub-section (2) stating that if a company does not have common seal, the authorization under this section shall be made by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary.

Further, on the deed signed by such an attorney on behalf of company, affixing of common seal is made optional.

d) Certificate of shares [Section 46]: Share Certificate issued under common seal of the company made optional. But in case, company is availing this option, Share Certificate has to be signed by two directors or by a director and a Company Secretary, wherever the company has appointed a Company Secretary.

e) Section 223(4)(a): The report of any inspector appointed by Central Government shall be authenticated, whether common seal of the company whose affairs have been investigated will be affixed on report or not. Affixing of common seal on such report made optional.

3. Inserting a new section to provide for punishment for deposits accepted in violation of the Companies Act, 2013

Section 76A: If a company accepts or invites or allows any deposit in contravention of the section 73 or section 76 or rules made thereunder or If a company fails to repay the deposit or any interest due thereon within the time specified u/s 73 or 76 or rules made thereunder or such other time as allowed by tribunal as per sec. 73, then:

• The company shall alongwith the amount of deposit and interest due, be punishable with the fine which shall not be less than INR 1 crore but may extend to INR 10 crore; and

• Every defaulting officer shall be punishable with imprisonment which maximum of seven years or fine minimum of INR 25 Lacks but maximum to INR 2 crores or with both. Further, if it is proved that the defaulting officer of the company has contravened such provisions knowingly or willfully with the intention to deceive company or its shareholders or depositors etc., he shall be liable for actions u/s 447.

4. Amending section 117 to prohibit public to inspect board resolutions filed with the registrar: Proviso inserted after clause (g) of sub-section (3) of section 117 which states that public cannot inspect or obtain copies of the board resolutions filed the registrar (ROC) as like other documents.

5. Amending section 123 (Declaration of dividend) to add provisions for writing off past losses/depreciation before declaring dividend: th 4 proviso has been proposed to be inserted which states that company shall declare dividend only when, 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.

6. Amending section 124 to give benefits to shareholders who have not claimed dividends: As per proposal, the earlier condition of transferring shares to "Investor Education and Protection Fund" was dividend should remain unclaimed or unpaid for a period of 7 years. But now this condition has been changed to seven consecutive years. Clarification has also been inserted in the form of Explanation which states that if 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.

7. Enabling provisions to prescribe thresholds beyond which fraud shall be reported to Central Government, below the threshold, it will be reported toAudit Committee.

Disclosure of the fraud below the threshold also be made in the Board's Report:

• Section 143(12): This sub-section has been substituted. As per new sub-section, if and auditor of the company while doing audit, finds any fraud involving such amount or amounts as may be prescribed, is being or has been committed by company by its officer or employee, the auditor shall report the matter to the Central Government. Earlier, there was no restriction of amount of fraud, any amount of fraud has to be reported to Central Government. In case, auditor finds fraud of lesser amount than the specified amount, then he has to report this fraud to Audit Committed or Board, as the case may be. In case, auditor reported fraud of specified amount to Audit Committee/Board but has not reported to Central Government, then the company shall disclose the details about such frauds in the Board's report.

• Section 134(3): The corresponding amendment made in this sub-section by inserting clause (ca) after clause (c) which states that Board's Report of the company shall include the details in respect of frauds [having lesser amount than the specified amount] reported by auditor other than those which are reportable to Central Government.

8. To align with SEBI policy and for ease of business, Empowering audit committee to give omnibus approvals for related party transactions on annual basis: Proviso has been proposed to be inserted in clause (iv) of sub-section (4) of section 177, which states thatAudit committee may make omnibus approval for related party transactions proposed to be entered into by the company subject to some conditions [which may be prescribed under rules].

9. Exemption introduced in section185 for loans to wholly owned subsidiaries and guarantees/securities on loans taken from bank by subsidiaries: Clause (c) and (d) inserted after clause (b) of the proviso of section 185(1); As per clause (c) any loan made or any guarantee/security provided by a holding company to its wholly owned subsidiary company shall be out of the purview of section 185. As per clause (d), any guarantee given or security provided by a holding company to its subsidiary company shall also be out of purview of section 185. Proviso has also been introduced after clause (c) and (d), as per that proviso the loans made under (c) and (d) are to be utilized by the subsidiary company for its principal business activities only.

10. Amending section 188 for replacing 'special resolution' with 'resolution' for approval of related party transaction by non-related shareholder: In sub-section (1) of section 188, the word 'special resolution', at both the place where they occur, the word 'resolution' shall be substituted. In sub-section (3) also, for the words "special resolution", the word "resolution" shall be substituted.

11. Amending sub-section (1) of section 188 to exempt related party transactions between holding companies and wholly owned subsidiaries from the requirement of approval of non-related shareholders: the After the third proviso, 4 proviso has been inserted, which states that the requirement of passing the resolution under the 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 co and placed before the shareholders at the general meeting for approval.

12. Amending sub-section (6) of section 212 to provide for bail restrictions to apply only for offense relating to fraud u/s 447: In sub-section (6) for the words, brackets and figures "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, subsection (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 "offense covered under section 447" shall be substituted.

13. Amending section 419(4) to provide for winding up cases to be heard by 2-member bench instead of 3-member bench: In sub-section

(4) of section 419, the word "or winding up" shall be omitted.

14. Amending section 435 and 436 to provide for that Special Courts to try only offences carrying imprisonment of two years or more: **Section 435:** In sub-section (1) of section 435 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. Proviso has also been introduced after sub-section (1) which states that all other offences shall be tried by a Metropolitan Magistrate or a Judicial Magistrate of the Firs Class having jurisdiction to try any offence under this act or under any previous company law. Section 436: In clause (a) of sub-section (1) of section 436 for the words "all offences under thisAct", the words "all offences specified under sub-section (1) of section435" shall be substituted