The Companies (Amendment) Act, 2015

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COMPANIES AMENDMENT ACT, 2015

A look at the changes introduced in the Act

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.

Every change brings with it some complexities, resistance and issues. 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 Companies Amendment Act, 2015 has been notified. The Amendment Act aims at making it easier for corporates to do business in India.

Notifications have also been recently released by MCA recently granting certain reliefs and relaxations to Private Companies, Government Companies, Nidhi Companies and Companies Registered u/s 8. A combined reading of these notifications along with the Companies Amendment Act, 2015 will throw better light on the applicability of the various provisions of the Companies Act, 2013 to various classes of Companies.

The present write up presents an overview of the changes introduced by the Companies Amendment Act, 2015.

AMENDMENTS AT A GLANCE

1

What's the Change?

- Dispensing with the requirement of minimum paid up share capital for companies and commencement of business

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. The requirement of filing form for commencement of business has also been done away with and consequentially the power of Registrar to remove name of Compay from register for not filing commencement of business has also been removed.

Sections amended

- Section 2(68) , 2(70), 11 and 248

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 amended

- Sections 9, 12, 22, 46 and 223

3

What's the Change?

- Providing for punishment for deposits accepted in violation of provisions of the Act

Reason for bringing the change

- To remove an omission. This was left out in the Act inadvertently

Effect on Corporates

- 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 one crore rupees but which may extend to ten crore rupees; and
- (b) every officer of the company who is in default shall be punishable with imprisonment which may extend to seven years or with fine which shall not be less than twenty-five lakh rupees but which may extend to two crore rupees, or with both

Section amended

- Insertion of new Section 76A

4

What's the Change?	Reason for bringing the change	Effect on Corporates	Section 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)

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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.

Section 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

- In case the unclaimed dividend is subsequently claimed and paid during the period of 7 years, transferring equity shares to IEPF will not be required

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 amended

- Section 134 (3) and 143 (12). This is is yet to be notified.

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 permitted to be made to wholly owned subsidiaries and guarantees / securities to subsidiaries. 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 companies in removing 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 seeking member's approval 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

12

What's the Change?	Reason for bringing the change	Effect on Corporates	Sections likely to be modified
Bail restrictions to apply for all offences relating to fraud u/s 447	Though earlier provision is mitigated, concession is made to Law Ministry & Enforcement Directorate	The specific references made about certain sections in Section 212 have been removed. Now all offences covered u/s 447 will fall within the ambit of Section 212 as cognizable offences	Section 212

13

What's the Change?

- Winding Up cases to be heard by 2-member Bench instead of a 3-member Bench

Reason for bringing the change

- Removal of an inadvertent error

Effect on corporates

- Will help remove practical difficulties

Sections likely to be modified

Provisions of Chapter XX relating to Winding Up

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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

15

What's the Change?

- In calculating the period of 30 days, for which any notification proposing to exempt any class of companies from any provision of the Act, has to be placed before the Houses of Parliament, the period during which the Houses are prorogued or adjourned for more than 4 consecutive days shall not be considered.

Reason for bringing the change

- To bring clarity regarding the calculation of duration for which any notification has to be laid before the Houses of Parliament for its approval.

Effect on Corporates

- Earlier the provision provided that the period of 30 days may be comprised in one session or in two or more successive sessions. Now that provision has been removed and replaced with the provision that any period exceeding 4 days during which the Houses are adjourned or prorouged will not be counted.

Sections likely to be modified

- Section 462

Provisions of Sections 1 to 12 and 15 to 23 of the said Companies Amendment Act, 2015 came into force w.e.f 29.05.2015.

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