

Companies (Amendment) Bill, 2014

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

The Companies Act, 2013 (Act) was notified on 29.8.2013. 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. In order to address some issues raised by stakeholders such as Chartered Accountants and professionals, following amendments in the Act have been proposed:

S. No.	Proposed Amendments	Our brief comments (Would vary on actual wordings of the Amendment Bill)
1	Omitting requirement for minimum paid up share capital, and consequential changes. (For ease of doing business)	All private companies already have Rs. 1 Lac and Public Companies Rs. 5 Lac paid up capital. Would reduction of capital be allowed? The limits were prescribed by Companies (Amendment) Act 2000. Not much of ease.
2	Making common seal optional, and consequential changes for authorization for execution of documents. (For ease of doing business)	Good amendment.
3	Prescribing specific punishment for deposits accepted under the new Act. This was left out in the Act inadvertently. (To remove an omission)	No clarity on acceptance of deposits from shareholders and relatives of directors by Private company. This would be another punishment, which could be much harsher.
4	Prohibiting public inspection of Board resolutions filed in the Registry. (To meet corporate demand)	Corporate demand was to scrap filing of board resolutions for private companies to reduce over compliance. What would be the benefit to stakeholders (except MCA) if they cannot see what the company has resolved and filed?

This document has been compiled as service to our clients. We recommend that you seek professional advise prior to initiating action on specific issues.

Lunawat & Co.

Chartered Accountants

E-mail: ca@lunawat.com, lunawat@vsnl.com.Website: www.lunawat.com.

		All waiting for notification which is pending for approval in Parliament.
5	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.	This to provide in Act, which was squeezed in through Rules
6	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)	Good amendment
7	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. (Demand of auditors)	Good Amendment
8	Exemption u/s 185 (Loans to Directors) 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).	This to provide in Act, which was squeezed in through Rules
9	Empowering Audit Committee to give omnibus approvals for related party transactions on annual basis. (Align with SEBI policy and increase ease of doing business)	Good Amendment
10	Replacing 'special resolution' with 'ordinary resolution' for approval of related party transactions by non-related shareholders. (Meet problems faced by large stakeholders who are related parties)	Problems not fully solved where there are only two shareholders, who are directors also and are also the related party for this purpose.
11	Exempt related party transactions between holding companies and wholly owned subsidiaries from the requirement of approval of non-related shareholders. (corporate demand)	Was envisaged in the draft notification with the parliament too. Amendment in act would be good

This document has been compiled as service to our clients. We recommend that you seek professional advise prior to initiating action on specific issues.

Lunawat & Co.

Chartered Accountants

E-mail: ca@lunawat.com, lunawat@vsnl.com.

Website: www.lunawat.com.

12	Bail restrictions to apply only for offence relating to fraud u/s 447. (Though earlier provision is mitigated, concession is made to Law Ministry & ED)	Good amendment
13	Winding Up cases to be heard by 2-member Bench instead of a 3-member Bench. (Removal of an inadvertent error)	Technical flaw corrected
14	Special Courts to try only offences carrying imprisonment of two years or more. (To let magistrate try minor violations).	Administrative amendment

Comment by CA. Pramod Jain

Much more was expected. These amendments would not ease the doing of business by most of the small and private companies. Lot is expected related relaxations and exemptions with regard to private placement (s. 42), preferential issue (s. 62), deposits from shareholders and relative of directors (deposit rules), giving of loan to director (s. 185), making loans and investments (s. 186) for private companies.

May be notification (draft) pending for approval in the Parliament could be of some help if issued by the MCA at the earliest