

# Make in India / Ease of doing Business in India

## Big Problems for Indian Companies

I truly believe in 'Make in India' concept and initiatives taken for 'Ease of doing Business in India' and applaud Modi ji for such great initiatives.

However, I feel that **Indian Corporate Entrepreneurs are being overlooked**. Various issues in the Corporate Laws are hampering small Indian Corporates to work in current compliance environment. The following would explain the problems. I am also trying to suggest some easy solutions for the same:

<b>BRINGING IN CAPITAL</b>	
<b>Problem</b>	A company wants Mr. X to bring in Rs. 1 Lac as share capital – minimum time required to infuse the funds and use it is 30 working days. Immediate funds cannot be brought in any way
<b>Reason</b>	The procedure to be followed is under section 42 of companies Act 2013, which is a long, detailed and cumbersome. It includes requirement to call General Meeting of members with 21 days clear notice, preparation of detailed offer letter and filing of the same with Registrar, opening separate bank account just to receive even Rs. 1 Lac share application money, etc. On non-compliance, minimum penalty is Rs. 2 crores even for taking Rs. 1 Lac.
<b>Solution</b>	Remove the requirement of calling General Meeting of members and opening separate bank account for Private companies. Reduce the penalty to the extent of amount involved
<b>BRINGING LOANS</b>	
<b>Problem</b>	A relative of a director or shareholder of a private company wants to provide money for make in India to a private company. Also as prudent lender he / she also wants to get it returned back when the company is able to repay the same. It is not allowed under the Companies Act, 2013. This has resulted in huge bottleneck for arranging funds for doing business in India by private limited companies.
<b>Reason</b>	Companies (Acceptance of Deposit) Rules 2014 does not allow loans to be taken from shareholders and relatives of directors in case of private company. A private company can currently accept loans only from its directors and other companies in which the director is not interested. How would another company in which the director is not interested give loan in normal circumstances? A private company can take loan from an unlinked company (which practically is improbable) but it cannot take loans from its known persons i.e., relatives of directors and shareholders. How to have funds to do business?
<b>Solution</b>	Provide in Companies (Acceptance of Deposit) Rules 2014 that monies received from relative of a director or shareholder of a private company out of their own funds is not a deposit.

Prepared by

**CA. Pramod Jain**

B. Com(H), FCA, FCS, FCMA, LL.B, MIMA, DISA

<b>CONVERSION OF LOAN INTO EQUITY / ISSUE OF SHARES AGAINST PLANT &amp; MACHINERY</b>	
<b>Problem</b>	A company wants to convert its existing loan into equity or issue shares against purchase of plant or machinery. It is not allowed under the Companies Act 2013
<b>Reason</b>	The procedure under section 62 of companies Act 2013 read with Rule 13 of Companies (Share Capital and Debentures) Rules, 2014 states that if shares are to be issued on preferential basis then provisions of section 42 are also to be complied i.e., open separate bank account to receive money and then allot shares. How would a person who is to be allotted shares against plant & machinery pay money also? As per this provision it is impossible to issue shares for consideration other than cash. As in such cases compliance of section 42 is mandatory, which is practically not possible at all? Non-compliance minimum Penalty is Rs. 2 crores.
<b>Solution</b>	Remove the requirement of compliance of provisions of section 42 in case of preferential issue of shares in Rule 13 of Companies (Share Capital and Debentures) Rules, 2014.
<b>HUGE COMPLIANCES AND PENALTIES</b>	
<b>Problem</b>	A small private company has to file large number of resolutions and delay in filing beyond 300 days would result in minimum penalty of Rs. 5 lacs which could extend to Rs. 25 Lacs. For example a small private company with Rs. 1 Lac capital takes temporary loan from its director, but fails to file its resolution within 300 days. The above said penalty would be levied.
<b>Reason</b>	There are more than 24 types of transactions which include taking loans, investing money, giving loans, disclosure of directors' interest, etc., whose resolutions are to be passed and filed with registrar in compliance with s. 117 read with 179(3) and related rules. A small company may enter into these types of transactions which could be more than 50 such transactions in a year. In such a case the company would be busy in filing such forms again and again resulting in huge man-hours employed in non-productive compliances, huge costs and also fear of penalties and prosecution for such non-compliances
<b>Solution</b>	Provide in Rules that a private company is not required to file the resolutions passed under section 179(3).

There are various other issues also under Companies Act, 2013 however solution to these 4 problems would give huge relief to small corporates and allow them to use readily available finance with them for their businesses. It would also result in utilising their important man-hours in constructive building of the Nation.

A favourable response on these issues by the Government is in the best interest of nation and not any specific corporate business house. Solution to these problems would be a huge confidence building of corporate world that this new Government really means business.