
Companies (Amendment) Bill, 2014 passed by the Lok Sabha on December 17, 2014 – Key amendments and impact

18 December 2014



Introduction

The Companies Act 2013 ('the Act') is now largely operationalised with 283 sections and 22 sets of Rules corresponding to such sections having so far been brought into force. However, even with the new legislation being in its nascent months of implementation, there has been consistent request for simplification and clarifications on various aspects by the industry and professionals likewise.

Heeding to the continuous concerns raised by the stakeholders with regards the procedural difficulties, the Government has introduced the Companies (Amendment) Act, 2014 and has attempted to ease out the environment for doing business in India. The changes have also attempted to plug certain

obvious fissures ensuring the interest of public at large.

The Union Cabinet approved the introduction of the Companies (Amendment) Bill, 2014 on 2 December 2014 which has now been passed by the Lok Sabha on December 17, 2014. The Bill would now be presented before the Rajya Sabha, before it is finally sent to the President of India for his assent.

The key amendments include changes in provisions related to approval for related party transactions, fraud reporting by auditors, public inspection of board resolutions, restriction on bail in case of offences and other procedural relaxations.

Key amendments:***Approval for Related party transactions***Requirement of Special Resolution

Presently, Section 188 of the Act requires companies to obtain prior approval of the shareholders (who are not related parties) by a special resolution where the prescribed transaction proposed to be entered into by related parties satisfies prescribed conditions. The 'special resolution' requirement is now replaced with an 'ordinary resolution' for approval of related party transactions by such shareholders. Consequently, a simple majority approval of these shareholders (not being related parties) to be required for approving any related party transaction.

Similar to Clause 49 of the equity listing agreement, the revised Act expressly exempts the requirement of passing any resolution in case of any transaction between a holding company and its wholly owned subsidiary company whose accounts are consolidated with such holding company and placed before the shareholders at the general meeting for their approval.

Omnibus approval of Audit Committee

Presently, Clause 49 of the equity listing agreement permits an omnibus audit committee approval for a related party transaction proposed to be entered into by the company, subject to certain conditions to be valid for a period not exceeding one year.

To harmonise with the above conditions prescribed under the equity listing agreement, the Companies (Amendment) Bill 2014 also empowers an audit committee to provide omnibus approvals for related party transactions proposed to be entered into subject to compliance with the conditions as may be prescribed.

Inter-corporate loans

Section 185 of the Act does not provide any exemption for any loan / guarantee by holding company to its wholly owned subsidiary. Such

exemption was however brought in through Rule 10 of the Companies (Meetings of Board and its Powers) Rules, 2014 which exempted any:

- loan made by a holding company to its wholly-owned subsidiary company or any guarantee given or security provided by a holding company in respect of any loan made to its wholly-owned subsidiary company; and
- Guarantee given or security provided by a holding company in respect of loan made by any bank or financial institution to its subsidiary company

from the requirements of section 185 of the Act provided that loans are utilised by the subsidiary for its principal business activities.

To expressly clarify the said exemption under the Act and to avoid any conflict of applicability between the provisions of Act vis-a-vis the delegated powers under the rules, the above exemption is explicitly proposed to be included under section 185 of the Act.

Punishments/offencesContravention of acceptance of deposit provisions

While the Act provided specific penalties for violation of provisions concerning repayment of deposits accepted before the commencement of the Companies Act 2013, it inadvertently missed out on imposition of any penal provisions where the provisions of Section 73 or Section 76 dealing with acceptance of public deposits from members or public are violated. Specific punishment for deposits accepted under the Act is now proposed vide introduction of Section 76A of the Act.

Consequently where any deposits are accepted from public or members in violation of provisions of section 73 or 76 of the Act and the rules prescribed thereunder or where the any company fails to repay any deposit within the time period specified, subject to any additional time being specifically allowed by the Tribunal:

- The company in addition to the payment of the amount of deposit and the interest due, to be liable for fine being not be less than one crore rupees and extending to ten crore rupees; and
- Every officer in default to be punishable with imprisonment which may extend to seven years or with fine being at least Rs.25 lakhs and extending to Rs.2 Crore or with both. In case of any wilful default or contravention by the office being proved as being intended to deceive the company or its shareholders or depositors or creditors or tax authorities, more rigorous penal action under section 447 of Act to be imposed.

Other Amendments

The jurisdiction of special court to be set up for trials of offences under Companies Act limited. Special Courts to now entertain cases only for offences carrying imprisonment of two years or more.

Bail restrictions prescribed under Section 212 6) of the Act now to apply only for offence relating to fraud.

Fraud Reporting by Auditors

Presently under the Act, in absence of any stipulated threshold, the auditors are required to report any frauds to the Central Government as per the prescribed procedure. Thresholds for reporting of

fraud to Central Government to be now prescribed. Further frauds below the prescribed threshold now needs to be reported to the audit committee and disclosed in the board's report

Dividend

No company to declare dividend unless carried over previous losses and depreciation not provided in previous years are set off against profit of the company for the current year. The aforesaid requirement which was already provided in the Rules has now been proposed to be included in the relevant section of the Act as well.

Other relaxations

- Resolutions passed by the Board of Directors filed with ROC not to be available for public inspection
- Requirement of minimum paid up share capital of Rs. 1 lakh for private limited companies and Rs. 5 lakhs for public limited companies omitted.
- Use of common seal has been made optional. Where a company does not have common seal, alternative mode of authorisation for execution of documents has been provided.

Winding up cases to be heard by a two member bench instead of a three member bench of the National Company Law Tribunal.

Impact

- The restriction on public inspection of Board resolution as well as omnibus approval by audit committee and imposition of rigorous penal provisions for defaulter in case of deposits were much required and welcomed.
- Though the replacement of special resolution with an ordinary resolution may relieve small business and privately held companies, however no significant benefit would be extended to listed companies since the equity listing agreement still mandates special resolution for material related party transactions.
- The amendments within such short span of introduction of Companies Act 2013 clearly demonstrates the government's intent to regularise and simplify the existing complexities and provide a more conducive business environment. However, more substantive changes would be required to make an actual and much needed impact.

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[Indian court rules in favor of Royal Dutch Shell over tax dispute](#) [The Energy Business Review– 20 November 2014]

[Towards a friendly tax regime](#) [The Financial Express – 21 November 2014]

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