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## The Companies (Amendment) Act, 2015



The Companies (Amendment) Bill, 2014 passed in the Rajya Sabha on May 13, 2015 has received the assent of the President on May 25, 2015 and published in the Official Gazette of India on May 26, 2015 and became The Companies (Amendment) Act, 2015. It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act and any reference in any provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

- **Amendment of Section 2- Definitions**

In Section 2 of the Companies Act, 2013:

- i) In clause (68), in the definition of Private Company, the words “of one lakh rupees or such higher paid-up share capital” shall be omitted;
- ii) In clause (71) sub-clause (b), in the definition of Public Company, the words “of five lakh rupees or such higher paid-up share capital” shall be omitted;

- **Amendment of Section 9- Effect of Registration**

In section 9 of the Companies Act, 2013, the words “and a common seal” shall be omitted.

- **Omission of Section 11- Commencement of Business**

Section 11 of the Companies Act, 2013 which states that a Company having share capital shall not commence any business or exercise any borrowing powers unless a declaration is filed by the Director with the Registrar has been omitted. Now as per the Companies (Amendment) Act, 2015 there is no requirement of commencement of business certificate.

- **Amendment of Section 12- Registered Office of the Company**

As per the Section 12(3)(b) of the Companies Act, 2013 “Every Company shall have its name engraved in legible characters on its seal”. After the amendment in Section 12(3)(b), the following clause shall be substituted, namely:-

“(b) have its name engraved in legible characters on its seal, if any.”

- **Amendment of Section 22- Execution of bills of exchange, etc.**

As per the Section 22(2) “A Company may, by writing under its common seal, authorize any person, either generally or in respect of any specified matters, as its attorney to execute other deeds on its behalf in any place either in or outside India.” After the amendment of section 22:

- i) In sub section (2)-
  - a) for the words “under its common seal”, the words “under its common seal, if any,” shall be substituted;
  - b) the following proviso shall be inserted, namely:-

“Provided that in case a company does not have a common seal, the authorisation under this sub-section shall be made by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary.”;

ii) in sub-section (3), the words “and have the effect as if it were made under its common seal” shall be omitted.

- **Amendment of Section 46- Certificate of Shares**

In sub-section (1), that deals with the issue of share certificates, for the words “issued under the common seal of the company”, the words “issued under the common seal, if any, of the company or signed by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary” shall be substituted.

- **Insertion of New Section 76A- Punishment for contravention of Section 73 or Section 76**

After Section 76 of the Companies Act, 2013 the following section shall be inserted:

“76A Where a company accepts or invites or allows or causes any other person to accept or invite on its behalf any deposit in contravention of the manner or the conditions prescribed under section 73 or section 76 or rules made thereunder or if a company fails to repay the deposit or part thereof or any interest due thereon within the time specified under section 73 or section 76 or rules made thereunder or such further time as may be allowed by the Tribunal under section 73,—

(a) 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:

Provided that if it is proved that the officer of the company who is in default, has contravened such provisions knowingly or willfully with the intention to deceive the company or its shareholders or depositors or creditors or tax authorities, he shall be liable for action under section 447.”

- **Amendment of Section 117- Resolutions and Agreements to be filed**

In section 117 of the principal Act, in sub-section (3),-

(i) in clause (g), which states “ resolutions passed in pursuance of sub-section (3) of Section 179; and” the word “and” occurring at the end shall be omitted;

(ii) after clause (g), the following proviso shall be inserted, namely:-

“Provided that no person shall be entitled under section 399 to inspect or obtain copies of such resolutions; and”.

i) Resolutions passed by circulation shall be noted at the next meeting of the Board and the text thereof with dissent or abstention, if any, shall be recorded in the Minutes of such Meeting.

ii)

- **Amendment of Section 123- Declaration of Dividend**

In Section 123 of the Companies Act, 2013, in sub-section (1), after the third proviso, the following proviso shall be inserted, namely:-

“Provided also that no Company shall declare dividend unless 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.”

- **Amendment of Section 124- Unpaid Dividend Account**

In Section 124 of the Companies Act, 2013, in sub-section (6), which states that “All shares in respect of which unpaid or unclaimed has been transferred under sub-section (5) shall also be transferred by the company in the name of Investor Education and Protection Fund along with the statement containing such details as may be prescribed:

(i) for the words, brackets and figure “unpaid or unclaimed dividend has been transferred under sub-section (5) shall also be”, the words “dividend has not been paid or claimed for seven consecutive years or more shall be” shall be substituted;

(ii) after the proviso, the following Explanation shall be inserted, namely:—

“Explanation.—For the removal of doubts, it is hereby clarified that in case 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.”

- **Amendment of Section 134- Financial Statement, Board’s Report, etc.**

In section 134 of the Companies Act, 2013, in sub-section (3), after clause (c), which states that “There shall be attached to statements laid before a Company in General Meeting, a report by its Board of Directors, which shall include- (c)Director’s Responsibility Statement;” the following clause shall be inserted, namely:—

“(ca) details in respect of frauds reported by auditors under sub-section (12) of section 143 other than those which are reportable to the Central Government.”

- **Amendment of Section 143- Powers and Duties of Auditors and Auditing Standards**

In section 143 of the Companies Act, 2013 for sub-section (12), the following sub-section shall be substituted, namely:—

“(12) Notwithstanding anything contained in this section, if an auditor of a company in the course of the performance of his duties as auditor, has reason to believe that an offence of fraud involving such amount or amounts as may be prescribed, is being or has been committed in the company by its officers or employees, the auditor shall report the matter to the Central Government within such time and in such manner as may be prescribed:

Provided that in case of a fraud involving lesser than the specified amount, the auditor shall report the matter to the audit committee constituted under section 177 or to the Board in other cases within such time and in such manner as may be prescribed:

Provided further that the companies, whose auditors have reported frauds under this sub-section to the audit committee or the Board but not reported to the Central Government, shall disclose the details about such frauds in the Board's report in such manner as may be prescribed."

- **Amendment of Section 177- Audit Committee**

In Section 177 of the Companies Act, 2013 in sub-section (4)(iv), which states that "Every Audit Committee shall act in accordance with the terms of reference specified in writing by the Board which shall inter alia, include,- approval or any subsequent modification of transactions of the company with related parties;" the following proviso shall be inserted, namely:—

"Provided that the Audit Committee may make omnibus approval for related party transactions proposed to be entered into by the company subject to such conditions as may be prescribed;"

- **Amendment of Section 185- Loan to Directors, etc.**

In section 185 of the Companies Act, 2013 in sub-section (1), in the proviso, after clause (b), the following clauses and proviso shall be inserted, namely:—

"(c) 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; or

(d) any guarantee given or security provided by a holding company in respect of loan made by any bank or financial institution to its subsidiary company:

Provided that the loans made under clauses (c) and (d) are utilized by the subsidiary company for its principal business activities."

- **Amendment of Section 188- Related Party Transactions**

In Section 188 of the Companies Act, 2013—

(a) in sub-section (1),—

(i) for the words "special resolution", at both the places where they occur, the word "resolution" shall be substituted;

(ii) after the third proviso, the following proviso shall be inserted, namely:-

"Provided also that the requirement of passing the resolution under 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 company and placed before the shareholders at the general meeting for approval."

(b) in sub-section (3), for the words "special resolution", the word "resolution" shall be substituted.

- **Amendment of Section 212- Investigation into affairs of Company by Serious Fraud Investigation Office**

In section 212 of the principal Act, in sub-section (6), for the words, brackets and figures "the offences covered under sub-sections (5)



and (6) of section 7, section 34, section 36, sub-section (1) of section 38, sub-section (5) of section 46, sub-section (7) of section 56, sub-section (10) of section 66, sub-section (5) of section 140, sub-section (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 "offence covered under section 447" shall be substituted.

- **Amendment of Section 223- Inspector's report**

As per the Section 223(4) "The report of inspector appointed by the Central Government for the purpose to carry out the inquiry, shall be authenticated either (a) by the seal of the Company whose affairs have been investigated; or (b) by a certificate of a public officer having the custody of the report, as provided under section 76 of the Indian Evidence Act, 1872 (1 of 1872), and such report shall be admissible in any legal proceeding as evidence in relation to any matter contained in the report.

After the amendment in Section 223(4), in clause (a), for the words "by the seal", the words "by the seal, if any," shall be substituted.

- **Amendment of Section 248- Power of Registrar to remove name of Company from Register of Companies**

In Section 248 of the Companies Act, 2013 in sub-section (1),—

(i) in clause (a), after the word 'incorporation', the word 'or' shall be inserted;

(ii) clause (b) "the subscribers to the memorandum have not paid the subscription which they had undertaken to pay within a period of one hundred and eighty days from the date of incorporation of a company and a declaration under sub-section (1) of section 11 to this effect has not been filed within one hundred and eighty days of its incorporation;" shall be omitted.

- **Amendment of Section 419- Benches of Tribunal**

In section 419 of the Companies Act, 2013 in sub-section (4), the words "or winding up" shall be omitted.

- **Amendment of Section 435- Establishment of Special Courts**

In section 435 of the Companies Act, 2013, in sub-section (1),—

(i) 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;

(ii) the following proviso shall be inserted, namely:—

"Provided that all other offences shall be tried, as the case may be, by a Metropolitan Magistrate or a Judicial Magistrate of the First Class having jurisdiction to try any offence under this Act or under any previous company law."

- **Amendment of Section 436- Offences triable by Special Courts**

In section 436 of the principal Act, in sub-section (1), in clause (a), for the words "all offences under this Act", the words, brackets and figures "all offences specified under sub-section (1) of section 435" shall be substituted.

- **Amendment of Section 462- Power to exempt class or classes of Companies from provisions of this Act.**

In section 462 of the principal Act, for sub-section (2), the following sub-sections shall be substituted, namely:—

“(2) A copy of every notification proposed to be issued under sub-section (1), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days, and if, both Houses agree in disapproving the issue of notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses.

(3) In reckoning any such period of thirty days as is referred to in sub-section (2), no account shall be taken of any period during which the House referred to in sub-section (2) is prorogued or adjourned for more than four consecutive days.

(4) The copies of every notification issued under this section shall, as soon as may be after it has been issued, be laid before each House of Parliament.”

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