COMPANIES (AMENDMENT) ACT, 2015

The Companies (Amendment) Bill, 2014, seeking to make certain amendments to the Companies Act, 2013 ("Act"), had been introduced in the Parliament on December 2, 2014.The bill received Presidential assent on May 25, 2015 and has finally been notified in the Official Gazette ("Amendment Act"). The provisions of the Amendment Act shall come into force on the dates appointed by the Central Government in this regard.

1. **Removal of minimum paid up share capital:** The definition of "private company" and "public company" under Section 2 of the Act earlier provided for a requirement of having a minimum paid-up share capital of one lakh rupees and five lakh rupees, respectively. The Amendment Act omits requirements for such minimum paid up share capital. It is a welcome change as companies can now be set up without having to arrange for any minimum capital. It is pertinent to note that, post this amendment, Sections 2 (68) and 2 (71) continue to retain the words "minimum paid up share capital as may be prescribed". Hence, the Parliament has given the Central Government a right to prescribe a minimum capital requirement in the future.
2. **Making common seal optional:** Section 9 of the Act made it mandatory for every company to have a common seal which has power to acquire, hold and dispose of property, to contract, to sue and be sued in the company's name. The Amendment Act dispenses with this mandatory requirement and makes consequential amendments in other provisions of the Act as well. Hereafter, affixing seal of a company on documents, authorization papers, agreement etc. would no longer be mandatory.
3. **Removal of declaration of commencement of business:** Under Section 11 of the Act, in order to commence business or exercise borrowing powers, a director of a company (having a share capital) was required to file a verified declaration with the Registrar of Companies that each subscriber had paid the requisite value of the shares agreed to be paid and that the minimum paid-up share capital requirement had been satisfied. Additionally, the company was also required to a file a verification of its registered office.

   The Amendment Act has omitted this Section in its entirety. This means that companies (with share capital) are now free to commence operations without restrictions. The said Section had severe consequences under the Act, including a monetary fine and removal of the name of the company. The consequences remain intact by virtue of Section 248. Section 248 prescribes that the name of the company shall be removed, if the members do not subscribe to shares within a stipulated period and "a declaration under sub-section (1) of section 11 to this effect has not been filed".

   Though Section 11 has been omitted, consequent amendments in Section 248 have not been carried out. Reading Section 248 with this amendment, one would have to ignore the reference to Section 11 in Section 248 and conclude that companies would need to ensure that the members pay the subscription amounts, that they have agreed to pay, within 180 days of the incorporation of the company and that there is no requirement to file any declaration. Hence, companies can now commence business operations soon after receipt of the certificate of incorporation.

4. **Punishment for acceptance of deposits introduced:** Section 73 of the Act prohibits a company from inviting, accepting or renewing deposits from the public except in the manner provided under Chapter V of the Act. The penalty for non-compliance with this Section had been inadvertently left out under the Act. Therefore, Section 76A has been introduced by the Amendment Act as the penalty provision

   The proposed penalty is (i) the payment of the amount accepted as deposit and the interest due by the company along with payment of fine by the company which shall not be less than one crore rupees and which may extend up to ten crore rupees, and (ii) every officer who is in default shall be punishable with imprisonment which may extend to seven years or fine which may extend to two crore rupees or both. Further, if it is proved that the officer in default has contravened the said provisions knowingly or willfully, with an intention to deceive then he shall be additionally liable for action under Section 447 which prescribes the punishment for the commission of fraud. It is quite likely that the deposit accepted by the company is much lesser than one crore. In such cases, the punishment prescribed not only seems unreasonable and disproportional but additionally imposes burden on the company to arrange for these funds. The intent of the Amendment Act seems not just to punish the company for the wrongful acceptance of deposit but also to deter the companies from undertaking such acts.

5. **Public inspection of certain board resolutions prohibited:** This amendment to Section 117 of the Act clarifies that no person shall have the right to inspect or obtain copies of resolutions passed by the board of a company relating to matters prescribed under Section 179 (3). These include matters relating to buy-back, issuance of securities, borrowing or investing monies, approving financial statements, granting loans, acquisition of control etc. Though the filings with respect to these matters are still required to be made, the amendment possibly aims to address the demand of companies which do not want to expose its regular business operations to the general public.
6. **Losses to be written off before declaration of dividend:** Rule 3(3) of the Companies (Declaration ad Payment of Dividend) Rules, 2014 provides that in the event of inadequacy or absence of profits in any year, a company may declare dividend out of its free reserves. It further mandates that all such surplus amounts should first be utilized to set off the losses incurred in that financial year before any dividend in respect of equity shares is declared. Such a provision had been missing in the Act. The Amendment Act has added this as a proviso to Section 123 of the Act. It is now clarified that the dividends cannot be declared unless all losses are fully written off against the profits.
7. **Regulation of transfers of unclaimed dividend and shares:** Section 124 of the Act provides for the transfer of the dividend declared, but not claimed within 30 days of such declaration, to the unpaid dividend account. Under sub-section 6, the Amendment Act has now clarified that, if such dividend has not been paid or claimed for a period of seven consecutive years from the date of such transfer then such amount shall be transferred by the company to the Investor Education and Protection Fund ("Fund") along with the shares in respect to which the unclaimed/unpaid dividend has been transferred. By adding an explanation to the proviso of the said sub-section, the Amendment Act has clarified that if any dividend is paid or claimed for any year during the said period of seven consecutive years, such shares shall not be transferred to the Fund

8. **Only fraud involving amounts exceeding a prescribed threshold to be reported**: Section 143(12) of the Act prescribed that in case the auditor has reason to believe that an offence involving fraud is being committed against the company by officers or employees of the company, he shall immediately report the matter to the Central Government. However, the Amendment Act has now provided that only such offences which involve amounts exceeding the prescribed threshold must be reported to the Central Government. Further, all offences that involve fraud but are below the aforementioned threshold, must be reported to the Audit Committee and disclosures pertaining to the same must be made in the Board's Report. The Amendment Act has qualified offences relating to fraud in monetary terms. This amendment ensures that frauds involving small amounts are not escalated to the Central Government. However, there is sufficient deterrence for all kinds of frauds, even those involving smaller amounts, as all frauds need to be reported to the audit committee and further disclosed in the board's report

9. **Exemption u/s 185 for loans to wholly owned subsidiaries:** Under Section 185 of the Act, loans or guarantees/ securities given to wholly owned subsidiaries and guarantees/securities on loans taken from banks by subsidiaries have been exempted from complying with the requirements under this Section, provided that such loans are utilized by the subsidiaries for its principal business activities. Such clarification had already been provided under the Rules. Now by way of this amendment, similar language has been included in Section 185 of the Act as well to clarify the same.
10. **Approval of related party transactions:**
    a) Section 188 (1) of the Act read along with Rule 15 of the Companies (Meetings of Board & its Powers) Rules, 2014 ("Rules") provides that a special resolution is required by a company to enter into any contract or arrangement with a related party. In order to solve the problems faced by large stakeholders who are related parties, the Amendment Act has replaced the requirement of passing a 'special resolution' with 'ordinary resolution' for approval of related party transactions by non-related shareholders.
    b) Explanation to Rule 15 of the Rules further provides that for the purpose of entering into a transaction between wholly owned subsidiary and a holding company, a special resolution passed by the holding company shall be sufficient. By way of this amendment, related party transactions between holding companies and wholly owned subsidiaries have been exempt from the requirement of approval of non-related shareholders if the accounts of such a subsidiary are consolidated with such holding company and placed before the shareholders at the general meeting for approval.
    c) Section 177 of the Act allows the audit committee of a company to approve and review related party transactions of the company. The Amendment Act now empowers such audit committees to give collective approvals for related party transactions on an annual basis. This amendment aligns the Act with the SEBI policy and further increases the ease of doing business for companies
11. **Bail Restrictions**: Section 212 (6) provides that in the case of certain offences relating to fraud, the accused person cannot be released on bail unless the (i) Public Prosecutor has been given an opportunity to oppose such bail and (ii) the court is satisfied that there are reasonable grounds for believing that the accused person is not guilty of the offence and he

is not likely to commit any offence while on bail. Pursuant to the Amendment Act this restriction on bail shall now only apply to the offence of 'fraud' under Section 447 of the Act. The offence of fraud under Section 447 includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss.

12. **Winding-up cases to be heard by 2 member bench:** Section 419 (4) states that the President shall, for disposal of any case relating to winding up of companies, constitute a special bench consisting of three or more members. The Amendment Act has rectified the inadvertent error, as the winding up cases are to be heard by 2-member Bench instead of a 3member Bench
13. **Offences triable by Special Courts:** Section 435 of the Act has been amended to include that Special Courts shall only try offences carrying imprisonment of two years or more. This amendment has been introduced to allow magistrate courts to try minor violations.
14. **Exemption to companies from the provision of the Act:** Section 462 of the Act empowered the Central Government to exempt any company or class of companies from the provisions of the Act, by notification which was required to be approved by each House of Parliament. The said Section also prescribed the process for presenting such notification before the Houses etc. The Amendment Act has substituted the earlier procedure and clarified that the 30 day period for which the said notification shall be laid before a House of Parliament shall not take into account any period during which the House is prorogued or adjourned for more than four consecutive days and further that as soon as may be after it has been issued, be laid before each House of Parliament.