

THE COMPANIES AMENDMENT BILL, 2014 GETS RAJYA SABHA NOD

The Companies Amendment Bill 2014 (“**the Bill**”), approved by the Lok Sabha, the lower house of the Indian Parliament, in December 2014, received the assent of Rajya Sabha the upper house of the Indian Parliament on May 13, 2015. The Bill addresses the impediments in the Companies Act, 2013 (“**the Act**”), with respect to provisions in relation to winding up, reporting of fraud, utilization of unclaimed dividends and bail, and aligns the Act with international standards. The Finance Minister also announced the setting up of an expert committee for further assessment of the Act.

Some of the key changes made by the Bill are:

A. RELATED PARTY TRANSACTIONS:

Pursuant to the Bill, major relaxations have been effected in the stringencies involved in related party transactions under Section 188 of the Act. As per the extant provisions, related party transactions exceeding Rs. 100 Crores or 10 percent of the net worth of the company, required shareholder’s approval via a special resolution, where the concerned related parties were not allowed to vote. This procedural requisite has been simplified, wherein shareholder’s approval via an ordinary resolution shall suffice to authorize or approve related party transactions. Further, such an ordinary resolution shall not be required for transactions entered into between a holding company and its wholly owned subsidiary having consolidated accounts with such holding company. The said amendment has been made to align it with the relaxed norms set out by the Securities and Exchange Board of India (“**SEBI**”) under Clause 49 of the Listing Agreement for listed companies.

B. REPORTING OF FRAUDS BY AUDITORS:

Section 143 of the Act mandates reporting of every suspected transaction involving fraud by the auditors of company to the Government. The said section has been amended to provide a threshold above which all transactions involving fraud are to be reported to the Government. All the other transactions below the prescribed limit are to be reported to the audit committee/ board and thereafter mandatorily addressed by the board in the directors’ report attached to the financial statements.

C. INSPECTION OF BOARD RESOLUTIONS:

In view of safeguarding the confidentiality of board resolutions, public scrutiny of board resolutions filed with registry has been prohibited.

D. OTHER KEY AMENDMENTS:

- The threshold for minimum paid up share capital for private companies (Rs. 1 Lakh) and for public companies (Rs. 5 Lakhs) has been removed.
- There is no requirement of securing certificate of commencement for the company incorporated in India, before starting its operations.
- Maintenance and usage of common seal for authentication of documents have been made optional. Going forward, the documents can be authorized by two directors of the company or a director and a company secretary of the company, where the company has appointed a company secretary.
- New stringent penalties have been stipulated for invitation or acceptance of deposits in contravention of Section 73 (Prohibition on acceptance of deposits from public) or Section 76 (Acceptance of deposits from public by certain companies) and the rules made there under. The same can extend up to Rs. 10,00,00,000/- (Indian Rupees Ten Crores) in case any company has been in default; and Rs. 25,00,000/- in case of every officer in default.

- The position in relation to appropriation of unclaimed dividend has been made clear. It is now mandatory to retrieve past year losses and depreciation before distribution of dividends from current year profits and undistributed profits of past year.
- In order to facilitate bona fide lending between the holding companies and subsidiaries, the Bill grants an exemption under Section 185 of the Act to loan made by a holding company to its wholly owned subsidiaries. The above exemption also extends to guarantee given or security provided by a holding company in respect of any loan to its wholly owned subsidiary or any loan made by any bank or financial institution to its subsidiary company.

ARA Law's View

The Bill is directed towards liberalization of some stringencies and discrepancies in the Act, for the ease of doing business in India. The Bill further provides dilution in the procedures relating to corporate compliances in the interests of the investors and the stakeholders.

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