

TAX FLASH NEWS

Highlights on Companies (Amendment) Act, 2015

The Ministry of Corporate Affairs (MCA) recently issued the Companies (Amendment) Act, 2015 (Amended law) thereby amending certain sections of the Companies Act, 2013. The amendment received an assent from the President on May 25, 2015 and was notified in the Official Gazette on May 26, 2015. Further the amended law mainly strives to improve the ease of doing business in India and has addressed the issues/concerns faced by the stakeholders.

We have provided the key amendments in the ensuing paragraphs.

- **Requirement of Minimum Paid up Share Capital [Section 2(68) and Section 2(71)]**

The requirement of having a minimum paid up share capital by a company has been done away with.

Hence, going forward, a private or a public company can be incorporated without the need for minimum paid up share capital of one lakh or five lakh rupees, respectively.

- **Common Seal made optional [Sections 9, 12, 22, 46 and 223]**

The requirement of having a common seal has been made optional, and as a consequence, changes have been made with regards to authorisation for execution of documents.

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

Hitherto, before commencement of business or exercising any borrowing powers, the director of a company having share capital was required to file with the Registrar of Companies a declaration that every subscriber to the Memorandum has paid the value of shares committed by him/her and that the paid-up share capital of the company is not less than the amount prescribed.

The relevant Section has now been omitted and the requirement of filing a declaration before commencement of business has been done away with.

- **Punishment for Contravention of Section 73 and Section 76 of Companies Act, 2013 for Acceptance of Deposits by Companies [New Section 76A inserted]**

The amended law has inserted a new Section 76A after Section 76 which introduces penal provisions for contravention of provisions of Section 73 and Section 76 (*pertaining to acceptance of deposits by a company*) or rules made thereunder, or if a company fails to repay deposits within the time specified.

As per the amendment:

- In addition to the payment of the amount of deposit or part thereof and the interest due, a company shall be punishable with a fine which shall not be less than one crore rupees but which may extend to ten crore rupees.
- Every officer of the company who is in default shall be punishable with imprisonment which may extend to seven years or with a fine which shall not be less than twenty-five lakh rupees but which may extend to two crore rupees, or with both.

- **Obtaining copies of Board Resolution**

As per the amendment, no person shall be entitled under Section 399 to inspect or obtain copies of the Board Resolutions passed by a company under Section 179(3), filed with the Registrar under Section 117(3).

- **Declaration of Dividend [Section 123(1)]**

Additional proviso has been inserted in Section 123 in accordance with which no company shall declare dividend unless carried over past losses and depreciation in previous year or years are set off against profit of the company for the current year.

- **Reporting of Fraud by auditor [Section 134(3) and 143(12)]**

As per the amendment, the Report by the Board of Directors, in addition to others, shall also include details in respect of frauds reported by auditors under Section 143(12) other than those which are reportable to the Central Government.

Further, the enabling provisions of Section 143(12) [replaced vide this amendment] prescribes a threshold (*yet to be defined*) beyond which fraud shall be reported to the Central Government or audit committee/Board, as may be applicable.

Companies whose auditors have reported fraud to the audit committee or the Board but not to the Central Government also need to disclose details of such fraud in the Board's Report.

- **Empowered Audit Committee to give omnibus approval for related party transactions [Section 177(4)]**

Vide the amendment, an audit committee may give omnibus approvals for related party transactions subject to conditions as may be prescribed.

- **Loan to Directors [Section 185]**

Section 185 of the Companies Act, 2013 deals with provisions relating to loans, guarantees and securities provided by a company to its directors or any other person in whom directors are interested.

The prohibition is not applicable to:

- loans given to a managing director or whole time director as part of the conditions of services extended by the company to all its employees or, pursuant to any scheme approved by the members by a special resolution;
- companies which provide loans or give guarantees or securities in the ordinary course of its business.

As per the amendment, the following are added to the above mentioned exceptions:

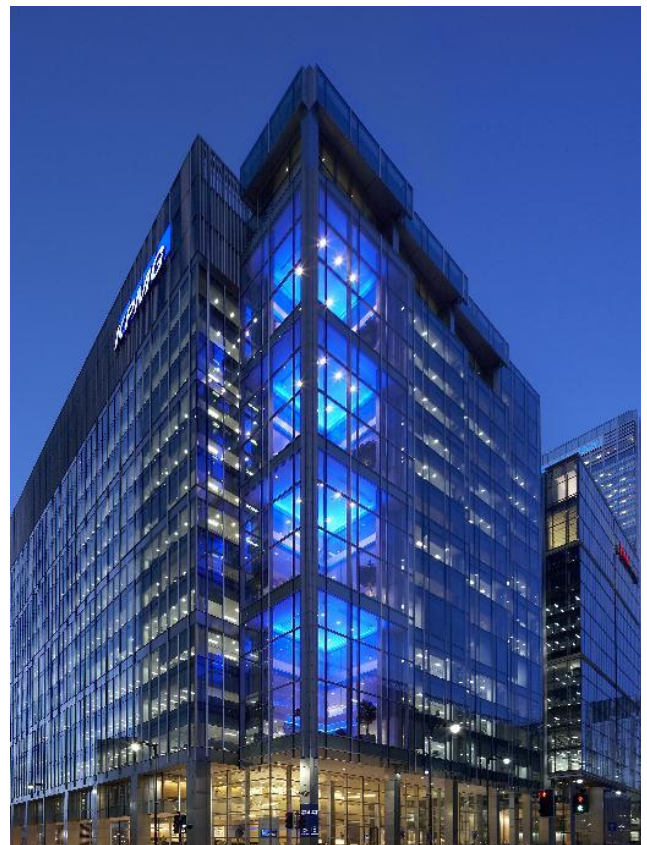
- Loan made or guarantee given or security provided by the holding company to its wholly owned subsidiary; or
- Guarantee given or security provided by the holding company in respect of loan made by the bank or financial institution to its subsidiary.

Provided the loans made above are utilised by a subsidiary for its principal business activity.

- **Related party Transaction [Section 188]**

As per the amendment, the requirement of passing special resolution for approving certain related party transactions has been done away with. With this, certain related party transactions can now be approved through a 'resolution' instead of 'special resolution'.

Further, it has also been provided that for related party transactions between a holding company and its wholly owned subsidiary, no resolutions are required to be passed if the accounts of the holding and subsidiary company are consolidated and placed before the shareholders in a general meeting for approval.



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