

Amendments to Companies Act 2013 and its Impact

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The Companies Act 2013 was the highly anticipated reform in the corporate legislation. The Act consists of 470 sections and 7 Schedules. It looked much shorter and precise than its predecessor, which comprised of 658 Sections and 15 Schedules. Though the Act was short and precise, the execution of majority of its

sections was done through the rules framed under it. As a result there are 22 rules complementing the Act, which actually brought the Act into existence and made it workable. The implementation of The Act was done in two phases. Firstly on the 12th of September 2013, 282 sections and certain rules were enforced and the remaining sections and the rules were enforced from 1st of April 2014.

REASON FOR AMENDMENTS

There were certain ambiguous and vague provisions in the Act, which had varied interpretations, and rules that complemented the Act to some extent amended the Act. These led to operational difficulty and along with it the Ministry of Corporate Affairs (MCA) issued and came out with various notifications and clarifications for interpreting the same, such as the

AMENDMENTS AT A GLANCE

The Companies (Amendment) Act 2015 comprises of 23 sections, of which all the sections, except Sec. 13 and Sec. 14, have been brought into effect from the 29th May 2015. The major amendments and the provisions are as illustrated below. All these exemptions have come into effect from the 29th day of May 2015, except for amendment in Sec. 177 and Sec. 143 for which the date is yet to be notified.

Sec. 2(68) & 2(71)	The criteria of minimum paid up share capital have been done away with. Now private limited and public limited companies can have any amount of share capital for incorporation.
Sec 11	The section dealt with the commencement of business by a company having a share capital and the necessary declarations being filed with the Registrar and the consequential penalty for non-compliance. The Amendment Act has omitted the Section.
Sec 76	A new section Sec. 76A have been inserted. Sec. 76A is a penalty provision and levies a penalty of Rs. 1 Crore- Rs. 10 Crores if the company fails to repay the deposit or any interest due on such deposit. Moreover the officer of the company in default shall also be punishable with a fine and imprisonment.
Sec 123	The amendment bars the company to declare the dividends unless the carried forward losses of the previous year and the depreciation amount have been set off against the current years profits.
Sec 143	The Amendment Act has made stricter provisions with regard to reporting of fraud. It casts a duty upon the auditor to report fraud to the Central Government or the Audit Committee depending upon the amount of the fraud committed. Moreover it also makes the responsibility of the Board to report fraud in the Board Report in cases where the fraud is reported by the auditor to the audit committee and not to the Central Government.
Sec 177	Provides for omnibus approval for related party transactions proposed.
Sec 185	The exemptions, which were earlier provided through rules, have now been directly provided under the Act.
Sec 435	The offences, which are punishable under the Act with imprisonment of two years or more, shall tried by the Special Courts and the other offences shall be tried Metropolitan Magistrate or a Judicial Magistrate of First Class.



applicability of Sec 185 and 186 in respect of loans and advances to employees, CSR and Sec. 135, Consolidated financial Statements, Related Party Transactions to name a few.

The Government received various representations from its stakeholders regarding difficulty in practical implementation of the Act and having regard to the fact that

A) Rules made in certain aspects led to the provisions being overridden.


B) Numerous clarifications, notifications and circulars issued by the Ministry of Corporate Affairs (MCA), there arose a need for addressing the various concerns and these could only be done by amending the Act. Hence the Companies Amendment Bill 2014 was presented before the House of Parliament and it received the President's assent on the 25th of May 2015, and published in the official gazette on the 26th of May 2015.

ANALYSIS AND CONCLUSION

The amendment seeks at removing the ambiguity in the act and provides for ease in carrying out the business and aims at restoring investor confidence. The basic urge for the amendment arose due to inability in practical implementation of the Companies Act and the subsequent notices, circulars and

clarifications issued by the Ministry of Corporate Affairs. However, there are still various areas, which are still ambiguous, and on which clarity and improvements can be done.

Recently on the 5th of June, the Ministry of Corporate Affairs has issued a notification under Sec 462 of The Companies Act 2013, wherein it has given relief and provided exemptions to the Private Limited Companies, Sec 8 Companies, Nidhi Companies and Government Companies from various provisions and sections of the Companies Act. These notable sections include amongst others include Sec. 62, Sec. 67, Sec. 177, Sec. 185, Sec. 188 and many more.

Seeing the notifications it is quite evident that there is still scope for further amendments, improvements and clarity on the applicability of the Companies Act so that it can be implemented in a better manner. If this prevails then the Ministry, from time to time, will have to come out with clarifications, notifications and circulars for implementing the Companies Act. Simultaneously care should also be taken to ensure that the harsh and severe penalty and difficulty in the practical applicability does not hinder the ease and prospect of conducting business. 



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