

Companies (Amendment) Act, 2015 & Subsequent changes in the Rules:

Since the implementation of the Companies Act, 2013, there were enormous difficulties faced in implementation of certain provisions of the New Act. Ministry of Corporate Affairs received many representations on the same, thus MCA with a view to bring about ease of doing business in India, amendments were sections were brought about.

The Companies (Amendment) Act, 2015 was published in the Official Gazette of India on the 26th May, 2015. It is to come into on various dates as maybe appointed for various provisions by the Government.

Vide Notification No S.O. ___(E) dated 29.05.2015, MCA notified the Amendment Act partially leaving Section 13 & 14 to be notified at a later date.

Major Amendment are:

- **Section 2(68) Definition of Private Company & 2(71) Definition of Public Company:** both Definitions amended: the requirement of minimum capital of 1lakh & 5lakhs respectively removed: Now minimum capital to be as prescribed in the Rules.
- At present nothing as such is prescribed in the Rules. As and when the same is prescribed, companies will have to be incorporated with such minimum amount of Authorized Share Capital.
- **Section 11 Commencement of Business:** Omitted: thus the requirement of intimating the ROC about commencement of business by a company removed.

Consequent amendment brought about in the **Companies (Incorporation) Second Amendment Rules, 2015**, by omitting **Rule 24:** Declaration at the time of commencement of business.

Thus the requirement of filing form INC 21 with 180 days of Incorporation is done away with. Thus easing the process of commencement of business

Further in **Rule 12** of the Incorporation Rules, a Proviso Inserted Stating that where ever any proposed company is to have any such object that requires approval of any sectoral regulator the same to be obtain & intimation regarding the same to be given at the time of Incorporation itself

Consequently the format of Memorandum of Association as prescribed in Form INC 13 & 16 amended.

- **Section 9 Effect of Registration:** The requirement of mandatorily having a Common Seal is removed, now it is upto the Company to decide whether to have a Common Seal or not.
- **Section 12(3): Registered Office of the Company:** Consequent to the requirement of Common Seal becoming non mandatory



- **Section 22. Execution of bills of exchange, etc:** Consequent amendment to Common Seal requirement becoming non mandatory. Where company opts not to have a Common Seal: Authority to execute Bills may be given to any 2 Directors / 1 Director & 1 CS (where ever appointed)
- **Section 46 Certificate of Share:** Consequent amendment to Common Seal requirement becoming non mandatory. Where company opts not to have a Common Seal: Authority to issue Share Certificate may be given to any 2 Directors / 1 Director & 1 CS (where ever appointed)
- Further the **Companies (Share Capital and Debenture) Second Amendment Rules, 2015**, brought about to amend **Rule 5**, making the requirement of Common Seal non mandatory, thus authorizing the Company Secretary and the Directors to issue Share Certificates under their Signatures.
- In case of OPC, not having seal then certificate to be issued signed by the person in whose presence Common Seal is required to be affixed.
- **Section 76A: Punishment for contravention of section 73 or section 76:** Specific punishment prescribed for non compliance of the provisions of Section 73: Prohibition on acceptance of deposits from public & Section 76: Acceptance of deposits from public by certain companies.

Penalty for contravention:

- To the Company: Amount of Deposit or Part thereof & Interest due + Penalty min: 1 Crore which may extend to 10 Crores.
- To Officers of the Company: Imprisonment upto maximum 7 years or Fine of minimum 25 Lakhs which may extend to 2 Crores or Both.
- **Section 117: Resolutions and agreements to be filed:** Proviso inserted stating the resolutions filed under this section shall not be made available for Inspection. Thus companies can be relieved that the resolution that are being filed by them with ROC as per the requirement of this Section shall not be available under Public registry for Inspection.
- **Section 123: Declaration of dividend:** Proviso inserted stating no company to declare dividend unless previous years losses/depreciation set off against profits of the current year.

Consequently the same omitted from the Rules in **Rule 3** vide **Companies (Declaration and Payment of Dividend) Second Amendment Rules, 2015**

- **Section 124; Unpaid Dividend Account:** Time limit for transfer of share to IEPF account specified as 7 years or more. & explanation for calculating the 7 year period inserted
- **Section 134: Financial Statement, Board's Report, etc.:** Details of Fraud suspected by the Auditor to be mentioned in the Directors Report, even where it is non reportable to the Central Government to be put in the Directors Report.



- **(Not Yet Notified) Section 143:Powers and Duties of Auditors and Auditing Standards:** Auditor to report any Fraud involving such amount as prescribed; found by him in the Company, the auditor to report to the Central Government,
Fraud of a Lower amount than that is prescribed: to be reported to the Audit Committee/Board of Directors of the Company.

- **(Not Yet Notified) Section 177: Audit Committee:** To bring the Act in lines with the Listing Agreement, Audit Committee given powers to give Omnibus Approvals for Related Party Transactions.

Condition for giving Omnibus approvals are yet to be prescribed: they shall be by the way of amendment to the Rules.

- **Section 185: Loan to directors, etc:** Loans/Guarantee given / Security Provided by Holding Company to/for its Wholly Owned Subsidiary Company are exempted restriction of Section 185.

Any Guarantee given or Security provided by holding company to its subsidiary company are also exempted

Restriction put on the subsidiaries to use the amount of loan only for its principal business activities.

- **Section 188: Related Party Transactions:** Requirement of passing Special Resolution done away with, now related party transactions can be approved by a Ordinary Resolution only.

Exemption provided to related party transactions from obtained shareholders approval where this transactions are with wholly owned subsidiaries whose accounts are consolidated with that of the Holding Company.

***Disclaimer:** The entire contents of this document have been prepared on the basis of relevant provisions, the information existing at the time of the preparation, and the understanding of the same by the author. Though utmost efforts has made to provide authentic information, it is suggested that to have better understanding kindly cross-check the relevant sections, rules under the Companies Act, 2013 & relevant rules made thereunder. The observations of the author are personal view and the authors do not take responsibility of the same and this cannot be quoted before any authority or any court for any official matter.*

