

THE COMPANIES (AMENDMENT) BILL, 2014 - Firsthand Analysis (Jan '15)

Bill No. 185 of 2014

THE COMPANIES (AMENDMENT) BILL, 2014

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BILL

to amend the Companies Act, 2013.

Be it enacted by Parliament in the Sixty-fifth Year of the Republic of India as follows:—

1. (1) This Act may be called the Companies (Amendment) Act, 2014.
(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act and any reference in any provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

THE COMPANIES (AMENDMENT) BILL, 2014

The Union Cabinet, chaired by the Prime Minister Shri Narendra Modi, approved the introduction of the Companies (Amendment) Bill, 2014 “Bill” in Parliament on December 2, 2014 to make certain amendments in the Companies Act, 2013. The lower house of Parliament cleared the Bill on December 17, 2014.

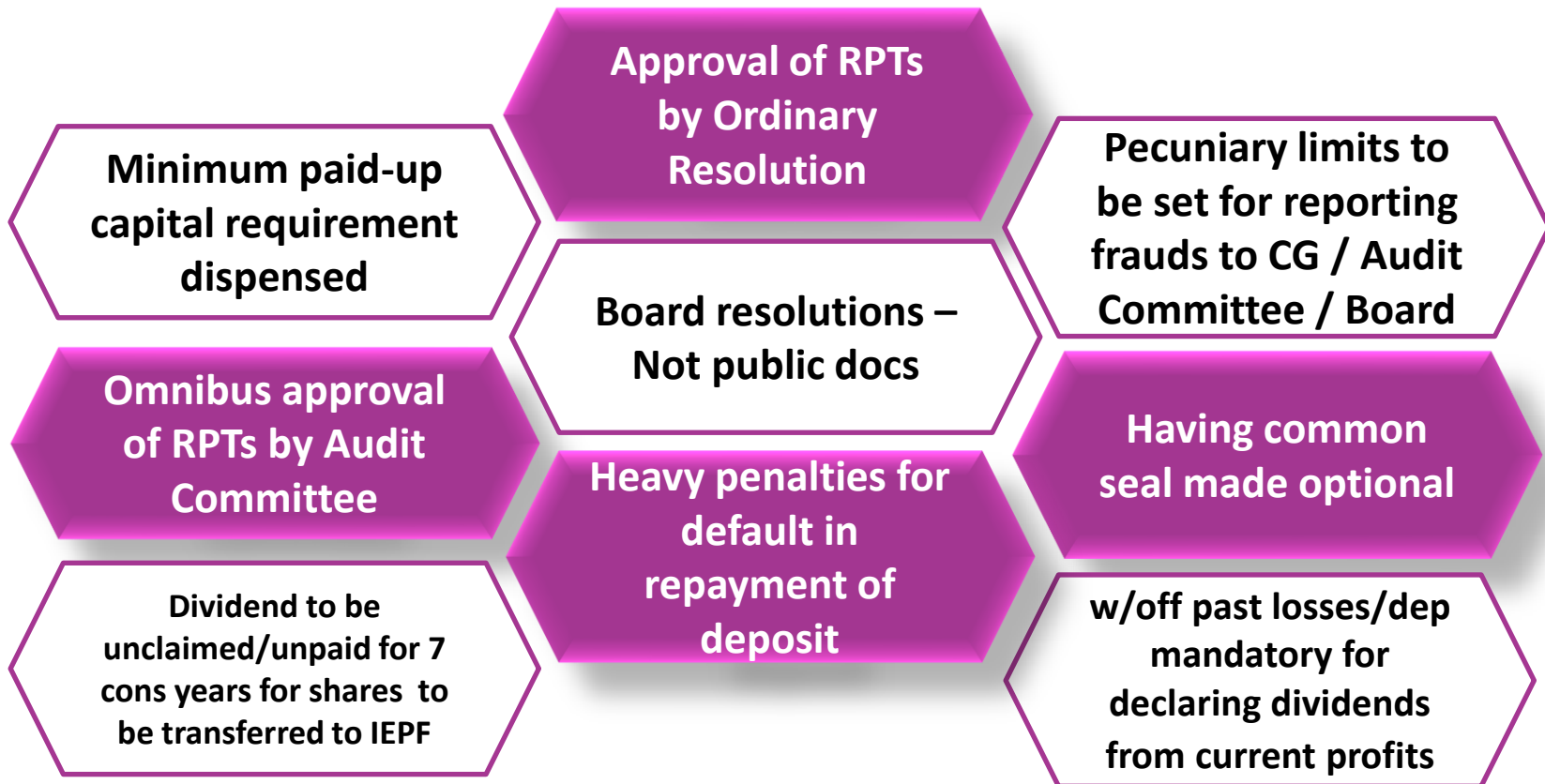
Key Drivers / Objectives :

- Facilitate 'ease of doing business'
- Weed out practical difficulties for compliance of certain provisions
- Correction of drafting errors
- Avoid any disruption in the investment environment in the country

This Precursor provides analysed insights on the major changes and implications of The Companies (Amendment) Bill, 2014 on corporates and stakeholders

THE COMPANIES (AMENDMENT) BILL, 2014

– What's New ?



Analysed Update

S.No.	Amendment	Analysis
1.	Minimum paid-up capital requirement dispensed	The requirement for maintaining the minimum paid up capital of Rs. 1 lac and Rs. 5 lacs in Private and Public Company respectively is done away with. Thus, reducing cost of incorporation and thereby encouraging more people to chose company as preferred vehicle for conducting business.
2.	Board resolutions – Not public docs	The Board resolutions filed with the Registrar are restrained from public inspection, to prevent any leaking of confidential commercial information to peers / competitors.
3.	Pecuniary limits to be set for reporting frauds to CG / AC / Board	Auditor needs to report frauds exceeding certain limits (yet to be specified under Rules) to the Central Government. All the frauds below the specified limits are to be reported to either Audit Committee, if any or the Board. Disclosure of frauds reported to Audit Commiitee / Board to be made under the Board's Report.
4.	Omnibus approval of RPTs by Audit Committee	Audit Committee is empowered to give omnibus approval on fulfilment of certain conditions for related party transactions. This move would prevent any obstacles in the daiy to day business operations.
5.	Having common seal made optional	A company may or may not have a common seal. Thus, procedural issues like time lag for executing agreements / deeds shall reduce.

Analysed Update

S.No.	Amendment	Analysis
6.	Approval of RPTs by Ordinary Resolution	Requirement for approval by special resolution for certain RPTs is dispensed. Now only approval of unrelated shareholders by way of ordinary resolution will be required. It means a Promoter will now require lesser number of minority shareholders to approve the transaction.
7.	Heavy penalties for default in repayment of deposit	Stringent penalty for default in compliance with norms for accepting deposit and its repayment for protecting the interest of public– Company – Repayment of deposit & Penalty of Rs. 1 crore to Rs.10 crores Officer in default – Imprisonment for maximum 7 years / Penalty of Rs.25 Lacs to Rs. 1 crore / Both
8.	Dividend to be unclaimed/unpaid for 7 cons years for shares to be transferred to IEPF	Now the requirement of transferring shares for which unclaimed/unpaid dividend has been transferred to the IEPF even though subsequent dividend(s) has been claimed is dispensed to rectify anomaly in drafting
9.	Writing off of past losses/dep mandatory for declaring dividends from current profits	Drafting anomaly permitting declaration of dividend from current year profits even though there are past losses and unabsorbed depreciation in the company has been corrected

Much needed steps for facilitating ease in doing business are being taken up by the Government by introducing Companies (Amendment) Bill, 2014 to dilute the provisions of the 9 month old Companies Act, 2013.

In our view, the relaxations like requirement of ordinary resolution instead of special resolution approval for RPT transactions and omnibus approval by Audit Committee are a significant boost to facilitate smooth business operations. Reporting of frauds by auditors of only prescribed size to Central Government may be looked into as a concern for weaker governance. No minimum capital requirement and optional common seal are expected to act as catalyst for reducing procedural issues and costs thereto.

Thank You....



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