

COMPANIES AMENDMENT ACT 2015

KEY HIGHLIGHTS

The Companies (Amendment) Act, 2015 has been notified on 25th May 2015. <http://egazette.nic.in/WriteReadData/2015/164058.pdf> The key Highlights are:

- 1. Amendment to Section 2 (68) and (71):** No Requirement of minimum paid up Capital for both private and public company.
- 2. Amendment to Section 9:** From the Section 9 "and a common seal" the words has been omitted now a Common Seal is not mandatory.
- 3. Amendment to Section 11:** Section 11 has been omitted. Commencement of Business Certificate not required for commencement of business activity.
- 4. Amendment to Section 12:** In section 12 of the principal Act, in sub-section (3), for clause (b), following clause shall be substituted, namely:--
"(b) have its name engraved in legible characters on its seal, **if any**";. This amendment is corresponding of amendment in Section 9.
- 5. Amendment to Section 22:** Amendment to this section has been made to corresponding amendment in Section 9 for requirement of common seal.
- 6. Amendment to Section 46:** Amendment to this section has been made to corresponding amendment in Section 9 for requirement of common seal.
- 7. Insertion of new Section 77A:** Penalty for violation of provision regarding acceptance/invitation of deposits stipulated by inserting section 76A. Minimum penalty **1** Crore and Maximum **10** Crore.
- 8. Amendment to Section 117:** A proviso inserted after clause 117 (3)(g)
"Provided that no person shall be entitled under section 399 to inspect or obtain copies of such resolutions"
Now copy of resolutions cannot be inspected and obtained by every person.
- 9. Amendment to Section 123:** Dividend not to be given unless previous year losses / depreciation provided in previous year are set off against the current year profits.
- 10. Amendment to Section 124:** A clarification has been inserted to sub-section (6) as the share shall not be transferred to Investor Education and Protection Fund if any dividend is paid or claimed for any year during the said period of seven consecutive years.

- 11. Amendment to Section 134:** The details in respect of frauds reported by auditors under sub-section (12) of section 143 other than those which are reportable to the Central Government should be included in the Board Report. **(Threshold limit yet to be notified)**
- 12. Amendment to Section 143:** Auditor to report fraud/ offence involving prescribed amount to Central Government. If the amount is below prescribed limit then its reporting to be done to audit committee/ Board and disclosure in board report to be given.
- 13. Amendment to Section 177:** Concept of omnibus approval for Related Party Transaction by audit committee inserted in section 177.
- 14. Amendment to Section 185:** Exemption given under rules of section 185 regarding giving loans to wholly owned subsidiary company and subsidiary has been incorporated in section itself.
- 15. Amendment to Section 188:** Only ordinary resolution will be required for related party transactions
- 16. Amendment to Section 212:** offence covered under section 447
- 17. Amendment to Section 223:** Amendment to this section has been made to corresponding amendment in Section 9 for requirement of common seal.
- 18. Amendment to Section 248:** Now Registrar cannot remove name of the company from the register of companies if the subscriber of memorandum had not paid their subscription.
- 19. Amendment to Section 419:** Constitution of Special bench not required in case of Winding of company
- 20. Amendment to Section 435 & 436:** regarding establishment of special courts and offences triable by special courts.
- 21. Amendment to Section 462:** regarding power to exempt class or classes of companies from provisions of the Act.

COMPANIES ACT 2013

The provisions of Section 94 and 117 are applicable regarding registration of certain resolutions and agreements with ROC

Section-117 of the Companies Act, 2013, every resolution or any agreement, in respect of matters specified in sub-section (3) together with the explanatory statement under section 102, if any, annexed to the notice calling the meeting in which the resolution is proposed, shall be filed with the Registrar within 30 days of the passing or making thereof through filing of form MGT.14.

As per rule 24 of Companies (Management and Administration) Rules, 2014, every resolution or any agreement required to be filed, together with the explanatory statement under section 102, if any, shall be filed with the Registrar in Form No. MGT.14 along with the fee

Under Companies Act, 2013, form MGT - 14 is to be filed for more than 20 different types of resolutions. List of Resolutions/Agreements to be filed through form MGT.14 has been provided in 4 categories:

1. List of Resolutions/Agreements given in Section 117(3)
2. List of Resolutions given in Section 179(3)
3. List of Resolutions given in rule 8(5) of Companies (Meetings of Board and its Powers) Rules, 2014 read with Section 179(3)
4. Miscellaneous Provisions.

1. **List of Resolutions/Agreements given in Section 117(3)** – Below mentioned is the list of resolutions and agreements which needs to be filed with ROC within 30 days through form MGT.14 as desired by section 117(3):

1. Special Resolutions;
2. Resolutions which have been agreed to by all the members of a company, but which, if not so agreed to, would not have been effective for their purpose unless they had been passed as special resolutions;
3. Any resolution of the Board of Directors of a company or agreement executed by a company, relating to the appointment, re-appointment or renewal of the appointment, or variation of the terms of appointment, of a Managing Director;
4. Resolutions or agreements which have been agreed to by any class of members but which, if not so agreed to, would not have been effective for their purpose unless they had been passed by a specified majority or otherwise in some

particular manner; and all resolutions or agreements which effectively bind such class of members though not agreed to by all those members;

5. Resolutions passed by a company according consent to the exercise by its Board of directors of any of the powers under clause (a) and clause (c) of sub-section (1) of section 180;
6. Resolutions requiring a company to be wound up voluntarily passed in pursuance of section 304;
7. Resolutions passed in pursuance of sub-section (3) of section 179; and
8. Any other resolution or agreement as may be prescribed and placed in the public domain.

2. List of Resolutions given in Section 179(3) : As per section 179(3), the Board of Directors of a company shall exercise the following powers on behalf of the company by means of resolutions passed at meetings of the Board, namely:—

- i. to make calls on shareholders in respect of money unpaid on their shares;
- ii. to authorize buy-back of securities under section 68;
- iii. to issue securities, including debentures, whether in or outside India;
- iv. to borrow monies;
- v. to invest the funds of the company;
- vi. to grant loans or give guarantee or provide security in respect of loans;
- vii. to approve financial statement and the Board's report;
- viii. to diversify the business of the company;
- ix. to approve amalgamation, merger or reconstruction;
- x. to take over a company or acquire a controlling or substantial stake in another company;
- xi. any other matter which may be prescribed in rule 8 of Companies (Meetings of Board and its Powers) Rules, 2014: Section 179(3)(k) read with rule 8(5) of Companies (Meetings of Board and its Powers) Rules, 2014, prescribes few more matters which shall be exercised, on behalf of the company, by the Board of Directors, only by means of resolutions passed at meetings of the Board. namely:-
 - 1) to make political contributions;
 - 2) to appoint or remove key managerial personnel (KMP);
 - 3) to appoint internal auditors and secretarial auditor;

5. Filing of MGT.14 under miscellaneous provisions [Section-94]

As per section 94 of the Companies Act, 2013, statutory registers u/s 88 and Annual Return u/s 92, shall be kept at the registered office of the company. As per proviso such registers or copies of return may also be kept at any other place in India, if approved by a special resolution and the Registrar has been given a copy of the proposed special resolution in advance.

As per rule 15(6) of Companies (Management and Administration) Rules, 2014 [Chapter-7], a copy of the proposed special resolution in advance to be filed with the registrar as required in accordance with first proviso of sub-section (1) of section 94, shall be filed with the Registrar, at least one day before the date of general meeting of the company in Form No. MGT-14.

Consequences of not filing MGT 14:

A. Additional Fee:

As per Section 117(3) every Special Resolution is required to be filed with ROC in e-form MGT-14. If the Company fails to file **Special Resolution** in e-form MGT-14 within 30 days of passing of resolution additional fee will be applicable as per table given below: As per Section 403(1).

Table of **Additional fees** which shall be applicable for delays in filing of the forms other than for increase in Nominal Share Capital

Period of Delays	Forms including charge documents
Up to 15 days (sections 93, 139 and 157)	One time
More than 15 days and upto 30 days (Sections 93, 139 and 157) and upto 30 days in remaining forms.	2 times of normal filing fees
More than 30 days and upto 60 days	4 times of normal filing fees
More than 60 days and upto 90 days	6 times of normal filing fees
More than 90 days and upto 180 days	10 times of normal filing fees
More than 180 days and upto 270 days	12 times of normal filing fees

Delay beyond 270 days, the second proviso of section 403(1) of the Act may be referred.

B. Penalty:

In company fails to file E-Form within 30 days + Additional 270 days (Total 300 days) the provisions of Section 403(2) will apply.

Penalty provided under the act for such default is given in Section 117(2):-

The company shall be punishable with fine which shall not be less than 5 lacs rupees and which may be extended to 25 lacs rupees and Every Officer of the Company, who is in default, including liquidator of the company, If Any, shall be punishable with fine which shall not be less than one lac rupees and which may extend to five lakh rupees.

Disclaimer:

The information contained in the newsletter is purely based on our understanding and is not an opinion or advice. We shall not be held responsible for any action taken on the basis of above information. The user is advised to seek professional service specific to its circumstances.

Newsletter

June 2015 Issue

GREWAL & SINGH Chartered Accountants

Compiled By:



CA. (Dr.) Gurmeet S. Grewal
B. Com.(Hons.), FCA, Ph.D
Partner



CA. Simrat Bir Singh
B.Com FCA
Partner

Other Offices

Chandigarh

1026,
Sector 37 B
Chandigarh

Haryana

S.C.O. 1/3, First Floor,
Near District Library,
Civil Line Jagadhri,
Haryana - 135003

Delhi

M-7, G.F.
Lajpat Nagar III
New Delhi -110024

Jammu & Kashmir

41/3,
Triakuta Nagar,
Jammu-180012

For further information and assistance please contact:

Grewal & Singh Chartered Accountants

A-17,LGF,Lajpat Nagar III,
New Delhi -110024
Ph 011-29842641, 29833394, 29839823,
Email: info@cagrewalsingh.com
Visit us at : www.cagrewalsingh.com