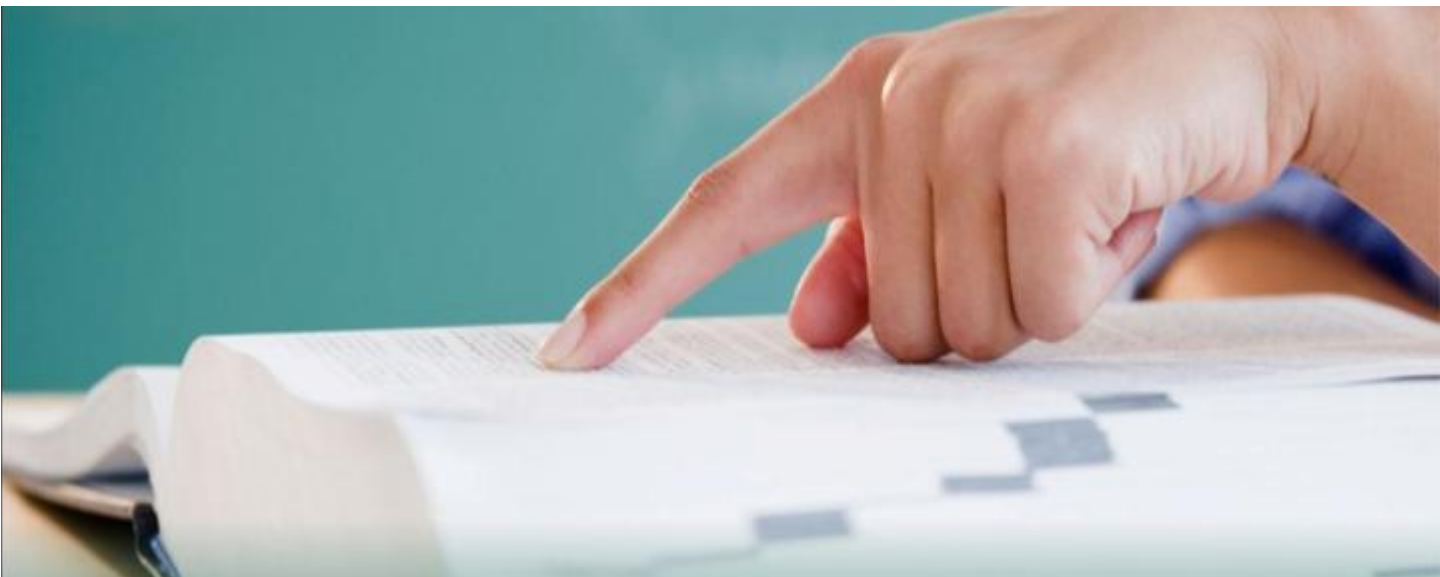


The Union Cabinet proposes certain amendments to the Companies Act, 2013

4 December 2014



First Notes on:

Financial Reporting
Corporate law updates
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Sector:

All
Banking and Insurance
Information, Communication, Entertainment
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Relevant to:

All
Audit committee
CFO
Others

Transition:

Immediately
Within the next 3 months
Post 3 months but within 6 months
Post 6 months

The Companies Act, 2013 (the Act) is largely operationalised from 1 April 2014. The Ministry of Corporate Affairs (MCA) has been issuing various amendments and clarifications to the Act and the corresponding Rules in order to address the implementation challenges faced by corporates and professionals.

Continuing with the endeavour for effective implementation of the Act, the Union Cabinet, on 2 December 2014 introduced the Companies (Amendment) Bill, 2014 in the Parliament to make certain amendments to the Act. Changes proposed include approval process of related party transactions, fraud reporting by auditors, areas where the Rules overreached the Act, and other procedural relaxations.

This issue of First Notes provides a list of the amendments proposed in the Act.

Related party transactions

- Currently, clause 49 of the equity listing agreement provides that an audit committee may grant an omnibus approval for a related party transaction proposed to be entered into by the company, subject to certain conditions. Such omnibus approval would be valid for a period not exceeding one year and will require fresh approvals after the expiry of one year.
- Similar to clause 49 of the equity listing agreement, it is proposed to exempt related party transactions between holding companies and wholly-owned subsidiaries from the requirement of approval by non-related shareholders.
- Currently, section 188 of the Act requires companies to obtain prior approval of the shareholders by a special resolution if certain conditions are met.

Now, to align with the equity listing agreement, it is proposed under the Act that an audit committee would be empowered to provide omnibus approvals for related party transactions on an annual basis.

Now, it is proposed that the 'special resolution' is replaced with 'ordinary resolution' for approval of related party transactions by non-related shareholders.

Fraud reporting by auditors

Currently, the Act does not provide any threshold for reporting of frauds by auditors.

Now, enabling provisions are proposed to prescribe thresholds beyond which fraud should be reported to the central government.

Additionally, it is proposed that frauds below the prescribed threshold will be reported to the audit committee and disclosed in the board's report.

Inter-corporate loans

- Currently, Rule 10 of the Companies (Meetings of Board and its Powers) Rules, 2014 requires that the following transactions are exempted from the requirements of section 185 of the Act provided that loans made are utilised by the subsidiary company for its principal business activities:
 - loan made by a holding company to its wholly-owned subsidiary company or any guarantee given or security provided by a holding company in respect of any loan made to its wholly-owned subsidiary company; and
 - guarantee given or security provided by a holding company in respect of loan made by any bank or financial institution to its subsidiary company.

The above requirement is proposed to be included in the relevant section under the Act.

Dividend

- Currently, the Companies (Declaration and Payment of Dividend) Rules, 2014 (as amended) requires a company to set-off carried over previous
- losses and depreciation against the profit of the current year, in order to declare dividend.
- The above requirement is proposed to be included in the relevant section of the Act.
- It is proposed to rectify the requirement of transferring equity shares for which unclaimed/unpaid dividend has been transferred to the Investor Education and Protection Fund even though the dividend has been claimed.

Punishments/offences

- Specific punishment for deposits accepted under the Act is proposed.
- Bail restrictions to apply only for offence relating to fraud.
- Special courts to try only offences carrying imprisonment of two years or more.

Other procedural relaxations

- Public inspection of board resolutions filed with the Registrar of Companies is proposed to be prohibited.
- It is proposed to omit the requirement for minimum paid-up share capital along with consequential changes.
- Common seal is proposed to be made optional, and consequential changes for authorisation for execution of documents has been proposed.
- Winding up cases to be heard by a bench consisting of two members instead of a three members of the National Company Law Tribunal.

Our comments

- The amendment signifies that the MCA is continuing to re-look at some of the crucial aspects of the Act. The proposed amendments with regard to fraud reporting, shareholders' approval for related party transactions and prohibition of public inspection of board resolutions filed with the Registrar of Companies are substantive and welcome. The amendments, if approved, are expected to go a long way in paving the way for effective implementation of the Act.
- The proposal for replacing the requirement to obtain special resolution with ordinary resolution will not impact listed companies as clause 49 of the equity listing agreement requires approval of shareholders through a special resolution for all material related party transactions.

The bottom line

The amendments proposed within a short succession of notification of the Act is a clear reflection of the fact that the MCA continues to consider the practical challenges while implementing the Act. However, there are several other areas where corporates would still continue to face challenges, and hope that there would be a more comprehensive post implementation review of the Act to address the other issues.

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Introducing IFRS Notes



IFRS Convergence: ICAI issues exposure drafts on financial instruments and revenue recognition

As part of the initiatives towards India's convergence with IFRS from 2016-17, the Accounting Standards Board of the Institute of Chartered Accountants of India has recently issued exposure drafts on Ind AS 109, Financial Instruments (ED on financial instruments) and Ind AS 115, Revenue from Contracts with Customers (ED on revenue).

These exposure drafts are in line with the requirements of the corresponding International Financial Reporting Standards (IFRS) (IFRS 9, Financial Instruments and IFRS 15, Revenue from Contracts with Customers), the International Accounting Standards Board has recently issued.

In this issue of IFRS Notes, we have provided an overview of these exposure drafts along with key impact areas.

Missed an issue of Accounting and Auditing Update or First Notes?



November 2014

The November 2014 edition of the Accounting and Auditing Update provides insights into the mutual funds industry in India, recent changes that affect the industry and its accounting and reporting issues. In this issue we have examined some of the key changes that Ind AS application will have for companies relating to accounting for fixed assets. We have also highlighted the key differences and salient features of the COSO 2013 Framework for internal control with the earlier COSO 1992 framework.

This month we also highlighted the key impacts of the Companies Act, 2013 in the area of acceptance of deposits by companies.



The RBI reviews guidelines on joint lenders' forum and corrective action plan

The Reserve Bank of India (RBI) on 30 January 2014 had released a 'Framework for Revitalising Distressed Assets in the Economy' (the Framework) effective from 1 April 2014. The Framework lays down guidelines for early recognition of financial distress, taking prompt steps for resolution, and thereby attempting to ensure fair recovery for lending institutions. For operationalising the above Framework, the RBI has issued various notifications that provide guidelines on refinancing of project loans, sale of non-performing assets by banks, guidelines on formation of joint lenders' forum, adoption of corrective action plan and other regulatory measures.

The RBI based on representations received from banks and the Indian Banks' Association has introduced certain changes in the Framework and its guidelines.

This issue of First Notes provides an overview of these amendments.



KPMG in India is pleased to present Voices on Reporting – a monthly series of knowledge sharing calls to discuss current and emerging issues relating to financial reporting.

On 20 November 2014, we covered following three topics:

- (1) Roadmap for IFRS convergence in India
- (2) Exposure draft on Ind AS 101, First-time Adoption of Indian Accounting Standards
- (3) An overview on the Ind AS convergence process.

Feedback/Queries can be sent to aaupdate@kpmg.com

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