



# Monthly Newsletter

## From the Editorial Desk:

India's economic growth is pegged at 7.3% for the financial year 2014-15. India officially became a two trillion dollar economy in the last fiscal with GDP at current prices reaching the level of 2.03 trillion US dollars. With a share of 7% of global GDP India is the third largest economy in the World in terms of purchasing power parity next only to USA and China.

While this GDP number has boosted business optimism, productive capacity in the domestic economy is capable of much greater expansion. Investment rate, measured by Gross Fixed Capital Formation (GFCF) to GDP ratio, remained low at 28.7% during 2014-15 compared to 29.7% in the previous year. A revival of investment cycle is necessary to maintain the growth momentum.

Expansion in business transactions is already reflected in substantial increase in indirect tax collection during the first two months of the current fiscal. Indirect tax receipts consisting of central excise, customs, and service tax recorded 36.4% growth during the first two months of the current financial year as compared to (-)4.4% growth observed in corresponding period of previous year. Collection of central excise has shown substantial improvement during this period indicating increased performance in manufacturing and services sector.

The recent amendments to the Companies Act, 2013 have been well received by the corporate world. With a view to further simplifying the law and facilitate smooth functioning of companies, the Ministry of Corporate Affairs has constituted a Companies Law Committee under the Chairpersonship of Secretary, MCA to make recommendations to the Government on issues arising from the implementation of the Companies Act, 2013.

With this publication of newsletter, the practice of publishing Monthly Newsletter is being discontinued. This edition is the last edition of Monthly Newsletter of Ministry of Corporate Affairs. It

is envisaged to bring out occasional periodicals as and when some significant policy developments take place in the Ministry.

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## New Appointment:

1. Justice (Retd.) Shri Mahesh Mittal Kumar assumed charge as Chairman, the Company Law Board with effect from 09.06.2015.
2. Shri Atul Hasasmukhrai Mehta, President of the Institute of Company Secretaries of India, has been nominated as a Member of the National Advisory Committee on Accounting Standards with effect from 18.05.2015.

## Implementation of the Companies (Amendment) Act, 2015

The Companies (Amendment) Act, 2015 has been published in the gazette on 26<sup>th</sup> May, 2015. The Amendment Act addresses the practical difficulties faced by the companies/ stakeholders in complying with some of the provisions of the Companies Act, 2013. It also facilitates 'ease of doing business' and addresses the difficulties in this regard earlier brought out by Industry Chambers and other agencies. In brief, the amendments made in the Act are as follows:

- a. Omitting requirement for minimum paid up share capital, and consequential changes. [-section 2(68)/2(71) of the Companies Act, 2013 (Act)].
- b. Making common seal optional, and consequential changes for authorization for execution of documents. [-sections 9, 12, 22, 46 and 223 of the Act].
- c. Doing away with the requirement for filing a declaration by a company before commencement of business or exercising its borrowing powers. [-Omission of section 11 of the Act and consequential change in section 248].
- d. Prescribing specific punishment for deposits accepted under the new Act to deal with defaults in repayment to depositor. [-New Section 76A of the Act].
- e. Prohibiting public inspection of Board resolutions filed in the Registry. [-section 117(3) of the Act].
- f. Including provision for setting off past losses/ depreciation before declaring dividend for the year. [ section 123(1) of the Act]
- g. Rectifying the requirement of transferring equity shares for which unclaimed/ unpaid dividend has been transferred to the Investor Education and Protection Fund [-section 124(6) of the Act].
- h. Enabling provisions to prescribe thresholds beyond which fraud shall be reported to the Central Government (below the threshold, it will be reported to the Audit Committee/ Board. Disclosures for the latter category also to be made in the Board's Report). [ section 143(12) and 134(3) of the Act].

- i. Empowering Audit Committee to give omnibus approvals for related party transactions on annual basis. [- section 177(4) of the Act].
- j. Exemption u/s 185 (Loans to Directors) provided for loans to wholly owned subsidiaries and guarantees/ securities on loans taken from banks by subsidiaries. [ section 185(1) of the Act].
- k. Replacing 'special resolution' with 'resolution' for approval of related party transactions by non-related shareholders. [-section 188(1) of the Act].
- l. Related party transactions between holding companies and wholly owned subsidiaries exempted from the requirement of approval of non-related shareholders. [-section 188(1) of the Act].
- m. Bail restrictions to apply only for offences relating to fraud u/s 447. [section 212(6) of the Act].
- N. Winding up cases to be heard by 2-member Bench instead of a 3-member Bench in NCLT. [-section 419 of the Act].
- o. Special Courts to try only those offences carrying imprisonment of two years or more. [section 435 and 436 of the Act].
- p. Rationalizing the procedure for laying draft notifications granting exemptions to various classes of companies or modifying provisions of the Act in Parliament, in order to ensure speedier issue of final notifications. [section 462 of the Act].

Barring the sections relating to Audit Committee functioning and fraud reporting, all the sections of the amendment Act have been brought into force vide notification dated 29<sup>th</sup> May, 2015. Consequential changes in the following five sets of rules were also notified on 29<sup>th</sup> May 2015.

**Repeal of Companies (Accounting Standards) Amendment Rules, 2011:** Vide notification dated 18.05.2015, the Government of India rescinded the Companies (Accounting Standards) Amendment Rules, 2011, notified on 03.03.2011 and G.S.R. 650 (E) dated 29.08.2011 with effect from 18.05.2015.

**Constitution of Companies Law Committee:** The Government has constituted a Companies Law Committee on 04.06.2015. The terms of references of the Committee are: (i) to make recommendations to the Government on issues arising from the implementation of the Companies Act, 2013 and (ii) to examine the recommendations received from the Bankruptcy Law Reforms Committee, the High Level Committee on CSR, the Law Commission and other agencies, while undertaking (i) above. The Committee comprises Secretary, MCA, Ms. Reva Khetarpal, former Judge, Delhi High Court, Shri Manoj Fadnis, president the Institute of Chartered Accountant of India, Shri Atul H Mehta, President, the Institute of Company Secretaries of India, Dr. A.S. Durga Prasad, President,

The Institute of Cost Accountants of India, Shri Bharat Vasani, Chief Legal & Group General Counsel, Tata Sons Ltd, and Shri Y.M. Deosthalee, Chairman, L&T Finance Holdings. Joint Secretary (Policy), MCA is its Member-Convener. The Committee held its first meeting on 13<sup>th</sup> June, 2015 and decided to invite comments/suggestions from the public to assist its deliberations. The Committee will submit its recommendations within six months of its first meeting.

**Exemptions to Various Category of Companies:**

The Ministry of Corporate Affairs issued the final notifications on 05.06.2015 under Section 462 of the Companies Act, 2013 (Act), which provide exemptions under various provisions of the Act to (i) Government Companies; (ii) Private Companies; (iii) Section 8 Companies and (iv) Nidhis.

**(i) Exemptions for Government Companies:**

Government Companies have been exempted from the limits pertaining to managerial remuneration; restriction on maximum number of directorships and disqualification of directors in certain cases. The provisions in respect of Nomination and Remuneration Committee have also been relaxed in respect of their applicability to directors/managerial persons. The provisions relating to loans to directors; loans and investments by companies and related party transactions have been modified to provide flexibility to Government companies in complying with such provisions. The exemption for Government companies to retain the suffix "Limited" even if incorporated as private limited company, has been continued as per the exemption available under Companies Act, 1956. Modifications in the provisions relating to place of holding general meetings have also been made. A wholly owned Government Company is exempted from the provisions relating to rotation of Directors and rights of persons to stand for Directorship. The provisions in respect of forming opinion about integrity, expertise/experience of independent directors have been modified to provide flexibility to concerned Ministry/Department. For the Government companies engaged in producing defence equipment, the provisions of section 186 (loans and investments by companies) and Accounting Standard - 17 (Segment Reporting) shall not be applicable (**G.S.R. 463(E)** dated 05.06.2015)

**(ii) Exemptions for Private Companies:** For Private Companies, the exemptions relax the provisions for entering into related party transactions; provide a shorter period for offering securities to members through right offers; provide for approving issue of employee stock option plans through a simple majority and allow an easier procedure and flexibility in holding general meetings. Private companies have also been allowed to accept deposits from members without the requirement of offer circular and creation of deposit repayment reserve etc. Flexibility

has also been provided in the types of share capital that can be issued by private companies. Exemption has been given from filing of board resolutions with the registry and giving of notice for standing for directorships. Requirement of mandatory consent of shareholders with regard to certain transactions relating to sale of undertaking, investments, borrowings etc. has been omitted. Further, OPCs, dormant companies, small companies and private companies having paid up share capital less than Rs. 100 crore have been excluded for calculating the limit of 20 companies for audit by an auditor. Private companies not having any investment by anybody corporate have been allowed to extend loans to directors etc. subject to certain conditions relating to bank borrowings and default thereof. An interested director of a private company can now participate in the Board meeting after declaring his interest (**G.S.R. 464 (E)** dated 05.06.2015).

**(iii) Simplification of Rules for Charitable Companies:**

For Charitable Companies the provisions in respect of notice for general meeting have been modified to enable such companies to save time and resources in sending notices. The notice for general meeting and financial statements may be circulated at notice of 14 days instead of 21 days. The provisions in respect of appointment of independent directors (IDs) and Nomination and Remuneration Committee will not be applicable to such companies. The audit committees of such companies need not have Independent Directors. The restrictions on number of directorships have also been removed for these companies. These companies are allowed to hold board meetings once in six months instead of four meetings in a year, as prescribed for other companies. These companies have been exempted from provisions requiring notice to be given for standing for directorship if their articles provide for election of directors by ballot. Flexibility from the provisions on passing of board resolutions in a board meeting only and on disclosure and participation in board meetings by an interested director have also been provided (**G.S.R. 466(E)** dated 05.06.2015)

**(iv) Simplification of Rules for Nidhi Companies:**

In case of *Nidhis*, provisions relating to serving of documents to members and payment of dividend have been modified to provide more flexibility to such companies. Provisions relating to private placement have been partially relaxed for such companies. These companies have also been exempted from the requirements of section 62 which relates to further issue of share capital. The notice amount of Rs. 1 lakh provided under section 160 has been reduced to Rs. 10,000 for these companies. Provisions of section 185 in respect of loans to directors have been relaxed for these companies with the condition that loan is given to a director or his relative in his capacity as member and the disclosure is made in the accounts (**G.S.R. 465 (E)** dated 05.06.2015).

**Vide General Circular No. 08/2015 dated 12<sup>th</sup> June 2015**, the revised form CRA-2 and CRA-4 has now been notified. The time for filing of notice of appointment of the Cost Auditor has been extended till 30<sup>th</sup> June 2015 in form CRA-2 and filing of Cost Audit Report to the Central Government has been extended till 31<sup>st</sup> August 2015 for the financial year 2014-15

### Review of Corporate Sector:

- A.** As on 31.05.2015, the number of companies registered under the Companies Act was 14,72,179. Of this, 2,72,242 companies were closed, 5,309 companies are under liquidation and 23,721 companies are in the process of being struck-off from the register. 271 companies have so far obtained the "dormant" status according to Section 455 of the Companies Act, 2013. Further, a total number of 1,39,224 companies have not filed their Annual Returns/ Balance Sheets for the past three consecutive years or more, and therefore not counted as active. There are 10,31,234 active companies, including 1,10,808 companies which were incorporated within the preceding eighteen months (not due for Annual Statutory Filings).
- B.** A total of 6,857 companies, including 290 One Person Companies (OPCs), were registered under the Companies Act, 2013 during May, 2015 with authorized capital of Rs. 3168.56 crore. The break-up of the newly incorporated companies by type is as follows:

Type of Company	No. of Companies registered in May, 2015	Total Authorised Capital (in ₹ Crore)
<b>Company limited by shares</b>	<b>6822</b>	<b>3168.34</b>
of which		
Private	6402	2866.9
of which		
One Person Companies	290	7.72
Public	130	293.68
<b>Company limited by guarantee</b>	<b>34</b>	<b>0.17</b>
of which		
Private	32	0.17
Public	2	0
<b>Unlimited company</b>	<b>1</b>	<b>0.05</b>
of which		
Private	1	0.05
Public	0	0
<b>Grand Total</b>	<b>6857</b>	<b>3168.56</b>

- C.** Under the category of companies registered as limited by shares during the Month of May, 2015, Maharashtra had maximum number of registrations (1,403) followed by Delhi (1,257) and Uttar Pradesh (608). "Business Services" topped the economic activity-wise classification (3,229) of newly registered companies.
- D.** During May, 2015, nine State Level Public Enterprises (SLPEs) were registered with aggregate authorized capital of Rs. 100.72 crore and one Central Public Sector Undertaking, Ircon Shivpuri GunaTollway Limited, Delhi, was registered with aggregate authorized capital of Rs. 150 crore. For more statistical details, the reader is invited to the 'Monthly Information Bulletin on Corporate Sector', at URL: [mca.gov.in/MinistryV2/InformationBulletin.html](http://mca.gov.in/MinistryV2/InformationBulletin.html).

### Investor Protection and Awareness:

- A.** In collaboration with the three Professional Institutes (i.e., Institute of Chartered Accountants of India, Institute of Company Secretaries of India, and Institute of Cost Accountants of India), 10 Investor Awareness Programmes were conducted in different towns/cities of the country in May, 2015.
- B.** Till the end of May, 2015, 3619 companies uploaded information about unpaid and unclaimed amounts of investors on the website [iepf.gov.in](http://iepf.gov.in). This website has been set up by the Ministry for companies to file details of unpaid and unclaimed amounts of investors during the past seven years, which are yet to be transferred to the Investor Education and Protection Fund, to enable the investor to claim the said money from the company. A reported sum of Rs. 4566.91 crore was lying unclaimed with these companies.

### Major Events:

- Annual Day of CCI was celebrated on 20.05.2015 at New Delhi. Shri N.R. Narayan Murthy, Founder, Infosys, delivered the Annual Day Lecture on "Creating a Better India: Musings on Economic Governance ideas for India".
- Global Summit on Corporate Social Responsibility 2015:** IICA along with the Indian Institute of Management, Raipur and National Law School of India University, Bangalore, organised a Global Summit on Corporate Social Responsibility 2015 on 15-16, May 2015 in New Delhi.
- Activities Conducted by ICLS Academy:** The Indian Corporate Law Service (ICLS) Academy housed within the IICA conducted a Mid-Career Training Programme for ICLS officers (SAG & JAG level) of Ministry of Corporate Affairs from 25-29 May, 2015. The topics covered during the training programme were *inter alia* related to financial statement, fraud detection, risk management, computer related fraud, forensic auditing, accounting standards, cyber laws, cybercrime and corporate governance.