

CLIENT UPDATE

January 2015

EXECUTIVE SUMMARY

PROPOSED AMENDMENTS TO THE COMPANIES ACT 2013; COAL ORDINANCE 2014; AND MMDR ORDINANCE 2015

About a year ago, the Companies Act, 2013 was brought into force and now the Government has already yielded to pressure from industry to address some concerns within the legislation. The Act was notified on August 29, 2013. Out of 470 sections in the Act, 283 sections and 22 sets of Rules corresponding to such sections have so far been brought into force. The Union Cabinet has approved the introduction of the Companies (Amendment) Bill, 2014 in Parliament. Till now, only a press release of the Government highlighting the amendments is available, and not the actual text thereof. Based on the available information, we have summarized the key proposals in a few bullet points.

Additionally, the Government has recently come up with two ordinances, one on coal and the other on development and regulation of mines and minerals. The salient features and key provisions of the ordinances are discussed in this document.

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1. PROPOSED AMENDMENTS TO THE COMPANIES ACT, 2013

The following key amendments have been proposed in the Companies Act, 2013 (the “Act”):

- Omitting requirement for minimum paid up share capital, and consequential changes.
- Making common seal optional, and consequential changes for authorization for execution of documents.
- Prescribing specific punishment for deposits accepted under the new Act.
- Prohibiting public inspection of Board resolutions filed in the Registry.
- Including provision for writing off past losses/depreciation before declaring dividend for the year.
- 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). Disclosures for the latter category also to be made in the Board’s Report.
- Exemption under section 185 (Loans to Directors) provided for loans to wholly owned subsidiaries and guarantees/securities on loans taken from banks by subsidiaries.
- Empowering Audit Committee to give omnibus approvals for related party transactions on annual basis.
- Replacing ‘special resolution’ with ‘ordinary resolution’ for approval of related party transactions by non-related shareholders.
- Exempt related party transactions between holding companies and wholly owned subsidiaries from the requirement of approval of non-related shareholders.
- Bail restrictions to apply only for offence relating to fraud under section 447.
- Winding-up cases to be heard by a 2-member bench instead of a 3-member bench.

2. COAL MINES (SPECIAL PROVISIONS) ORDINANCE, 2014

The Central Government promulgated the Coal Mines (Special Provisions) Ordinance, 2014 on October 21, 2014. The ordinance provides the procedure for auction of coal blocks. The main features of the ordinance are as follows:

- Categorisation of coal mines: The coal mines are categorised as: (i) Schedule I coal mines, which consist of all 204 coal blocks cancelled by the Supreme Court in *M.L. Sharma v. The Principal Secretary*, (2014) 2 SCC 709, (ii) Schedule II coal mines, which are a subset of Schedule I and consist of coal blocks where production has started, and (iii) Schedule III, which is also a subset of Schedule I and consists of coal blocks earmarked for specific end - use by the government.
- General eligibility: (i) Government companies or corporations, (ii) any company incorporated in India, or (iii) a joint venture between any two or more Indian companies, are eligible to participate in the public auction by competitive bidding for an area containing coal to carry out coal mining operations.
- Allocation process: Schedule I coal mines will be allocated by way of public auctions for a fee not exceeding INR 5, 00, 00, 000 (Rupees Five crore).
- Eligibility for Schedule II and III: The above mentioned companies are eligible to bid in an auction for Schedule II and Schedule III mines so long as they are engaged in specified end use (which includes power generation, cement, etc.).

- Allotment of mines: Despite the provisions providing for action, the Central Government may allot a Schedule I coal mine to a Government company or corporation which is not a joint venture with a private company or to a company which has been awarded a power project on the basis of competitive bids for tariff (including Ultra Mega Power Projects) from specified Schedule I coal mines by making an allotment order in accordance with such rules as may be prescribed.
- Prior allottees: A prior allottee shall not be eligible to participate in the auction process if (i) he has not paid the additional levy imposed by the Supreme Court, or (ii) he is convicted of an offence related to coal block allocation and sentenced to imprisonment for more than three years.

3. THE MINES AND MINERALS DEVELOPMENT AND REGULATION (AMENDMENT) ORDINANCE, 2015

The Government promulgated the Mines and Minerals Development and Regulation (Amendment) Ordinance on January 12, 2015. This amends certain provisions of the Mines and Minerals Development and Regulation Act, 1957 (the “MMDR Act”).

The salient provisions of the ordinance are as follows:

- The ordinance adds a new Fourth Schedule of “notified minerals” consisting of bauxite, iron ore, limestone and manganese ore.
- Under the MMDR Act, a person could acquire one mining lease for a maximum area of 10 sq km. However, for the development of any mineral, the central government could permit the person to acquire one or more licenses or leases covering additional area. The ordinance amends this provision to allow the central government to increase the area limits for mining, instead of providing additional leases.
- For all minerals other than coal, lignite and atomic minerals, mining leases shall be granted for a period of 50 years. All mining leases granted for such minerals before the ordinance shall be valid for 50 years.
- The ordinance specifies that any lease granted before the commencement of the ordinance, shall be extended: (i) up to March 31, 2030 for minerals used for captive purpose (specific end-use) and up to March 31, 2020 for minerals used for other than captive purpose, or (ii) till the completion of renewal period, or (iii) for a period of 50 years from the date of grant of such lease, whichever is later.
- The state governments shall grant mining leases and prospecting license-cum-mining leases for both notified and other minerals. The central government shall prescribe the terms and conditions, and procedure for auction, including parameters for the selection of bidders.
- The holder of a mining lease or prospecting license-cum-mining lease may transfer the lease to any eligible person, with the approval of the state government, and as specified by the central government.
- The MMDR Act required that for coal, lignite, atomic and metallic and non-metallic minerals, a mining license could be granted by the state government with the approval of the central government. The ordinance exempts metallic and non-metallic minerals from the requirement of getting the approval of the central government.

For a detailed analysis of these topics, you may email us at delhi@jurislegal.org or call us on +91 11 4359 3370