Dated: 26th June, 2014

Shri Arun Jaitley
Hon'ble Union Minister of Finance, Defence
and Corporate Affairs
'A' Wing, Shastri Bhawan
Rajendra Prasad Road
New Delhi - 110 001

Respected Sir,

Sub: Companies Act, 2013 and Companies Rules, 2014

Calcutta Chamber of Commerce (CCC) is pleased to applaud government's focus on "Achhey Din Aayenge" to eliminate the federal deficit in this crucial time of persistent global economic uncertainty.

First of all , we would like to thank you for the positive initiation taken to give relief to private limited companies through the draft notification published on MCA site dated 24.06.2014 which consists exemptions, exceptions, modifications and adaptations for private limited companies from various provisions of Companies Act, 2013. Since many provisions which are currently creating lot of chaos, across corporate India both for public listed companies as well as private companies. The same provisions should be made applicable to public limited unquoted and closely held companies, preferably with a limit of either annual turnover and or Share Capital.

Our kind submission is also related to the same newly introduced Companies Act 2013 and the Companies Rules, 2014. It seems that the previous ruling Government at the time of finalizing, had taken into consideration the law based on a very few mala fide incidences. Basically, they were reactionary in nature after the busting of 3S. In this context, we would like to state that one or two incidences of corporate malfeasance should not lead to mistrust of the entire spectrum of corporate India and hence should not be considered to make normal business activities difficult.

We represent industries and commerce of Eastern part of India, a more neglected area since long time by almost all previous Governments of India. Due to this phenomenon, the development in this part, as thought could not be achieved. **In this region, Small and Medium industries have played an important role in driving economic growth. And hence private limited companies play a major part in development of this region. We are, therefore, forwarding to you our submission for consideration.**

Since the success of every modern law depends on implementation, here are the main issues that will make the new law as the great law and hence CCC now recommends an immediate and comprehensive review of the same.

Our submission is: Relieve from many harsh provisions of Companies Act, 2013 and Companies Rules, 2014.It seems that the previous Government rushed to notify the Act which had created disruptive features to make it harder for corporate to ensure compliance. Many new concepts are being introduced for the first time. Our humble request is to adopt a Pro-Growth law provisions which can give booster to industries and commerce. **Our kind recommendation is to modernize but simplify the system.**

Incorporation of Company – a cumbersome process:

When other countries are promoting incorporation within a day, India is moving to an era where incorporation will be considered a hectic process and likely to be opted less in times to come. The old Companies Act of 1956 had simplified the procedure but the new Act has totally gone in contrast, making the incorporation process a very complicated task. While the old Act just required details of subscribers and directors, the new Act also wants an affidavit from each of the subscribers to the memorandum and from persons named as first directors, the director's interest in other companies, specimen signature and latest photograph verified by a notary etc. etc. By putting additional weightage on disclosures, it has made the incorporation process a cumbersome activity. Our humble submission is to reconsider the Incorporation process to make it easier.

Many Technical issues in the Act are forcing many concerns to seek for limited liability partnership structures**.**

New rules may hit fundraising plans and Appointment of directors for a newly setup unit:

Appointment of directors:

There are some proposed relaxations in case of appointment of directors by private companies, but in this regard, a lot more is still needed. Through this proposal, the requirement of giving a special notice for appointment or proposing a person to be appointed as director by a member, along with a deposit of Rs. 1,00,000/- has been done away with for private companies. The proposed exemption from sec 160 is a favourable move for private companies.

Fund Raising:

Directors on the board of startups have also been made liable for a number of compliance issues. According to Section 42(10) of the new Companies Act, 2013 if a company accepts any money in contravention of the rules of the new Act governing fund raising, the promoters and directors shall be liable for a penalty. This can extend to the amount raised or Rs 2 crore, whichever is higher. The company is also required to refund the amount raised within a period of 30 days of being penalized. Earlier the penalties the penalties for minor contravention were very low.

More red tape awaits Indian startups as regulators tighten processes required to raise new investment or add new directors on the board of new ventures. These strictures, which are a part of the new Companies Act 2013, are likely to delay investments, increase the cost of compliance and prove to be a hindrance in registering a new company. Allotment of shares to any new investor now has to be followed by a number of compliances.

Filing Roc Forms – A Tedious Process:

Already a businessman in India has to deal by filing Returns on daily, weekly, monthly, quarterly, half yearly, yearly basis with income tax, service tax, value-added tax, excise duty, shops and establishments' tax, professional tax and many other taxes and also participate in employer provident funds and employee state insurance schemes with a series of unlimited compliances. Each state has different rules with different forms, which change on a regular basis. This newly introduced Companies Act, 2013 has also introduced a number of lengthy forms as part of Compliances. These procedures consume time, resources and costs that start-ups cannot afford. **Our submission is to introduce "Saral" forms in the Companies Act, 2013 to avoid dependency on professionals.**

General Meeting Provisions:

As per proposed notification, Sec 101-07 & 109 (relating to management & administration) shall apply to private companies unless articles provide otherwise. Also General meeting provisions, contained in sections 101 to 107, and the provisions about demand for poll etc in sec 109, are proposed to be exempted in case of private companies. However, sec 108 on electronic voting is proposed to be retained. There are only a few private companies which have 1000 or more members (where this provision actually applies). Hence, our request is to exempt all private companies.

Harsh Penalties

We would like to bring to your kind notice that **in comparison to earlier Act**, the penalties for non- compliances are very harsh in this Act. Where there is any mistake without any mala fide intention, huge penalty provisions are enforced. In many cases, the impact of non- compliance is very low, but the penalty provisions are beyond imagination. **Our request to reconsider the penalty provisions which should be based on circumstances**.

Related Party Transactions: Section 188

The new Act creates lot of problems in family corporate businesses. The restrictions in transactions through relatives in Private companies also attract lot of compliances and restrictions. In private companies, it is very difficult to run the businesses due to these restrictions. The disclosure norms requires rethinking based on Public (Quoted) and private sectors.

Sec 188 dealing with related party transactions (RPTs) is sought to be fully exempted. Section 188 puts restrictions on RPTs, and the way the requirement to seek approval of "majority of minority" is worded, it may be impossible for private companies to seek the requisite approval. In our view, WE **TOO SUPPORT FOR THE PROPOSAL FOR TOTAL EXEMPTION TO PRIVATE COMPANIES IS REQUIRED**.

Appointment of Key Managerial Personnel (Kmp):

As per proposed notification, a whole time KMP of a private company can hold office in one more than one company at the same time and also the compliance required on appointment of managing director who is also a managing director or manager of other company is not applicable to private companies. Section 203 (3) (appointment of KMP) is not to be applicable to private companies is our expectation.

Offer or invitation for subscription of securities on Private Placement

Since the requirements for raising the funds by way of private placement have been made more stringent, it will significantly increase the compliance burden on private companies looking to raise funds through private placement. It is also to be noted that as no specific exemption has been provided for private companies or small companies, it will lead to reduce flexibility available to private companies and the companies operated by closely held people for the raising funds. However, the better governance of all companies is expected which will lead to the transparency in the affairs of the Company and accountability of the directors. Section 73 (2) conditions (relating to acceptance of Deposits) not be levied on private companies with 50 or less members. In our view this relaxation is required for all private companies.

According to Section 42(10) of the Cos. Act, 2013, if a company makes an offer or accepts monies in contravention of the section 42 of the Act, 2013, the company, its promoters and directors shall be liable for a penalty which may extend to the amount involved in the offer or invitation or two crore rupees, whichever is higher. The company is also required to refund all monies to subscribers within a period of thirty days of the order imposing the penalty. **Our kind submission is to relieve at least Private Companies from these provisions.**

Kinds of share capital & Voting Rights:

The proposed changes related to Section 43 (Kinds of share capital) & Section 47 (Voting Rights) for exemption to private companies is a welcome worthy move so that Private companies are eligible to create and issue such other kind of share capital and on such other terms as may deem appropriate. Our recommendation is there should be no restriction on new issues of share capital and voting rights to private companies.

Restriction on loans to directors and other persons in whom the director is interested:

The Cos. Act, 2013 has made significant changes to the restrictions relating to provision of loan by a company to its directors. Section 185 of the Act, the most debated section of CA 2013, imposes a total prohibition on companies providing loans, guarantee or security to the director or any other person in whom the director is interested.

This restriction contained in the Cos Act 1956 applied only to public companies, CA 2013, has extended this restriction to even private companies.

This restriction would create significant difficulties for companies which provide loans, or guarantee/ security to their subsidiaries or associate companies for operational purposes. However, with the enactment of the Rules, companies are now permitted to give loans, guarantee or security with respect to a loan taken by a wholly owned subsidiary, if the loan is utilized by such subsidiary for its principal business activities. This has to be contrasted with the position under the Cos Act 1956, which permitted companies to give loans, guarantee or security to any of its subsidiaries which may be utilized by the subsidiary for any purpose. Further, the

Cos Act 2013 does not provide any indication as to what activities would amount to principal business activities of the subsidiary. In view of the above, the ability of

associate companies and other subsidiaries to access capital from their parent company shall be restricted. However, Cos Act 2013 permits holding companies to give guarantees or provide security for a loan provided by any bank or financial institution to any of its subsidiaries.

As per the Draft notification dated 24.06.2014, Section 185 (Loans to Directors, etc) not apply to certain category of private companies. But our submission in this regard is to give relaxation to all the Private and Public (closely) companies.

Loans and borrowings of the company including Inter corporate loans:

Section 186 of the Cos Act 2013 restricts a company from providing loans, giving any guarantee or security, or acquiring any securities of a body corporate. However, a company may overcome such restrictions by passing a *special resolution* at a general meeting. These provisions are substantially the same as contained in Section 372A of the Cos. Act 1956. **This was applicable only to public companies. Section 186 of Cos. Act 2013 additionally applies to private companies.**

While Cos Act 1956 restricted a company from giving any loans to other body corporates only, the Cos Act 2013, restricts companies from providing loans to any person or any other body corporate and hence loans to individuals and other non-corporate entities are also covered.

The Cos Act 2013 requires companies to disclose its loans, investments made, guarantee given or security provided and its purpose, to its members in the financial statement.

However for above a holding company need not pass a special resolution in case of transaction with its wholly owned subsidiary. The true intent of Rule 13 (1) seems unclear in case of Private Companies.

Acceptance of Deposits by Companies

The provisions relating to deposits are set out in Chapter V of the Cos Act 2013 read with the Companies (**Acceptance of Deposits by Companies**) Rules, 2014. Private companies would be severely restricted in accepting deposits from its members. While the CA 1956 permitted public companies to accept deposits only in compliance with the Companies (Acceptance of Deposits) Rules, 1975, it did not include elaborate requirements for acceptance of deposits by private companies. It will be very difficult for private companies to easily access capital from their members. Whereas per Cos Act 1956 permitted a private company to accept deposits from members, directors or their relatives also. These provisions require your kind attention to give relief to Private Companies.

Section 180 (Restrictions on powers of Board) shall not apply to private companies with 50 or less members is praise worthy.

However, the move towards increased regulation of corporate loans and borrowings under Cos Act 2013 shall significantly affect the ability of companies (specifically private companies) to access funds.

Independent directors (IDs):

We want to draw your kind attention towards, the provisions related to IDs where companies to have one-third of their board members as independent directors which seems fine in principle. But whether it sounds good? There are pitfalls for three reasons. First, how independent can IDs be when they are appointed and paid for by the promoters? Will promoters appoint truly independent people on boards?

Second, are there enough persons available to be appointed as IDs? In theory, yes, because there are no qualifications for becoming an ID. But, in practice, once you tell the prospective person the responsibilities he will bear, the actual number of competent and willing IDs diminishes. Third, if eligible IDs end up taking up 20 directorships each, how can they really serve each of those companies' shareholders diligently? Kindly reconsider the provision.

Women directors:

The mandate to appoint at least one Woman Director -It is important for corporate boards to ensure gender diversity, but before that happens there have to be more women reaching the top of the corporate hierarchy. Certain qualification and experience criterion can be taken into consideration for making it more effective.

Corporate social responsibility (CSR):

The real issue is not in the 2 percent spending, but that the bill makes no effort whatsoever to define CSR. The only obligation is to earmark the funds, form a committee, formulate a CSR policy, and spend the cash. If any one does not spend the money, he has to explain "why" in the annual report. So, it seems the law has no problems whether a company uses profits to help in notorious places or build places of worship as part of CSR. So, beyond inculcating a corporate conscience, what difference will it make to society? Hence our submission is to make the body corporate self decisive towards CSR. It can be justified by promoting by other means giving tax reliefs to corporates etc.

Hence we hereby pray that small companies, private companies should be spared from such provisions, as these restrictions were not applicable under old act to private companies and these are considered unreasonable for private companies.

In conclusion, CCC members thank you for your leadership and commitment to fiscal responsibility. If I and my colleagues can be of any assistance in your deliberations, kindly do contact us.
Thanking you,

Yours faithfully,

R. K. CHHAJER
PRESIDENT