

COMPANIES ACT 2013 –

.By CS Makarand Joshi
-makarandjoshi@mmjc.in

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- Precautions and Urgent Actions
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Status of Companies Act 2013

Change in approach of Companies Act 2013

- Shift from Shareholders Protection to stakeholders protection
- Corporate Governance /Investor Protection is Mantra
- Lot of Disclosures
- Strict penalties and prosecution
- Liabilities of Directors / Professionals increased
- Cost of Limited Liability increased
- Coverage of the Act increased

Summary

Particulars	Companies Act, 1956	Companies Act 2013
Sections	658	470
Schedules	15	7

Out of total 470 sections -

1. 98 sections effective from 12th September, 2014
2. 183 sections effective from 01st April, 2014

List of Rules notified

Chapter Number	Name of Chapter
chapter 1	Specification of definitions details
chapter 2	Incorporation
chapter 3	Prospectus and Allotment of Securities
chapter 4	Share Capital and debentures
Chapter 5	Acceptance of deposits
chapter 6	Registration of Charges
chapter 7	Management and administration
chapter 8	Declaration and Payment of Dividend
Chapter 9	Accounts
chapter 10	Audit and Auditors
chapter 11	Appointment and Qualification of Directors

List of Rules notified (Contd)

Chapter Number	Name of Chapter
chapter 12	Meetings of Board and its Powers
chapter 13	Appointment and Remuneration of Managerial Personnel
Chapter 14	Inspection, Investigation and Inquiry
chapter 21	The Companies (Authorised to Registered) Rules
chapter 22	Registration of Foreign Companies
chapter 24	Registration Offices & Fees
chapter 26	Nidhi Rules
chapter 29I	(Adjudication of Penalties) Rules
chapter 29II	(Miscellaneous) Rules
Section 135	Corporate Social Responsibility

New Concepts – Type of Companies

New Type of Companies

- ❑ Associate Company
- ❑ Subsidiary Company
- ❑ One Person Company
- ❑ Dormant Company
- ❑ Small Company
- ❑ Foreign Company
- ❑ Sick Company
- ❑ Section 8 Company
- ❑ Listed Company
- ❑ Infrastructure Company

New Definition : Associate Company

- ❑ “Associate company” in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.
- ❑ “Significant Influence” means control of at least **twenty percent** of total share capital or of business decisions under an agreement.
- ❑ Consolidation / RPT / Auditor Disqualification / Prohibition of non cash transaction

New Concept: One Person Company

- ❑ Concept of one person is introduced. One person can form a private limited Company to be called OPC by subscribing his name in MOA and after complying with other provisions
- ❑ Can not exceed capital 50 lacs OR avg. turnover 2 cr
- ❑ Only natural persons can be a member
- ❑ It can have only one director
- ❑ MOA of OPC is required to mention the name of person who shall be the member of the company in case of death of the original subscriber to the MOA or in his incapacity to contract. The consent of such person is required to be filed with ROC at the time of incorporation.
- ❑ Such person can withdraw his consent and can also change the name of such person. Any such change is to be intimated to ROC in such time & format as may be prescribed.

Dormant Company [Section 455]

1. Where a company has no significant accounting transaction **or**
 2. an inactive company
- ❑ may make an application to the Registrar for obtaining the status of a dormant company

New Concept: Small Company

□ **Small Company: Clause 2(85)**

(i) *paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than five crore rupees; or*

(ii) *turnover of which as per its last profit and loss account does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than twenty crore rupees;*

Provided that nothing in this clause shall apply to—

(A) *a holding company or a subsidiary company;*

(B) *a company registered under section 8; or*

(C) *a company or body corporate governed by any special Act;*

New Definition: Foreign Company

□ **Foreign Company: Clause 2(4)**

□ “foreign company” means any company incorporated outside India which—

(a) has a place of business in India, whether by itself or through an agent, physically or through electronic mode; and

(b) conducts any business in India in any other manner.

□ Modified Definition

□ Not a part of the company which is a subsidiary of a company in India

□ Foreign company: meaning of having place of business has been expanded and being made open ended

□ **Registration / annual account / CSR**



Would an overseas company with a routine purchase sale in India, having no branch, have to register itself?

New Concept: Sick Company

- Erosion of net worth is not the criteria any more
- Not restricted to Industrial Undertaking
- Not for protection of promoter but for protection of lender
- Secured Creditor may apply to NCLT if his debts are not serviced
- NCLT will have power to frame scheme [including take over management]

New Concept - Listed Co.

□ Listed Company includes –

1. Whose shares are listed on BSE / NSE
2. Whose shares are listed on regional stock exchange
3. **Whose Debt is listed [Equity may not be listed]**
4. Whose shares are listed on SME
5. Which are suspended from listing

Compliances for 'Listed entity'

- Annual Return Certification by PCS
- Disclosure of changes in Promoters and Top Shareholders shareholding
- Report on Annual General Meeting
- Appointment of Independent / Woman Directors
- Auditor Rotation
- Evaluation of Board Performance
- Committees – Audit / Nomination & Remuneration / Stakeholder Relationship

New Concepts – Infrastructure Co

- “infrastructure projects” means the infrastructure projects specified in Schedule VI
- It is a vast concept which covers – water management, agricultural support infra, telecommunication, **industrial parks, convention centre**, power, petroleum, **mass housing, SRA**, mining, environment related infra
- Infrastructure Cos. are exempt for loans and investment restrictions
- Infrastructure Cos. are allowed issue preference shares for larger period

New Concepts – Accounts/ Finance

New Concepts – Accounts / Finance

- Free Reserves
- Net worth
- Charge
- Deposit
- Turnover
- Financial Statement
- Financial Year

New Definition – Net worth

- ☐ Paid up share capital
- ☐ + All **reserves created on**
- ☐ + Securities Premium
- ☐ - accumulated losses
- ☐ - deferred expenditure
- ☐ - mis. Expenses not written off
- ☐ Does not include – revaluation reserve
- ☐ Some times 'net worth' some times 'paid up capital + free reserves'

Does it include
accumulated profit and
loss account?

New Defintion - Charge

- ☐ Means an interest or lien created on the property
OR assets of a company Or any of its undertaking
Or both as security and includes mortgage
- ☐ Lien against FD – to cover
- ☐ Pledge of Shares – to cover

New Definition - Deposit

- ☐ Loan from Shareholder / Relative / Outsider /
- ☐ Loan from LLP
- ☐ Loan from Foreign Entity without complying FEMA
- ☐ Business advance for more than 365 days
- ☐ Property advance without permission to sell
- ☐ OFCD
- ☐ Share application money for more than 60 days

New Concept/ Def. : Financial Year

- ☐ Financial Year = April to March
- ☐ Financial Year can not be extended
- ☐ If company is formed in the month of Jan – March,
financial year can end of March of subsequent year
- ☐ A company which is holding/ subsidiary company of
a company incorporated outside India can
approach Tribunal for change in FY for the purpose
of consolidation required outside India
- ☐ Transition Period is 2 years for this provision

New Scope : Financial Statements

- Financial Statements include – balance sheet, profit & loss account, cash flow & Changes in equity
- Every company is required to prepare consolidated financial statements [CG will prescribe]
- Consolidated financial statements will include financials of subsidiary AND associate company or JV Company
- Depreciation as per new method Useful Life
- Financial Statements to be signed by CFO. Chairman can singly sign with CFO if authorized
- Cash flow is not mandatory for OPC, Small / dormant Company

New Concept: Turnover

Mercantile Basis?

Books of Accounts

Cash basis?

over: Clause 2(91)

- "turnover" means the aggregate value of the realisation of amount made on account of sale or distribution of goods or services by the company during a financial year
- New Definition
- Impact: Words Related
- **Cross Reference**
- Applicability of



lot of confusion

Director and CSR

New Concepts – Management

New Concepts – Management

- Key Managerial Personnel
- CEO
- CFO
- One Level Below KMP [Senior Management]
- Officer In Default
- Independent Director
- Nominee Director
- Resident Director [minimum 1 AND MD to be resident]

Some New Terminologies

- Ordinary Course [Se. 188]
- Arms Length [se 188]
- Accustomed to Act [Se. 185]
- Interested Director [Se. 149]
- Related Party [Se. 2(46)]
- Related Party Shareholder [Se.188]
- Rotation of Auditors

INCORPORATION

Incorporation of Co -Process

- Forms to be filed:
 - Form INC-1 - Name Application
 - Form INC-7 – Registration of Company
 - Form INC-22 – For Notice of situation or change of situation of registered office
 - Form DIR-12 – For Particulars of appointment of Directors and the key managerial personnel and the changes among them

Change in Process

- Additional disclosures are required:
 - MOA & AOA as per CA-13
 - Subscription pages has to be as per rules and photo to be affixed
 - Other objects clause in MOA has been removed
 - Declaration from CA/CS/CWA/Advocate and from the directors, manager, secretary named in articles declaring that requirements of the Act and Rules have been complied with in form No. INC.8 (ROC insisting on affidavit)

Change in Process (contd)

- ❑ Affidavit from subscribers and first directors that he is not convicted of any offence for formation/promotion or management of any company and that that he is not guilty of fraud or misfeasance or breach of duty during the preceding previous 5 years and the documents filed with ROC are true and correct in form No. INC 9
- ❑ Correspondence address can be different from regd office till registered office is established

Change in Process (contd)

- ❑ Details of subscribers/directors are to be provided along with identity proof
- ❑ Other directorship interest in firm and bodies corporate to be provided by the directors along with consent
- ❑ Form of verification of signature of subscribers in Form No. INC.10
- ❑ Declaration from the subscribers/promoters to the effect that company shall not accept deposit
- ❑ Resident director to provide PAN details

Commencement of Business

- ❑ Commencement of business certificate is not required for any company
- ❑ Private & Public company can commence if –
 1. Confirmation w.r.t. receipt of share subscription money has been filed with ROC in 180 days
 2. Verification of registered office is filed with ROC within 30 days
- ❑ In absence of aforesaid, company can be struck off

One Person Company (OPC) – Process

- ❑ Forms to be filed:
 - ❑ Form INC-1 - Name Application
 - ❑ Form INC-2 – Registration of Company alongwith the details and consent of nominee in Form INC-3
 - ❑ Form INC-22 – For Notice of situation or change of situation of registered office
 - ❑ Form DIR-12 – For Particulars of appointment of Directors and the key managerial personnel and the changes among them

Companies with Charitable objects

- Forms to be filed:
 - Form INC-1- Name Application
 - Form INC-8- Application to Registrar for license
 - Form INC-2 – Registration of Company
 - Form INC-22 – For Notice of situation or change of situation of registered office
 - Form DIR-12 – For Particulars of appointment of Directors and the key managerial personnel and the changes among them

Companies with Charitable objects

- Additional disclosures
 - Declaration from professional in Form No .14 stating MOA & AOA are in conformity with the provisions of section 8 and rules thereunder and matters incidental and supplemental are complied with
 - Estimate of the future annual income and expenditure for next 3 years
 - Declaration from promoters in form INC-15 stating MOA & AOA are in conformity with the provisions of section 8 and rules thereunder and matters incidental and supplemental are complied with

PRECAUTIONS / Amendments

Share Capital

- Share Application money accepted before 31 March 2014 will have to be refunded; OR
- Shares to be allotted before 29 May 2014
- Refund will have to be made before 29 May 2014
- Else it will be considered as acceptance of deposit
- All Shares to be offered on rights basis; ELSE
- Special Resolution + valuation report
- Lot of documentation
- Allotment can not be shown on previous date

**Do you have Preference
Shares?**

**If dividend is not paid for 2
years, it will carry voting
right**

Borrowing

Who can approve borrowing?

- ☐ Board of Directors can approve borrowing
- ☐ Board can delegate this power to committee or to MD
- ☐ If borrowing exceeds paid up capital + free reserves, it requires prior **special resolution**
- ☐ All the resolutions [shareholders / directors] to be filed with ROC

Charge – secured loan

- Means an interest or lien created on –
 1. Property or
 2. Asset of a company or
 3. Any of its undertaking
 as a security and includes mortgage
- Now requires charge registration for lien on FD or pledge of shares
- Charge on vehicle is also required to be registered.

What if not complied?

- If charge is not registered – secured lender is at par with unsecured lender
- Penalty = 100,000 – 500,000 + imprisonment of 6 months
- If borrowing made without special resolution, borrowing may be considered as ultra vires

Unsecured Loan /Deposit

- **Company can take loan from Directors [out of owned funds]**
- **Private Company can not take loan from Shareholders/Relatives of Directors**
- A return is required to be filed before 30 June 2014
- Existing Deposits to be refunded in 1 year. **Penalty=1 cr**
- Private Company can take deposit only upto 25% of paid up capital + free reserves, if –
 1. Credit rating + deposit insurance + Special Resolution
- Only Public companies with min. networth of Rs.100 Cr or turnover of Rs.500 can accept Public Deposit

Fixed Assets

Assets

- All investments in assets should be made in company's name
 1. Motor Car?
 2. Agricultural Land?
- Depreciation to be changed on useful life
- It will have to be computed so from 1 April 2014

Disposal of Assets

- Any disposal/ lease / sell of undertaking OR substantial undertaking of the Company requires Special Resolution
- Undertaking includes – property / investment / business undertaking
- Undertaking = undertaking in which investment of the company exceeds 20% of its net worth OR
- Undertaking which generates 20% of total income of the Company as per last financial year
- This section does not apply to company, where selling and leasing property is an Ordinary Course of Business

What if special resolution is not obtained?

Disposal of Assets

- Buyer will not be impacted if he proves that he acted in good faith
- If buyer is aware about this non compliance, title will be faulty
- It is subject to litigation
- If you are acquiring property from the Company, get this special resolution passed and filed with ROC

Investments, Loans, Guarantees and Securities

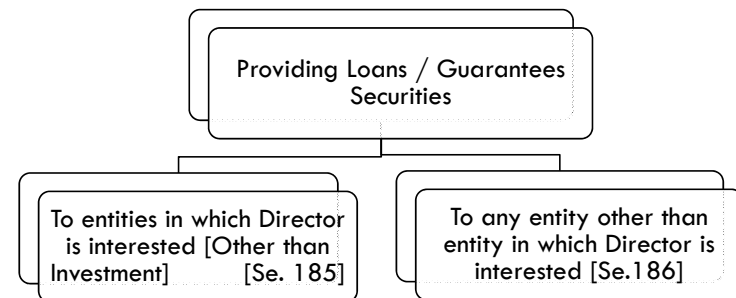
What is Investment?

- Laying of money in such a manner that it would produce some revenue
- It may include following –
 1. Shares,
 2. Debentures
 3. Property [which is not purchased for business]
 4. Fixed Deposit is investment? – Yes, it can be said as Investment for the purpose of section 179

Investments – Who can approve?

- Every Investment requires approval of the Board of Directors
- If loans / investments / guarantee/ security made in excess of 100% of free reserves or 60% of paid up capital + free reserves, it requires prior approval of shareholders
- Approval of public financial institutions, in certain cases, is required
- Every such Board / Shareholder resolution to be filed with ROC

Loans /Guarantees /Securities



Prohibited Loan/ Guarantee/ Security

- Section 185
 - Following Loan /Guarantee/Security are prohibited [loan includes book debts]:
 - *To any director of the lending company,*
 - *To any Director of its holding company or*
 - *To any partner or relative of any such director;*
 - *To any firm in which any such director or relative is a partner;*
 - *To any private company of which any such director is a director or member*

Exemption:

- Advance loan, give guarantee or provide security in respect of loan made by any person to **wholly owned subsidiary**
- Give guarantee or provide security in respect of loan made by any bank or financial institution to **subsidiaries companies**
- **NBFC can give loans/ provide guarantee / security**
- If borrowing party is anybody other than prohibited list
- Penalty = 5 to 25 lacs

Loans and Investments

- **Limits on Investment /Loan /Guarantee /Security Given(186)**
 - Interest rate not lower than yield on Govt. Security
 - Applicable even to private limited company
 - Applicable even for loan given to employees
 - Requires approval of board – to be filed with ROC
 - Register to be maintained

Loans and Investments

- **Special Resolution and Board resolution to be filed with ROC**
- Exemption:
 - Loan given or guarantee or security provided by holding company to **wholly owned subsidiary** or **joint venture company**
 - Investment in shares by holding company to its **wholly owned subsidiary company.**
 - This section shall not apply to NBFC

DIRECTORS



Director – Composition

- ❑ **1/3 Independent Director – listed and few public companies**
- ❑ **1 woman director - listed and certain public companies**
- ❑ **Cos need 2 non interested directors to approve related party transactions**
- ❑ At least one director should be resident in India [Transition of 1 year]
- ❑ Any person who has not attended board meeting for last 12 months will vacate
- ❑ Any private co which has not filed 3 years ROC returns, all Directors will be disqualified
- ❑ **Max. no Directorship not to exceed 10 public co and total 20**

**Is it mandatory to have
Managing Director?**

Liabilities

- ❑ Every working Director/ KMP is officer in default
- ❑ Director made accountable is officer in default
- ❑ If there is no working Director, all Directors will be officer in default
- ❑ Non executive / independent Directors are liable for acts / omissions occurred with his knowledge attributable through broad process
- ❑ Insurance can be taken towards the liabilities of the Directors

Related Party Transactions

- Remuneration to Directors
- Purchase / sale of goods / services / Rent
- Loan / Investment

Remuneration

- ☐ Board and Shareholder approval essential
- ☐ Require compliance of schedule V
- ☐ No remuneration restriction on private company, if – no default in payment of debts
- ☐ Disclosure is required in the annual report
- ☐ Interested Directors should not vote
- ☐ Related Shareholders can vote

Related Party Transaction – Purchase/ sale of goods/ services

- ☐ All transactions should be in Ordinary Course at arms length; else
- ☐ Require approval of Board and shareholders
- ☐ Interested Directors not to vote
- ☐ Related party shareholder can not vote

Loan /Investment / Borrowing

- ☐ Director can give loan but shareholder can not
- ☐ Group company can not give loan
- ☐ Company can invest in group entity
- ☐ Company can not give loan to group entity
- ☐ Require board and shareholder approval [in certain cases]
- ☐ Related Party Shareholder can vote

Approval to be obtained

Resolutions to be passed by board & to be filed with ROC

- ☐ to issue securities, including debentures,
- ☐ to borrow monies;
- ☐ to invest the funds of the company
- ☐ to appoint or remove KMP
- ☐ **to take note of disclosure of interest by the Directors**
- ☐ to grant loans or give guarantee or provide security in respect of loans;
- ☐ to approve financial statement and the Board's report;
- ☐ to diversify the business of the company
- ☐ **To take note of appointment / removal of one level below KMP**

Consequences of Non Compliances

- ☐ Section 403 – consequences of late filing [effective]
- ☐ Section 450 – wherever no penalty is prescribed
- ☐ Section 447 – prosecution under fraud
- ☐ Compounding requires approval of special court
- ☐ Special Courts is constituted for doing trial of offences under Companies Act 2013
- ☐ SFIO is getting constituted
- ☐ Investors can claim damages against CA / CS / CWA
- ☐ Class action can be taken by investors

Actionable for Private Limited Company

Actionable for Private company

- ☐ Printing of CIN, website, mail id, phone, fax, registered office on letterhead and official publication
- ☐ Filing of return of deposit – DPT-4 (date 30.06.2014)
- ☐ Repayment of deposit in 1 year
- ☐ Appointment of KMP / MD / WTD
- ☐ Articles of Association needs revision
- ☐ Minutes/ Registers / Share Certificates to be maintained
- ☐ Statutory Registers to be maintained in new format [since incorporation]
- ☐ ROC filing to be maintained upto date without any delay
- ☐ Induction of new directors

Actionable for Private company

- ☐ Private Company can not give loan/ guarantee / security to another entity in which Director is interested
- ☐ Justification of arms length for related party transaction
- ☐ Borrowing in excess of paid up capital + reserves require special resolution to be filed with ROC
- ☐ Refund of Share Application money in 60 days, if not allotted
- ☐ Giving POA to non employees with common seal

Thank you

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