

## Management and Administration provisions under the Companies Act 2013



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Care, Pair, and Share

## Agenda



- Management and Administration - Section 88 to 122
- Declaration and Payment of Dividends – 123 to 127
- Meetings, Minutes, and Resolutions
- Powers and duties of Board of Directors

## New Concepts under the Companies Act 2013



### • Definitions

- Associate Company – 2 (6)
- Accounting Standards – 2 (7)
- Authorized Capital – 2 (8)
- Issued Capital – 2 (50)
- Key Managerial Person – 2 (51)
- Ordinary and Special Resolution – 2 (63)
- Private Company – 2 (68) – Significant Change
- Related Party – 2 (76)
- Relatives – 2 (77) – Significant Change
- Turnover – 2 (91)
- Voting Right – 2 (93)

## New Concepts under the Companies Act 2013



- Paradigm Shift from Act based Law to the Rules based Law
- Shift from Rates of Depreciation to Estimated useful life of Asset concept –
- National Financial Reporting Authority (NFRA), National Company Law Tribunal (NCLT) and Appellate Tribunal
- Code for Independent Directors (Schedule IV)

## New Concepts under the Companies Act 2013



- Associate Company – 2 (6)
- “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.
- *Explanation.*—For the purposes of this clause, “significant influence” means control of at least twenty per cent. of total share capital, or of business decisions under an agreement;

## New Concepts under the Companies Act 2013



- Key Managerial Person – 2 (51)
- “key managerial personnel”, in relation to a company, means—
  - (i) the Chief Executive Officer or the managing director or the manager;
  - (ii) the company secretary;
  - (iii) the whole-time director;
  - (iv) the Chief Financial Officer; and
  - (v) such other officer as may be prescribed;

## New Concepts under the Companies Act 2013



- Relatives – 2 (77)
- “relative”, with reference to any person, means any one who is related to another, if—
  - (i) they are members of a Hindu Undivided Family;
  - (ii) they are husband and wife; or
  - (iii) one person is related to the other in such manner as may be prescribed

The Companies (Specification of definitions details) Rules, 2014.

## New Concepts under the Companies Act 2013



- (1) Father: Provided that the term “Father” includes step-father.
- (2) Mother: Provided that the term “Mother” includes the step-mother.
- (3) Son: Provided that the term “Son” includes the step-son.
- (4) Son’s wife.
- (5) Daughter.
- (6) Daughter’s husband.
- (7) Brother: Provided that the term “Brother” includes the step-brother;
- (8) Sister: Provided that the term “Sister” includes the step-sister.

## Company Law Rules



- Chapter I - The Companies (Specification of definitions details) Rules, 2014.
- Chapter II - The Companies (Incorporation) Rules, 2014.
- Chapter III - The Companies (Prospectus and Allotment of Securities) Rules, 2014.
- Chapter IV - The Companies (Share Capital and Debentures) Rules, 2014.

## Company Law Rules



- Chapter V - The Companies (Acceptance of Deposits) Rules, 2014.
- Chapter VI - The Companies (Registration of Charges) Rules, 2014.
- Chapter VII - The Companies (Management and Administration) Rules, 2014.
- Chapter VIII - The Companies (Declaration and Payment of Dividend) Rules, 2014.

## Company Law Rules



- Chapter IX - The Companies (Accounts) Rules, 2014.
- Chapter X - The Companies (Audit and Auditors) Rules, 2014.
- Chapter XI - The Companies (Appointment and Qualification of Directors) Rules, 2014.
- Chapter XII - The Companies (Meetings of Board and its Powers) Rules, 2014.

## Company Law Rules



- Chapter XV-Compromises, Arrangements And Amalgamations
- Chapter XVI-Prevention Of Oppression And Mismanagement
- Chapter XVII-Registered Valuers
- Chapter XVIII-Removal Of Names Of Companies From The Register Of Companies
- Chapter XIX-Revival And Rehabilitation Of Sick Companies Chapter XX-Winding Up

## Company Law Rules



- Chapter XX-Winding Up
- Chapter XXI -The Companies (Authorised to Registered )Rules, 2014.
- Chapter XXII- The Companies (Registration of Foreign Companies) Rules, 2014.
- Chapter XXIII-Government Companies

## Company Law Rules



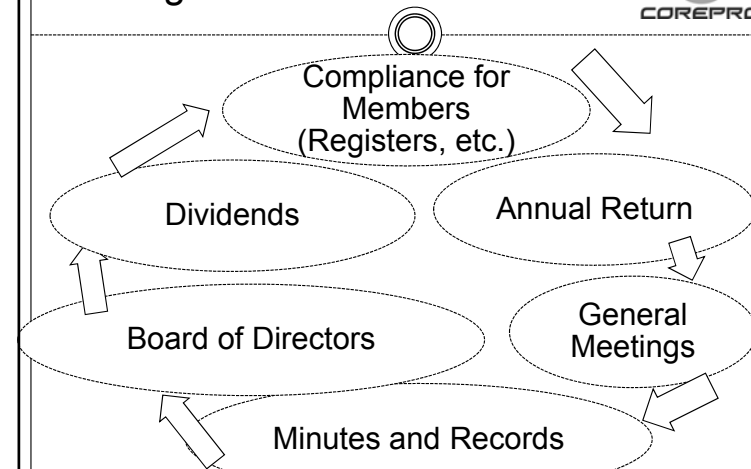
- Chapter XXIV - The Companies (Registration Offices and Fees) Rules, 2014.
- Chapter XXV - Companies To Furnish Information Or Statistics
- Chapter XXVI - Nidhi Rules, 2014.
- Chapter-XXVII-National Company Law Tribunal And Appellate Tribunal

## Company Law Rules



- Chapter-XXVIII-Special Courts
- Chapter XXIX - The Companies (Adjudication of Penalties) Rules, 2014.
- Chapter XXIX - The Companies (Miscellaneous) Rules, 2014.

## Management and Administration



## Management and Administration



- Section 88 to 122 – M and A
- Section 123 to 127 – Dividends

## Register of Members



- The Companies (Management and Administration) Rules, 2014
- Section 88 - Register of members - equity and preference–MGT 1 – Six Months for existing Companies
- Register of debenture-holders – MGT 2
- Register of any other security holders

## Other Registers



- Register of Deposits – 73 and 76
- Register of Contracts and Directors - 189
- Minutes of Board of Directors
- Minutes of Audit Committee
- Minutes of General Meeting

## Declaration in respect of beneficial interest in any share



- 89 – Registered Ownership v. beneficial interest
- Declaration to the Company by both – MGT 4
- Company to file with declaration with ROC – MGT 6

## Other Provisions



- 90 - Investigation of beneficial ownership
- 91 - Power to close register of members or debenture holders or other security holders.
  - Seven days' Notice
  - 45 days overall
  - 30 days at a time

## Annual Return



- 92 – Annual Return - Contents:
  - registered office, principal business activities, particulars of its holding, subsidiary and associate companies;
  - shares, debentures and other securities and shareholding pattern;
  - indebtedness;
  - members and debenture-holders along with changes therein since the close of the previous financial year

## Annual Return



- promoters, directors, key managerial personnel along with changes therein since the close of the previous financial year;
- meetings of members or a class thereof, Board and its various committees along with attendance details;
- remuneration of directors and key managerial personnel;
- penalty or punishment imposed on the company, its directors or officers and details of compounding of offences and appeals made against such penalty or punishment;

## Annual Return



- matters relating to certification of compliances, disclosures as may be prescribed;
- details, as may be prescribed, in respect of shares held by or on behalf of the Foreign Institutional Investors indicating their names, addresses, countries of incorporation, registration and percentage of shareholding held by them; and
- such other matters as may be prescribed,

## Annual Return



- AR to be Signed by a director and a CS (employee), or where there is no CS (employee), by a CS in practice
- In case of One Person Company and small company, AR signed by the CS (employee), or where there is no CS (employee), by director of the company
- Form No. MGT. 7

## Annual Return



- Listed company
- A company having paid-up share capital of ten crore rupees or more
- Turnover of fifty crore rupees or more,
- Certified by a Company Secretary in practice and the certificate shall be in **Form No. MGT.8**

## Promoters' stake changes



- 93
- Listed company - Return in Form No. MGT.10
- Changes relating to either increase or decrease of two percent or more in the shareholding position of promoters and top ten shareholders
- Either value or volume of the shares, within fifteen days of such change.

## Annual General Meeting



- Section 96 to 120
- Business hours – 9.00 A.M. to 6.00 P.M.
- National Holiday – vis-à-vis Public Holiday
- Section 170 of the Companies Act 1956 – No corresponding provision under the Companies Act 2013 – Shorter Notice

## Resolutions and Agreements to be filed



- Section 117
- A copy of every resolution or any agreement, in respect of matters specified in sub-section (3) together with the explanatory statement under section 102, if any, annexed to the notice calling the meeting in which the resolution is proposed,
- Shall be filed with the Registrar within thirty days in form MGT 14

## Resolutions and Agreements to be filed



- special resolutions
- resolutions which have been agreed to by all the members but should have been passed at SR
- any resolution of the Board of Directors of a company or agreement executed for appointment of a managing director
- resolutions or agreements which have been agreed to by any class of members

## Resolutions and Agreements to be filed



- resolutions passed by a company according consent to the exercise by its BOD of any of the powers under clause (a) and clause (c) of sub-section (1) of section 180
  - to sell, lease or otherwise dispose of the whole or substantially the whole of the undertaking
  - to borrow money exceeding aggregate of its paid-up share capital and free reserves
- resolutions requiring a company to be wound up voluntarily passed in pursuance of section 304

## Resolutions and Agreements to be filed



- resolutions passed in pursuance of sub-section (3) of section 179
  - to make calls on shareholders in respect of money unpaid on their shares;
  - to authorise buy-back of securities under section 68;
  - to issue securities, including debentures, whether in or outside India;
  - to borrow monies;
  - to invest the funds of the company;



## Resolutions and Agreements to be filed



- Rule 8 of the Companies (Meetings of Board and its Powers) Rules, 2014
  - to make political contributions;
  - to appoint or remove key managerial personnel (KMP);
  - to take note of appointment(s) or removal(s) of one level below the Key Management Personnel;
  - to appoint internal auditors and secretarial auditor;
  - to take note of the disclosure of director's interest and shareholding

## Resolutions and Agreements to be filed



- to buy, sell investments held by the company (other than trade investments), constituting five percent or more of the paid up share capital and free reserves of the investee company;
- to invite or accept or renew public deposits and related matters;
- to review or change the terms and conditions of public deposit;
- to approve quarterly, half yearly and annual financial statements or financial results as the case may be

## Resolutions and Agreements to be filed



- 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 approve amalgamation, merger or reconstruction;
- to take over a company or acquire a controlling or substantial stake in another company

## Report on annual general meeting



- Section 121
- Listed public company
- Confirmation to the effect that the meeting was convened, held, and conducted as per the provisions of this Act and the rules made there under
- Within thirty days of the conclusion of the annual general meeting - Form No. MGT.15

## Report on annual general meeting



- in addition to the minutes of the general meeting...
  - the day, date, hour and venue of the annual general meeting;
  - confirmation with respect to appointment of Chairman of the meeting;
  - number of members attending the meeting;
  - confirmation of quorum;

## Report on annual general meeting



- confirmation with respect to compliance of the Act and the Rules, secretarial standards made there under with respect to calling, convening and conducting the meeting;
- business transacted at the meeting and result thereof;
- particulars with respect to any adjournment, postponement of meeting, change in venue; and
- any other points relevant for inclusion in the report.
- Fair and correct summary of the proceedings of the meeting

## Declaration of dividend



- 123 to 127
- Transfer such percentage of its profits for that financial year as it may consider appropriate to the reserves of the company
- the Companies (Declaration and Payment of Dividend) Rules, 2014.

## Declaration of dividend



- From Past Reserves
- Not exceed the average of the rates at which dividend was declared by it in the three years immediately preceding that year (except where the Company has not declared dividends in past year)
- Total amount to be drawn from such accumulated profits shall not exceed one-tenth of the sum of its paid-up share capital and free reserves

## Declaration of dividend



- balance of reserves after such withdrawal shall not fall below fifteen per cent of its paid up share capital
- No dividend unless carried over previous losses and depreciation not provided in previous year set off against profit of the company of the current year - the loss or depreciation, whichever is less, in previous years set off against the profit of the company for the year for which dividend is declared or paid.

## Declaration of dividend



- 124 – Unpaid / unclaimed Dividends to be transferred to Investor Education and Protection Fund
- Shares

## Duties of Directors



- Section 166
  - Act in good faith in order to promote the objects of the company for the benefit of members
  - Exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment
  - Not involve any situation where there is direct / indirect conflict of interest
  - Not achieve or attempt to achieve any undue gain or advantage
  - Not assign his office and any assignment so made shall be void

## Vacation of office



- Section 167
  - Absents himself from all the meetings of the Board of Directors held during a period of twelve months with or without seeking leave of absence of the Board

## Powers of the Board



### • Section 179

- make calls on shareholders in respect of money unpaid on their shares;
- authorise buy-back of securities under section 68;
- issue securities, including debentures, whether in or outside India;
- borrow monies;
- invest the funds of the company;

## Powers of the Board



- grant loans or give guarantee or provide security in respect of loans;
- approve financial statement and the Board's report;
- diversify the business of the company;
- approve amalgamation, merger, or reconstruction
- make political contributions
- appoint or remove key managerial personnel (KMP)...

## Restrictions Powers of the Board



- Pass SR in General Meeting
- To sell, lease, or otherwise dispose of the whole or substantially the whole of the undertaking of the company
- To invest otherwise in trust securities the amount of compensation received by it as a result of any merger or amalgamation

## Restrictions Powers of the Board



- borrow money, where the money to be borrowed, together with the money already borrowed by the company will exceed aggregate of its paid-up share capital and free reserves, apart from temporary loans obtained from the company's bankers in the ordinary course of business
- Remitting time to debts owed by directors and donation (unless donation > 5% of Average NP of last Three years) – Excluded [Section 293 (1) of the Companies Act 1956 ]

## Accounts



- Report by its Board of Directors
  - the extract of the annual return as provided under sub-section (3) of section 92 - **Form No.MGT.9.**
  - number of meetings of the Board;
  - Directors' Responsibility Statement;
  - a statement on declaration given by independent directors under sub-section (6) of section 149;

## Report by its Board of Directors



- Listed Companies - under sub-section (1) of section 178, company's policy on directors' appointment and remuneration including criteria for determining qualifications, positive attributes, independence of a director and other matters
- Explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer in Auditors' Report and Secretarial Audit Report
- Particulars of loans, guarantees or investments under section 186 (372A of the Companies Act 1956)

## Report by its Board of Directors



- Particulars of contracts or arrangements with related parties referred to in sub-section (1) of section 188
- the state of the company's affairs;
- the amounts, if any, which it proposes to carry to any reserves;
- the amount, if any, which it recommends should be paid by way of dividends

## Report by its Board of Directors



- Material changes and commitments, if any, affecting the financial position of the company occurred between the end of the financial year of the company and the date of the report;
- *the conservation of energy, technology absorption, foreign exchange earnings and outgo;*
- a statement indicating development and implementation of a risk management policy for the company including identification therein of elements of risk, if any, which in the opinion of the Board may threaten the existence of the company

## Report by its Board of Directors



- CSR Policy
- Listed company and every other public company having paid-up share capital of RS. 25 Crore or more, a statement indicating the manner in which formal annual evaluation has been made by the Board of its own performance and that of its committees and individual directors

## Report by its Board of Directors



- Rule 8 – the Companies (Accounts) Rules, 2014
  - the financial summary or highlights;
  - the change in the nature of business, if any;
  - the details of directors or key managerial personnel who were appointed or have resigned during the year;
  - the names of companies which have become or ceased to be its Subsidiaries, joint ventures or associate companies during the year;

## Report by its Board of Directors



- the details relating to deposits, covered under Chapter V of the Act,-
  - accepted during the year;
  - remained unpaid or unclaimed as at the end of the year;
  - whether there has been any default in repayment of deposits or payment of interest thereon during the year, and if so, number of such cases and the total amount involved-
    - ✖ at the beginning of the year;
    - ✖ maximum during the year;
    - ✖ at the end of the year

## Report by its Board of Directors



- the details of deposits which are not in compliance with the requirements of Chapter V (Section 73) of the Act;
- the details of significant and material orders passed by the regulators or courts or tribunals impacting the going concern status and company's operations in future;
- the details in respect of adequacy of internal financial controls with reference to the Financial Statements.

## Directors' Responsibility Statement



- Applicable accounting standards had been followed
- Selected such accounting policies and applied them consistently
- Proper and sufficient care for the maintenance of adequate accounting records
- Prepared the annual accounts on a going concern basis

## Directors' Responsibility Statement



- The directors, in the case of a listed company, had laid down internal financial controls to be followed by the company and that such internal financial controls are adequate and were operating effectively.
- The directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively.
- To be signed by the Chairperson or Two Directors

## Meetings of Board



## OPC



- Section 122 to operate for OPC
- An Ordinary or Special Resolution (section 114) - sufficient if, the resolution is communicated by member to the OPC
- Entered in the minutes-book under section 118  
Signed and dated by the member
- Such date shall be deemed to be the date of the meeting for all the purposes under this Act.

## OPC



- Where there is only one director in OPC
- sufficient if, the resolution is signed by director of the OPC
- Entered in the minutes-book under section 118  
Signed and dated by the director
- Such date shall be deemed to be the date of the meeting for all the purposes under this Act.

## OPC



- 134 – Financial Statements of an OPC can be signed by only one Director
- 134 – Relaxation in disclosure requirements in Directors' Report - a report containing explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the auditor in his report.

## Meetings of Board



- 173 – Meeting of Board of Director
  - First Board of Director meeting of Directors within thirty days of the date of its incorporation
  - Minimum four meetings of BOD in a manner that not more than 120 days shall intervene between two consecutive meeting – **Seven Days' Notice**
  - Participation of directors in a meeting of the Board may be either in person or through video conferencing or other audio visual means

## Exemptions to Small Companies



- An OPC, a small company, and dormant company
- At least one meeting of the BOD in each half of a calendar year
- The gap between the two meetings is not less than ninety days



## Exemptions to Small Companies



- Mandatory Board of Directors Meetings
  - First Meeting of the year– Disclosure of interest by directors – Section 184
  - Adoption of Accounts – Section 134
- The Companies (Meetings of Board and its Powers) Rules, 2014.

## Meetings of Board



- Four meetings every year
  - Gap between Two meetings not to exceed 120 days as against One meeting in each quarter earlier
- Seven days' notice for Board Meeting (BM) (can be electronic also).
- Shorter Notice - possible if at least one independent director is present at such meeting
- If no ID present in meeting, Circulate the Resolutions and get Ratified

## Meetings of Board



- Video conferencing or other audio visual allowed for board meeting
- Matters can not be dealt in video conferencing or other audio visual (as per Rules)
  - Approval of financial statements
  - Approval of directors' report
  - Approval of prospectus
  - Audit committee meetings for consideration of accounts
  - Approval of matters relating to amalgamation, merger, demerger, acquisition, and takeover

## Meetings of Board



- Capable of recording and recognizing the participation of the directors and of recording and storing the proceedings of such meetings along with date and time

## Audit Committee



- Section 177
- Consisting of Three Directors
- Majority Independent Directors
- Minimum Five member Board (Implied) for listed companies

## Audit Committee



- Recommendation for appointment, remuneration, and terms of appointment of auditors
- Review and monitor the auditor's independence and performance, and effectiveness of audit process
- Examination of the financial statement and the auditors' report thereon
- Approval or any subsequent modification of transactions of the company with related parties

## Audit Committee



- Scrutiny of inter-corporate loans and investments;
- Valuation of undertakings or assets of the company, wherever it is necessary;
- Evaluation of internal financial controls and risk management systems;
- Monitoring the end use of funds raised through public offers and related matters.

## Disclosure of interest by director



- Section 184
- First Board of Directors' meeting of the year
- Not to participate in meeting

## Related Party Transactions



- Section 188
- Board of Directors' Resolution for approval
- Special Resolution in specified cases
- No member of the company shall vote on such special resolution, to approve any contract or arrangement which may be entered into by the company, if such member is a related party

## Related Party Transactions



- SR required if:
  - a company having a paid-up share capital of ten crore rupees or more
  - sale, purchase or supply of any goods or materials directly or through appointment of agents exceeding 25% of the annual turnover
  - selling or otherwise disposing of, or buying, property of any kind directly or through appointment of agents exceeding ten percent of net worth

## Related Party Transactions



- leasing of property of any kind exceeding ten percent of the net worth or exceeding ten percent of turnover
- availing or rendering of any services directly or through appointment of agents exceeding ten percent of the net worth
- appointment of a related party to any office or place of profit in the company, its subsidiary company or associate company at a monthly remuneration exceeding RS. 250,000