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[Presentation on new Companies Bill, 2013]

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Companies Bill, 2013

The Indian Parliament has passed the Companies Bill, 2013. ('The Bill / 2013 Act') on 8th August 2013. The Bill has received President's assent on 29th August, making it a law, replacing the old regulations that govern corporate in the country. It would come into force from date(s) as may be notified by the Central Government. The 2013 Act replaces the Companies Act 1956. It incorporates certain important provisions to facilitate ease of doing business in India. The 1956 Act was passed in the first decade of Free India; the business landscape has changed radically the last 60 years.

The Companies Bill, 2013 is a vibrant step, which will play a major role in attaining the ultimate ends of social & economic policy of the government and in the development of companies in India on healthy lines.

Important changes regarding Incorporation relating matters

S.No	Particulars	Provision contained in existing Companies Act, 1956	Provision contained in Companies Bill 2013
1.	Types of companies	Private Company Public Company	Private Company Public Company One Person Company
2.	Maximum number of members for private companies	A private company can have a maximum of 50 members	A private company can have a maximum of 200 members
3.	One Person Company	Public company to have minimum seven members and private companies to have minimum 2 members.	New concept of one person Company introduced which will be a private company.
4.	Commencement of Business	Provision is applicable only to Public limited companies	Now applicable to all companies having share capital.

5.	Registered Office	Companies are required to furnish the details of the Registered office of the company by filing Form 18 at the time of incorporation.	A company shall, on and from the 15 th day of its incorporation to have a registered office capable of receiving & acknowledging communications and notices as may be addressed to it. The company is also required to furnish to the Registrar verification of its registered office within a period of 30 days of its incorporation in a prescribed manner. Notice of every change of the situation of the registered office, shall be given to the Registrar within fifteen days of the change, who shall record the same.
6.	Object Clause of MOA	Object clause bifurcated into - Main Objects, Incidental or Ancillary Objects and Other Objects.	MOA to contain the objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof.

Important changes regarding Board Meeting

S.No	Particulars	Provision contained in existing Companies Act, 1956	Provision contained in Companies Bill 2013
1.	First Board Meeting	No specific time stipulated for holding first board meeting.	Every company shall hold the first meeting of the Board of Directors within thirty days of the date of its incorporation.
2.	Length of Notice	No specific length of notice specified	Meeting of the Board shall be called by giving not less than seven days' notice
3.	Penalty	Every officer of the company whose duty is to give notice as aforesaid and who fails to do so shall be punishable with fine which may extend to one thousand rupees.	Every officer of the company whose duty is to give notice under this section and who fails to do so shall be liable to a penalty of twenty-five thousand rupees.

4.	Time Gap between two meetings	At least one meeting to be held in every quarter.	Not more than one hundred and twenty days shall intervene between two consecutive meetings of the Board
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Important changes regarding Share Capital

S.No	Particulars	Provision contained in existing Companies Act, 1956	Provision contained in Companies Bill 2013
1.	Issue of Shares at a discount	Section 79 permits issue of shares at discount subject to compliance with conditions.	Shares, other than sweat equity shares, cannot be issued at a discount.
2.	Issue of preference shares for more than 20 years	Section 80 prohibits issue of irredeemable preference shares and preference shares Redeemable after 20 years.	Preference shares have to be redeemed within 20 years of issue except for the shares issued for prescribed infrastructure projects, provided a certain percentage of shares are redeemed annually at the option of shareholders.
3.	Issue of shares on private placement, bonus shares and GDRs	No specific provision for issue of shares on private placement, bonus shares and GDRs exist in the present Act.	Specific provision introduced for issue of shares on private placement, bonus shares and GDRs in the Bill.
4.	Notice of alteration of share capital	Notice of redemption of preference shares is not required to be filed with ROC.	Company shall file a notice in the prescribed form with the Registrar within a period of thirty days of redemption of redeemable preference shares.
5.	Consolidation and division of shares	Company permitted to consolidated or sub divide its shares by passing resolution in general meeting	Consolidation and division which results in changes in the voting percentage of shareholders shall require approval of the Tribunal to be effective.

Important changes regarding Directors and their Powers

S.No	Particulars	Provision contained in existing Companies Act, 1956	Provision contained in Companies Bill 2013
1.	Maximum Number of Directors	12	15. More can be appointed by passing S.R.
2.	Maximum number of Directorship	15; Excluding Private Companies, Unlimited Companies, Alternate Directorship and Directorship in Non-Profit Associations	20. Out of which not more than 10 can be Public Companies. Includes Alternate Directorship also. No specific exclusions provided
3.	Composition of Board	Minimum of 2 directors in case of private and 3 in case of public companies. Maximum 12 Directors.	Prescribed class of companies are required to appoint at least 1 woman director. At least 1 director should be a person who has stayed in India for a period not less than 182 days in previous year. Listed Companies to have atleast one third independent directors. Existing companies to get a transition period of 1 year to comply.
4.	Resignation of Director	No specific provisions except that any change in directors to be filed with ROC within 30 days.	Director to send copy of resignation letter and detailed reasons for resignation to Registrar within 30 days of resignation
5.	Vacancy of office for not attending board meetings	The office of a director shall become vacant if he absents himself from three consecutive meetings of the Board of directors, or from all meetings of the Board, for a continuous period of three months, whichever is longer, without obtaining leave of absence from the Board	The office of a director shall become vacant in case he 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.
6.	Disclosures in Board's report	Section 217 contains disclosure requirements of Board's report	Additional Disclosures proposed by the bill, namely, Extract of Annual Return , Number of board

meetings, CSR initiatives and policy, particulars of loans, guarantees, investments etc.

Important changes regarding Charges and their Registration

S.No	Particulars	Provision contained in existing Companies Act, 1956	Provision contained in Companies Bill 2013
1.	Definition	Inclusive definition of charge given in the present Act - “Charge to include mortgage”.	Charge defined as “charge” means an interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes a mortgage
2.	Registration of all charges	Present Act specifies only 9 types of charges which require registration.	Company are required to register all types of charges within or outside India, on its property or assets or any of its undertakings, whether tangible or otherwise, and situated in or outside India with ROC within 30 days.
3.	Registration of pledge	Pledge of movable property does not require registration with ROC.	Bill proposes to withdraw this exemption.

Important changes regarding Annual General Meeting

S.No	Particulars	Provision contained in existing Companies Act, 1956	Provision contained in Companies Bill 2013
1.	Maximum time for holding first AGM	18 months from incorporation or 9 months from closure of accounts, whichever is earlier	9 Months from closure of accounts
2.	Time and Day	Every annual general meeting shall be called for a time during business hours, on a day that is not a public holiday.	Every annual general meeting shall be called during business hours, that is, between 9 A.M. and 6 P.M. on any day that is not a National Holiday

3.	Length and Mode of Notice	Every annual general meeting shall be called for a time during business hours, on a day that is not a public holiday.	21 days clear notice to be given by all companies. Notice may be given in writing or in electronic form in the manner prescribed.
4.	Consent for Shorter Notice	Consent to be given by all members entitled to vote at the meeting	Consent to be given by not less than 95% of the members entitled to vote at the meeting
5.	Quorum	Private Companies-2 Members Public Companies-5 Members	Private Companies-2 members. Public Companies-5 members where total number of members do not exceed 1000. 15 members where total number of members exceed 1000 but do not exceed 5000. 30 members where total number of members exceed 5000
6.	Penalty	Company, and every officer of the company who is in default, shall be punishable with fine which may extend to Fifty thousand rupees and in the case of a continuing default, with a further fine which may extend to two thousand five Hundred rupees for every day after the first during which such default continues.	Company and every officer of the Company who is in default shall be punishable with fine which may extend to one lac rupees and in the case of a continuing default, with a further fine which may extend to five thousand rupees for every day during which such default continues.

New Definitions Introduced

Accounting Standards	Deposit	Postal Ballot
Associate Company	Expert	Promoter
Auditing Standards	Financial Institution	Public Financial Institution
Authorised Capital	Financial Statement	Register of Companies
Books of Accounts	Foreign Company	Related Party
Called up capital	Free Reserves	Remuneration
Charge	Global Depository Receipts	Serious Fraud Investigation Office
Chartered Accountant	Independent Director	Small Company
Chief Executive Officer	Indian Depository Receipt	Subscribed capital
Chief Financial Officer	Interested Director	Sweat Equity Shares
Company Limited By Guarantee	Issued Capital	Turnover
Company Limited by Shares	Key Managerial Personnel	Unlimited Company
Company Liquidator	Notification	Voting Right
Contributory	Official Liquidator	Whole Time Director
Control	One Person Company	
Cost Accountant	Ordinary or Special Resolution	

Important changes regarding Compromises, Arrangement and Amalgamation

Only person holding not less than 10% of the shareholding or having outstanding debt amounting to not less than 5% of the total outstanding debt, as per the latest audited financial statements, are eligible to raise any opposition to an arrangement or compromise. Separate provisions have been provided for merger or amalgamation between two or more small companies or between holding and wholly owned subsidiaries introduced. Cross-border mergers permitted with any foreign company with prior approval of RBI. Countries and rules to be notified by Central Government. Consideration can be in cash or in Depository receipts or partly in cash and partly in Depository receipts.

The Central Government shall, by notification, constitute, a Tribunal to be known as National Company Law Tribunal and an Appellate Tribunal to be known as National Company law Appellate Tribunal. Auditor of the company shall confirm that, accounting treatment proposed in scheme of compromise or arrangement is in conformity with Accounting standards prescribed under section 133. The certificate needs to be filed with tribunal. Notice of scheme along with documents shall also be sent to SEBI, RBI, IT authorities, Registrar, stock exchanges, official liquidator, Competition commission of India and other sector regulators or authorities which are likely to be affected by the compromise or arrangement and the representation of authorities shall be made within thirty days from the date of receipt of documents, failing which it would be presumed that, they have no representations to make.

Certificate from company secretary/chartered accountant/cost accountant in practice is required to be filed with Registrar in such form as to whether the scheme is being complied in accordance with the orders of tribunal or not. New terminologies “merger by absorption” and “Merger by formation of a new company” introduced. In a creditor compromise, report of the auditor that fund requirement after restructuring shall conform to liquidity test based on estimates provided to them by board needs to be provided. The entire rehabilitation and liquidation process has been made time bound. Winding up is to be resorted only when revival is not feasible.

Other Miscellaneous Changes

Corporate Social Responsibility - Followings Companies shall constitute a CSR Committee:

Net worth of rupees five hundred crore or more, or Turnover of rupees one thousand crore or more, or Net profit of rupees five crore or more. Committee to consist of at least three directors out of which at least one should be independent director. Board to ensure that at least 2% of the average net profits of last 3 years is spent by the company on CSR activities every financial year, else reasons for not spending to be specified in the Board's report signed by a director and the company secretary, or where there is no company secretary, by a company secretary in practice. The annual return, filed by a listed company or, by a company having such paid-up capital and turnover as may be prescribed, shall be certified by a company secretary in practice in the prescribed form, stating that the annual return discloses the facts correctly and adequately and that the company has complied with all the provisions of this Act.

Key Managerial Personnel - No company can have both Managing Director and Manager at the same time. Every company belonging to such class or description of companies as may be prescribed, to have managing director, or chief executive officer or manager and in their absence, a whole-time director, company secretary and chief financial officer. Individual limits for remuneration enhanced in the Bill.

Related Party Transactions - Scope of related party transactions has been widened and definition of relatives has also been enlarged and replaced with definition of "related party". Clause 188 of the bill which carries provisions regarding related party transactions, combines existing sections 297 and 314. Central Government Approval has been done away with. Every related party transaction to be disclosed in Board's report.

Secretarial Audit - Secretarial Audit mandated for all listed companies and certain other class of companies. Board to respond to qualifications contained in Secretarial Audit by means of explanation in Board's report.

Secretarial Standards - Statutory recognition has given to Secretarial Standards.

What's New for Professionals

Company Secretaries

Annual Return - Requirement of compliance certificate done away with and in its place scope of annual return has been enlarged. Annual Return to be signed by a director and the company secretary, or where there is no company secretary, by a company secretary in practice. The annual return, filed by a listed company or, by a company having such paid-up capital and turnover as may be prescribed, shall be certified by a company secretary in practice in the prescribed form, stating that the annual return discloses the facts correctly and adequately and that the company has complied with all the provisions of this Act.

Appointment

Certain Companies, as may be prescribed, have to appoint company secretary mandatorily. Company Secretary will be included within the definition of Key Managerial Personnel. Functions of company secretary defined.

Secretarial Standards

Secretarial Standards are introduced and statutory recognition is provided for the first time. Company Secretary has to ensure that the Company complies with the applicable Secretarial Standards.

Secretarial Audit

All Listed companies have to annex secretarial audit report obtained from a Practising Company Secretary to the Board's report. The Board has to respond to qualifications, made by the Secretary, in the Board's report.

Certification

For all the Companies (except One person Companies and small Companies), whether Private or Public, Listed or unlisted, annual return has to be signed either by Company Secretary in employment or by a Company secretary in practice. This is akin to compliance certificate u/s 38 3A

Secretarial Standards - Statutory recognition has given to Secretarial Standards.

Auditors

- Every company is required at its first annual general meeting (AGM) to appoint an individual or a firm as an auditor. The auditor shall hold office from the conclusion of that meeting till the conclusion of its 6th AGM and thereafter till the conclusion of every 6th meeting.
- The appointment of auditor is to be ratified at every AGM. Individual Auditors are to be compulsorily rotated every 5 years and audit firm every 10 years in listed companies & certain other classes of companies, as may be prescribed.
- Internal audit may be made mandatory for prescribed companies.
- Auditors are restricted from rendering other services like bookkeeping, accounting etc. directly or indirectly to the company or its holding company or subsidiary company.
- The Act provides for new disqualifications of Auditor.
- Auditors can audit maximum 20 Companies.

Cost Auditor

- Cost auditing standards' have been mandated.
- Instead of company pertaining to any class of companies engaged in production, processing, manufacturing or mining activities, the central government can only direct cost audit to be conducted in such class of companies engaged in the production of such goods or providing such services, which have the prescribed networth or turnover and who has been directed to include the particulars relating to the utilization of material or labour or to other items of cost as may be prescribed in their books of account.
- No approval is required of central government for the appointment of cost auditor to conduct the cost audit.

COURTESY:

We are sincerely thankful to CA Amit Maheshwari, Partner of M/s Ashok Maheshwari & Associates, Chartered Accountants, Gurgaon, a member firm of Leading Edge Alliance, an Worlds' 2nd Largest Association of International Independent Accounting Firms for permitting us to share this information.

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