

SUMMARY OF AMENDMENTS COMPANY LAW CA-IPC [NOV-2014]

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SUMMARY OF AMENDMENTS

1. The Companies Act, 2013 permits for the incorporation of one person Companies (OPCs) which the earlier Company act does not permit.
2. Maximum Number of Members in a Private Company rose from 50 to 200.
3. The Companies Act, 2013 extended restriction to invite public to subscribe for shares or debentures to all type of Securities.
4. The Companies Act, 2013 clearly provides that subsidiary of public company shall be deemed to be public company for the purpose of this Act even if subsidiary company continues to be a private company in its Articles.
5. The Act of 2013 restricts end number of subsidiaries which a holding company can have. It provides that such class or classes of the holding companies as may be prescribed shall not have the layers of subsidiaries beyond the prescribed numbers.
6. Subsidiary can hold shares in Holding Company as trustee, even if Holding or Subsidiary is beneficiary of the same, which is not allowed under the Companies Act, 1956.
7. The Companies Act, 2013, provides the definition of Promoter whereas it was not defined in the Previous Company Act.
8. The definition of prospectus given under the Companies Act, 2013 includes red herring prospectus and shelf prospectus along with the other forms of the prospectus.
9. Power to decide the Particulars of Abridged Prospectus vest with SEBI, earlier this power is with the Central Government.
10. Where a person making an offer of Securities is a company or a firm, such offer shall be signed on behalf of the company or firm by two directors of the company or by not less than one-half of the partners in the firm, as the case may be and not by their agent authorized in writing, as provided under the Companies Act, 1956.
11. In case of Shelf Prospectus, The facility in the new Act is available to any class or classes of companies as prescribed by SEBI whereas the 1956 Act prescribes that this facility was available to any public financial institution, public sector bank or scheduled bank whose main object were financing.

12. The facility of shelf prospectus as per the new law given in the 2013 Act, is no longer limited to financing entities.
13. The new Act, 2013 only says about the filing of red herring prospectus and final prospectus and removes the filing of information memorandum as given under the 1956 Act.
14. Requirement of individually intimating the variations between red herring prospectus and the Prospectus, has been dispensed with.
15. Civil liability is also extended to experts.
16. Now apart from untrue statement, civil liability will also arise in case of inclusion or omission of any matter which is misleading.
17. The 2013 Act prescribes punishment for falsely inducing another person to enter into an agreement to obtain credit facilities from any bank or financial institution has also been provided.
18. The new Act of 2013 now makes it mandatory to specify in the advertisement of prospectus, the contents of its memorandum as regards the objects, the liability of members and the amount of share capital of the company, and the names of the signatories to the memorandum and the number of shares subscribed for by them, and its capital structure. These particulars in an advertisement were not mandatory under the 1956 Act.
19. Every company making public offer and such other class or classes of public companies as may be prescribed shall issue the securities only in dematerialized form by complying with the provisions of the Depositories Act, 1996 and the regulations made thereunder. Such enabling provisions were not there in the 1956 Act.
20. The requirement that only a company making initial public offer of any security for a sum of ten Crore rupees or more, shall require to issue securities in dematerialized form, has been dispensed with.
21. The Act of 2013 omits the provision that bearer of a share warrant of the company is not a member as contained in the 1956 Act.
22. As per the 2013 Act, now apart from shares, return of allotment is also required to be filed for all types of securities.
23. The amount payable on application on every security has been modified i.e., not less than 5% of the nominal amount of the security or such other % or amount as may be specified by the Securities and Exchange Board.

24. Unlike the 1956 Act, the Companies Act, 2013 provides for the refunds where the stated minimum subscription not received within 30 days from the date of issue of prospectus or such other period as may be specified by SEBI.
25. The new Act, 2013 requires that listing permission be obtained from one or more recognized stock exchanges before making public offer and also the limitation of time i.e., 10 weeks for obtaining the listing permission has been omitted by the new Act of 2013.
26. The new law omits the line 'except where a distinction between stock and shares is expressed or implied'. Thus this makes clear that wherever the term share is used in the 2013 Act, it would include "stock" as well.
27. The Act specifically provides that with respect to shares held by a person name is entered as Holder of beneficial interest in such share in the records of depository, the requirements of numbering of shares doesn't apply.
28. As Per this Act, Now a Company can make buy-back even its had been defaulted in repayment of deposit or interest payable thereon, redemption of debentures or Preference Shares or payment of dividend to any shareholder, or repayment of any term loan or interest payable thereon to any financial institution or banking company, provided that default must have been remedied and a period of 3 years must have lapsed after such default ceased to subsist.
29. The new law under the 2013 Act, reduces the period within which private company has to intimate refusal to register the transfer of securities from 2 months to 30 days.
30. In case of a public company, the time-limit for registration of transfer of securities has been reduced to 30 days.
31. Provided that where any item of special business to be transacted at a meeting of the company relates to or affects any other company then the explanatory statement shall also specify the %age of shareholding of the promoter, director, manager or other key managerial personnel in cases such %age is not less than 2% of the paid-up share capital of that other company, as against 20% provided under the Companies Act, 1956.
32. As per Companies Act, 1956, Provided that in case of an adjourned meeting or of a change of day, time or place of meeting, the company shall give not less than three days' notice to the members either Individually or by publishing an advertisement in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated.
33. In the Companies Act, 2013, the number of members required for Quorum had been modified.

34. Under the Companies Act, 2013, the Central Government is vested with powers to prescribe a class or classes of companies whose members shall not be entitled to appoint Proxies.
35. Under Companies Act 2013, it is provided that one person cannot represent as proxy for more than 50 members.
36. Under the Companies Act, 1956, a company can allow its Articles, voting by proxy by show of hands. Under the Companies Act, 2013, there is no corresponding provision.
37. Under the Companies Act, 1956, a member of a Private Company cannot appoint more than one proxy to attend on the same occasion. There is no corresponding provision under the Companies Act, 2013.
38. The eligibility criteria for making requisition for Circulation have been modified:-
- ✓ In case of company having share capital, by members holding 1/10 of share capital instead of 1/20th of Voting Power as provided under the Companies Act, 1956.
 - ✓ In case of company not having share capital, by members holding 1/10 of voting power instead of 100 members as provided under the Companies Act, 1956.
39. Under the Companies Act, 2013, the expenditure related to sending notice of any resolution to the members and circulation of statement will be borne by the company, whereas in the 1956 act, the said expenses were to be borne by requisitionists.
40. The Power to Call EGM is provided also to the Board in the Companies Act, 2013.
41. Under this Act, the Provision that EGM called by requisition of members, if held within 3 months of deposit of requisition, can be adjourned to a date, which is after the expiry of period of 3 months, has been dispensed with.
42. The definition of Charge in the new Act, 2013, has been elaborated and clearly explained, Whereas 1956 Act did not explain the meaning but merely says that it includes a mortgage.
43. The new law contained in the 2013 Act, erased the ceiling on the appointment of the number of members of NCLT from 'not exceeding sixty two' as given in the 1956 Act to 'as may deem necessary'.
44. The person to be appointed as President of NCLT shall be the Judge of the High Court for at least 5 years, as contrary to the earlier provisions of the Companies Act, 1956, wherein the only requirement was that the person to be appointed should be such as qualified for being a Judge of the High Court.

- 45. New Companies Act, 2013 prescribes qualification separately for both the Judicial member and the technical member of the Tribunal unlike the 1956 Act, where a common qualification was prescribed for the members..
- 46. New Companies Act, 2013 increases the strength of NCLAT from maximum 3 members (including chairperson) to maximum 11.
- 47. New Companies Act, 2013 , provides that President, Chairperson, judicial Member of the tribunals shall be appointed after consultation with the Chief justice of India.
- 48. The 2013 Act, in addition to the existing members of tribunals as provided under the 1956 Act, shall consist of a Senior Judge of Supreme Court or Chief Justice of High Court as member.
- 49. The Companies Act, 2013 increases the term of office to be held by the President and Members of the NCLAT and the Chairperson and the member of NCLT from three years to five years.
- 50. The Companies Act, 2013 further provides for the member of Tribunal and Appellate Tribunal an additional eligibility that a person who has not completed fifty years of age shall not be eligible for appointment as Member.