A Brief Note on

The Companies Bill, 2013

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THE COMPANIES BILL, 2013

I. **Corporate Social Responsibility** *(Clause 135)*

1. Corporate Social Responsibility activities are required to be done by every company having:
   - Net Worth of Rs. 500 crores or more or
   - Turnover of Rs. 1000 crores or more or
   - Net profit of Rs. 5 crores or more

   in any financial year.

2. For complying with the formalities of CSR, a CSR Committee of the Board to be formed with at least three directors out of which at least one should be an independent director.

3. Activities to be included in CSR are:

   - promotion of education,
   - promoting gender equality and empowering women,
   - reducing child mortality and improving maternal health,
   - combating human immunodeficiency virus, acquired immune deficiency syndrome, malaria and other diseases,
   - ensuring environmental sustainability,
   - employment enhancing vocational skills,
   - eradicating extreme hunger and poverty,
   - social business projects,
   - Contribution to the Prime Minister's National Relief Fund or any other fund set up by the Central Government or the State Government for socio-economic development and relief and funds for the welfare of the Scheduled Castes, Scheduled Tribes, other backward classes, minorities and women,
   - such other matters as may be prescribed

4. The company should give preference to spend amount in the area where it operates

5. The Board shall ensure that the company in every financial year spends at least two percent of the average net profits of the company made during the three immediately preceding financial years.

6. In case of failure by the company to spend such amount required for CSR activities, then the Board shall specify the reasons for such failure in Directors Report.

II. <u>Internal Audit</u> *(Clause 138)*

1. Internal Audit to be Mandatory for the class of companies to be prescribed by Central Government.

2. An Internal Auditor shall be a CA, CWA or such **other professional as may be decided by the Board.**

III. <u>Financial Statements:</u>

1. The Financial year of the Company shall end on 31st March of every year *(Clause 2(41))*

2. If the Company has one or more subsidiary and/or an associate(s), it has to prepare Consolidated Financial Statements of the Company with its subsidiaries, Joint ventures and associate companies *(Clause 129)*

3. The definition of "net worth" does not include Credit balance in Profit & Loss Account (*Clause 2 (57)*)

4. Provisions have been incorporated for **voluntary revision of financial statements or Boards Report** after obtaining approval of the Tribunal on an application made by the company. The detailed reasons for revision of accounts shall be disclosed in Boards' report. *(Clause 129)*

5. Statement of Changes in Equity included in definition of Financial Statements.

6. Financial Statements can be kept in electronic mode to be prescribed by the Central Government.

7. **Board's Report** : Additional Disclosure Requirements *(Clause 134)*

   a. Extract of Annual Return
   b. Number of meetings of the Board
   c. Statement on declaration by Independent Directors
   d. Company's policies on director's appointment, remuneration, criteria for determining qualifications, etc.
   e. Explanations or comments by the Board on every qualification/ reservation/ adverse remark made by a PCS in his Secretarial Audit Report.

f. Particulars of Loans, Guarantees and Investments.
g. Particulars of Contracts and arrangements with Related Parties
h. A statement indicating development and implementation of Risk Management Policy.
i. Policies adopted and implemented by the Company on the CSR Initiatives.
j. In case of Listed Company / any other public company having such networth as may be prescribed , a statement in which formal evaluation has been made by the Board of its own performance and that of its committees and individual Directors.

8. The **Directors Responsibility statement** shall include the following new statements *(Clause 134(f))*:

   a. The Directors had laid down controls to be followed by the company and that such **internal financial controls are adequate** and were operating effectively.

   b. 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.

IV. <u>Auditors</u>

1. Any CA firm cannot be appointed as an auditor for a company for more than consecutive period of **10 yrs (two terms of 5 yrs each)** after which a separate firm has to be appointed as the statutory auditor. *(Clause 139)*

2. The **fresh audit firm should not have a common partner with the erstwhile audit firm** on the date of appointment of the new firm

3. Ratification for appointment of Auditors in each AGM by members is mandatory.

4. Members of a company may resolve to rotate the partner of the audit firm & his team.

5. The Tribunal may *suo motu* direct the Company to change its auditors *(Clause 140)*

6. A partner of the Audit firm cannot conduct audit of more than 20 Companies. *(Clause 141)*

7. Compulsory attendance by the Auditor/representative of the Auditor unless otherwise exempted by the company and the Auditor shall have the right to be heard on any part of the business which concerns him as the auditor. *(Clause 146)*

8. A Statutory Auditor cannot render the following services namely:
    a. accounting and book keeping services;
    b. internal audit;
    c. design and implementation of any financial information system;
    d. actuarial services;
    e. investment advisory services;
    f. investment banking services;
    g. rendering of outsourced financial services;
    h. management services; and
    i. any other kind of services as may be prescribed

V. Directors

1. Minimum of 3 Directors in a Public Company, 2 Directors in a Pvt. Co, 1 Director in One Person Company and Maximum of 15 Directors. *(Clause 149)*

2. One Woman Director in Classes of Companies to be prescribed.

3. At least one director who has stayed in India for a total period of not less than 182 days in the previous calendar year.

4. **Maximum number of directors has been increased from twelve (12) to fifteen (15) directors.** Further, no Central Government approval is required to increase the maximum number of directors beyond fifteen (15). Shareholders of a company may do so by passing a special resolution.

5. Existing companies are required to comply with this requirement within one year from the date of commencement or from the date of notification of the rules in this regard.

6. A listed company may have one Small Shareholder's Director elected by such small shareholders in such manner and with such terms and conditions as may be prescribed. *(Clause 151)*

7. Members may propose appointment of a person as Director other than retiring directors at any General Meeting by giving a Notice atleast 14 days prior to the meeting and by depositing a sum of Rs.1 Lakh which shall be refunded if the person proposed gets elected as a director or gets more than 25% of total valid votes cast. *(Clause 160)*

8. A person can hold directorships of maximum 20 Companies and the **maximum number of Public Companies in which a person can be appointed as Director shall not exceed 10**. *(Clause 165)*

9. Articles may be amended to specify any lesser number of companies in which a director of the company may act as directors

10. Directors will have to limit their directorships as prescribed within one year from the commencement of the Act.

11. The Bill lays down the **duties of Directors** *(Clause 166)* as under:

    - To act in accordance with the articles of the company
    - To act with due and reasonable care, skill and diligence and to exercise independent judgment
    - To act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the stakeholders (company, employees, shareholders, etc.)
    - To avoid conflict of interest (with that of the Co.)
    - Not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates
    - Not assign his office and any assignment so made shall be void

12. A director shall have to vacate his office **if he absents himself from all Board Meetings during a period of 12 months** *(Clause 167)*.

13. **Resignation of a Director** *(Clause 168)*:

a. A director may resign from his office by giving a notice in writing to the company
b. the Board shall on receipt of such notice take note of the same and the company shall intimate the Registrar in such manner, within such time and in such form as may be prescribed
c. The Board shall also **place the fact of such resignation in the report of directors** laid in the immediately following general meeting by the company.
d. The director shall also forward a copy of his resignation along with **detailed reasons for the resignation to the Registrar** within thirty days of resignation in such manner as may be prescribed.
e. The resignation of a director shall take effect from the date on which the **notice is received by the company or the date, if any, specified by the director in the notice, whichever is later.**

14. A company shall not enter into arrangement without approval of shareholders by which a director enters into Non Cash Transactions with the company/its holding company/its subsidiary/its associate companies *(Clause 192)*

15. In case of Inadequacy of profits remuneration may be paid to Managerial Personnel as under:

Effective Capital	Maximum Limit (Rs.)
Negative or less than 5 Crores	30 Lac
5 crore – 100 crore	42 Lac
100 crore-250 crore	60 lac
250 crore and above	60 Lac plus 0.01% of effective capital above 250 cr.

The above Limits shall be doubled if Special Resolution is passed by shareholders. *(Section II, Schedule V)*

16. A newly incorporated Company can pay double remuneration as mentioned above for a period of 7 years and a sick company can pay double remuneration for 5 years (*Section III (b), Schedule V*)

17. The Board of Directors should approve the appointment of its Whole Time Directors and Key Managerial Personnel to be directors in other companies

VI. <u>Independent Directors</u>

1. An Independent Director is a Director other than Managing Director, Whole Time Director & Nominee Director **whose office is not liable to retire by rotation**. *(Clause 149)*

2. The independent Director can be appointed for a period of 5 yrs after which it can be further eligible for reappointment for another 5 yrs **subject to passing of special resolution in the General meeting and disclosure in Directors Report**.

3. The same Independent Director can be again appointed after the expiry of 10 yrs after a gap of 3 yrs.

4. The period prior of Independent Directorship to commencement of this Act will be ignored.

5. An Independent Director cannot be a promoter or relative of the promoters of the company or its holding/subsidiary/associate company.

6. An Independent Director or his/her relatives cannot have any pecuniary relationship with the company, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year.

7. An Independent Director or his/her relatives should not have held or holds the position of KMP / employee of the Company or its Holding/ Subsidiary/ Associate Company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed.

8. An Independent Director cannot be an Employee/ Partner/ Proprietor in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed of the:

a. Audit Firm, Practising CS / CWA of the Company or its Holding/Subsidiary/Associate Company.

b. Legal/Consulting Firm that has or had any transaction with the company or its holding/ subsidiary/ associate company amounting to 10% or more of the gross turnover of such firm.

9. An Independent Director along with his/her relatives cannot hold more than 1.99% of the Voting Power in the Company.

10. An Independent Director cannot be a CEO/Director of any non profit organization that receives 25% or more of its receipts from the company, any of its promoters, directors or its holding / subsidiary/ associate company or that holds 2% or more of the total voting power of the company.

11. An Independent Director will have to give a **declaration** that he meets the criteria of independence at his/her first Board Meeting & thereafter at the first meeting of the Board in every financial year or whenever there is any change in the circumstances which may affect his status as an independent director.

12. An Independent Director is **not eligible for Stock Options** and can be remunerated by way of Sitting Fee, Re-imbursement of Expenses for attending Meetings & Commission approved by shareholders.

13. An Independent Director may be selected from a data bank of persons who are eligible and willing to act as independent directors, maintained by any statutory body to be notified by the Central Government.*(Clause 150)*

14. The Central Government may prescribe the manner and procedure of selection of independent directors who fulfill the qualifications and requirements specified under the Companies Bill 2013.

15. The appointment of Independent Directors shall be formalised through a letter of appointment and the terms and conditions of appointment shall be available for inspection at the Registered Office of the Company and shall also be posted on the website of the Company.

16. Schedule IV of the Companies Bill lays down the Code for Independent Directors in which guidelines. Role, functions, duties of Independent Directors are mentioned.

17. The Independent Directors of the Company shall hold atleast one separate meeting in a year without the attendance of Non-Independence Directors and management.

VII. Meetings

1. **Minimum seven (7) days advance notice is required for holding a board meeting.** However, in order transact any urgent business, a meeting may be called at shorter notice provided at least one Independent Directors, if any, shall be present at such meeting, failing which, decisions taken at such meeting shall be circulated to all directors and shall be final only upon ratification by at least one Independent Director, if any. *(Clause 173)*

2. The maximum interval between two Board meetings shall not exceed **120 days**

3. Provisions regarding **convening and holding of board meetings through video conferencing or other audio visual means**, have been specifically provided. However, the Central Government may prescribe certain matters which shall only be discussed at a physically convened board meeting. *(Clause 173)*

4. Central Government may prescribe the class or classes of companies and the manner in which a member may exercise his right to vote by electronic means *(Clause 108)*

5. Resolution by Circulation not possible and such resolution has to be passed at a Board Meeting if atleast one third of the total number of Directors object. *(Clause 175)*

6. Constitution of a Nomination & Remuneration Committee mandatory for a Listed Company or other classes of Companies as may be prescribed consisting of of three or more non-executive directors out of which one-half shall be independent directors. *(Clause 178)*

7. Constitution of a Stakeholders Relationship Committee mandatory for a Company which consists of more than 1000 shareholders/debenture

holders/ other security holders consisting of a chairperson who shall be a non-executive director and other such members to be decided by the board. *(Clause 178)*

8. An Annual General Meeting may be held on any day between business hours, i.e. 9am and 6pm except on a National holiday.*(Clause 96)*

9. Quorum requirements increased to 30 members personally present at a General Meeting if the number of members as on date of meeting is more than 5000.

10. A single person cannot be a proxy of more than 50 members or such number of shares to be prescribed *(Clause 105)*

11. Special Notice *(Clause 115)*: Any resolution requiring special notice, notice of the intention to move such resolution shall be given to the company by such number of members holding minimum 1% of total voting power or holding shares on which such aggregate sum not exceeding five lakh rupees.

12. **Secretarial standards** with respect to the meetings of board and shareholders as issued by the Institute of Company Secretaries of India, have been **granted statutory recognition.** *(Clause 118)*

13. A report on AGM shall have to be filed by a Listed Company to ROC within 30 days of meeting *(Clause 121)*

VIII. Dividends:

1. Dividend shall be declared or paid only from free reserves *(Clause 123)*

2. The requirement to transfer specified percentage of profits to reserves stands deleted and leaves it optional upon the wisdom of the company as to what % of profits it would transfer to reserves *(Clause 123)*

3. Shareholders/claimants are now entitled to claim the dividends transferred to Investor Education and Protection Fund. *(Clause 124)*

4. All shares in respect of which unpaid or unclaimed dividend has been transferred shall also be transferred by the company in the name of IEPF.

IX. Loans & Investments made by Company *(Clause 186) :*

1. No company can have investment in subsidiaries for more than 2 layers except if investment is made in foreign company/statutorily required under any law.

2. Exemption to private companies and holding-subsidiary companies for making loan or providing guarantee to director etc. **stands withdrawn.**

3. Exemption in relation to investment / loan /guarantee/security by a holding company in/to its wholly owned subsidiaries **stands withdrawn.**

X. Loans to Directors *(Clause 185)*

1. No company shall directly/ indirectly advance any loan to any of its directors or to any other person in whom the director is interested or give any guarantee or provide any security in connection with any loan taken by him or such other person.

2. *A private company of which any such director is a director or member is included in the expression "to any other person in whom director is interested".*

3. A company may in the ordinary course of its business provide loans or give guarantees or securities for the due repayment of any loan and in respect of such loans an interest is to be charged at a rate not less than the bank rate declared by the Reserve Bank of India

XI. Related Party Transactions:

1. Related party with reference to a company has been defined by sec 2(76) to mean as follows:
   a. Director or his relative (i.e. spouse/ members of HUF)
   b. KMP or his relative (i.e. spouse/ members of HUF)
   c. Firm in which director, manager, relative is a partner
   d. Private company in which director is a member or director
   e. Public company in which director is a director or holds along with his relatives more than 2% of paid up share capital
   f. Body corporate as per whose directions Board , manager or managing director is accustomed to act except in a professional capacity

g. Any person on whose advice director or manager is accustomed to act except in a professional capacity
h. Holding, subsidiary, associate
i. Subsidiary of company's holding company

2. Related party transactions are required to be approved by the board by a resolution unless the transaction is in the ordinary course of business and done at arm's length. *(Clause 188)*

3. In case the transaction exceeds certain sum or in case the companies' paid up share capital exceeds certain limit (to be prescribed by Central Government) prior special resolution of the members are required.

4. Related parties shareholders are not permitted to vote on such resolutions.

5. Imprisonment upto One year has been prescribed for non compliance of related party provisions for listed companies

XII. **Mandatory appointment of Key Managerial Personnel** ("KMP") *(Clause 203)*

a. Managing Director, or Chief Executive Officer or manager and in their absence, a whole-time director.
b. company secretary; and
c. Chief Financial Officer
    i. KMP included in the definition of "officer in default."
    ii. A whole-time key managerial personnel shall not hold office in more than one company except in its subsidiary company at the same time, provided that nothing contained in this sub-section shall disentitle a key managerial personnel from being a director of any company with the permission of the Board

XIII. **Officer who is in default** *(Clause 2(60))* **:** officer who is in default shall be liable to any penalty or punishment by way of imprisonment means the following officers:

a. Whole time Director, KMP

b. Any person, who under immediate authority of Board or any KMP, is charged with any responsibility and knowingly permits or fails to take active steps to prevent any default.

c. **Every director who is aware of any contravention of any provisions by virtue of receipt of any Board proceedings or participating in such proceeding without any objection or given his consent to such contravention**

XIV. <u>Merger and Scheme of arrangement</u> *(Clause 230)*

1. Fast Track mode has been provided for without the approval of HC between
   i. Holding and its subsidiary companies
   ii. Between 2 or more small companies

2. Provisions for Cross Border mergers have been provided for in the Bill.

3. No scheme can be approved unless the statutory auditor certifies that the scheme is as per accounting standards

4. Valuation of securities and goodwill can be done only by registered valuer.

5. Persons/group of persons holding 90% or more equity shares by virtue of amalgamation etc. can purchase the remaining equity shares of the company from Minority shareholders.

XV. <u>Acceptance of Deposits by Companies</u> *(Clause 73)*

1. A company having prescribed net-worth can only invite deposits from public.

2. The deposits may be accepted by companies from its members in accordance with ***rules to be prescribed and after compliance of following conditions:***

   a. Passing of resolution in general meeting
   b. Issuing circular to members along with statement showing financial position, credit rating, number of depositors, amount due towards deposit
   c. Filing copy of circular along with statement with Registrar
   d. Depositing at least 15% of deposits maturing in current or next financial year in separate bank account termed as deposit repayment reserve account.

XVI. **Formation of Companies with Charitable objects** *(Clause 8)*

1. The list of charitable objects has been extended to include sports, education, research, social welfare, protection of environment, commerce, art, science, religion, charity or any other useful object.
2. A firm may be a member of such company.
3. Provisions of Memorandum and Articles can be altered only with previous approval of Central Government
4. A company registered with charitable objects under this section can amalgamate only with a company registered under this section with similar objects
5. Company registered under this section can get converted into company of any other kind on compliance of **conditions to be prescribed.**

XVII. **Companies Incorporated Outside India** *(Clause 379)*

1. A foreign company whose 50% or more of paid up share capital:
   - Whether equity or preference or partly equity and partly preference is
   - Held by one or more Indian citizen and one or more companies or bodies corporate incorporated in India
   - Whether singly or in aggregate

   shall comply with provisions of the Act with regard to **business carried on by it in India** as if it were a company incorporated in India

2. Such company will have to submit prescribed documents to Registrar for registration and in every calendar year will have to make balance sheet and profit & loss a/c as prescribed

XVIII. Company with single shareholder has been introduced by this bill named as **"One Person Company"**. *(Clause 2(62))*

XIX. Limit for maximum number of members in a **private company** is **increased from 50 to 200.** *(Clause 2(68))*

XX. "**promoter**" has been defined to be a person who has been **named as such in a prospectus** or is identified by the company in the **annual return** or who has **control over the affairs of the company**, directly or indirectly whether as a shareholder, director or otherwise; or in **accordance with whose advice**, directions or instructions the Board of Directors of the company is accustomed to act otherwise than in professional capacity. (*Clause 2(69)*)

XXI. A **small company** is a Private Company which is not a holding company/ subsidiary company/Section 8 (Not for profit Company)/ company or body corporate governed by any special Act:

a. whose paid up capital does not exceed Rs. 50 lac or such higher amount that may be prescribed which shall not exceed Rs.5 Crore

b. whose turnover does not exceed Rs. 2 crore or such higher amount that may be prescribed which shall not exceed Rs. 20 Crore (*Clause 2(85)*)

XXII. A company shall be regarded as holding company of another, if the former is inter-alia, holding more that 50% of the total share capital of the latter i.e. equity share capital **as well as preference share capital** as opposed to only equity share capital presently under the Companies Act, 1956. *(Clause 2(87))*

XXIII. The Companies Bill does not require the objects clause in the Memorandum to be classified as main objects and other objects *(Clause 4)*

XXIV. The Bill provides that the Articles may contain **Entrenchment provisions** to provide a more restrictive procedure than passing a Special resolution to amend the articles. *(Clause 5)*

XXV. Any company (including Pvt. Co.) **cannot commence** any business unless:

a. declaration has been filed by a director to ROC with respect to subscription of shares by subscribers to the memorandum; paid up capital is according to the limits specified and
b. the company has filed with the ROC a verification of its registration office in manner to be prescribed. *(Clause 11)*

XXVI. Every Company shall get its name, address of its registered office and the Corporate Identity Number along with telephone number, fax number, if any, e-mail and website addresses, if any, **printed in all its business letters, billheads, letter papers and in all its notices and other official publications**; (*Clause 12 (1)(c)*)

XXVII. A Company which has raised money from public by issuing a prospectus and still has any unutilized amount out of the money so raised **shall not change its Objects Clause** for which it has raised money unless:

i. Special Resolution has been passed by the company

ii. Details of notice shall be published in newspapers
iii. Dissenting shareholders have been given an exit opportunity *(Clause 13)*

XXVIII. "**Private Placement**" defined in the Bill and any offer of securities to more than 50 persons shall be deemed to be a public offer and a private company can make offer of securities only through Private Place *(Clause 42)*

XXIX. In relation to **infrastructure projects, the preference shares may be issued** for a period **exceeding 20 years**, subject to redemption of such percentage annually at the option of the preferential shareholders, as may be prescribed. *(Clause 55)*

XXX. No buy-back can be made within a period of one year reckoned from the date of the closure of the preceding offer of buy-back. *(Clause 68)*

XXXI. All companies shall have to submit Annual return within 60 days of holding the AGM & the extract of such return has to be incorporated in the Board's report *(Clause 92)*

XXXII. National Advisory Council for formulation of Accounting Standards (NACAS) renamed as National Financial Reporting Authority (**NFRA**) and granted statutory authority with the responsibility to monitor and enforce compliance with Audit ,Accounting Standards, professional/other misconduct of Chartered Accountants *(Clause 132)*

XXXIII. National Company Law Tribunal & National Company Law Appellate Tribunal (**NCLT** & NCLAT) formed to govern Company Law matters *(Chapter XXVII)*

XXXIV. Listed companies are required to file return with the ROC **regarding change in shareholding of the promoters and the top ten (10) shareholders,** within fifteen (15) days of such change. *(Clause 93)*

XXXV. Prohibition has been imposed on **forward dealings in securities** of the company/ its holding/ its subsidiary/ associate company by any director or KMP. *(Clause 194)*

XXXVI. Prohibition has been imposed on **Insider Trading** for the first time in Companies Law by the directors of the company or its KMP and declares it as an offence with criminal liability. *(Clause 195)*

XXXVII. **Secretarial audit is made mandatory for all listed companies** and the companies belonging classes as prescribed. *(Clause 204)*

XXXVIII. Central Government shall establish an office called the **Serious Fraud Investigating Office (SFIO)** to investigate frauds relating to a company. *(Clause 211)*

XXXIX. **Class Action Suits** can be filed before the Tribunal by specified number of members or class of members/depositors or class of depositors if they are of opinion that the management or control of affairs of the company are being conducted in a manner prejudicial to the interests of the Company. *(Class 245)*

XL. New concept of **Dormant Companies** formed for a future project or to hold an asset or intellectual property which has no significant accounting transaction *(Clause 455)*

XLI. "**Punishment for Fraud**" defined in the Bill for the offences in compounding is not possible and where fraud involves public interest the minimum term of imprisonment shall be 3 years *(Clause 447)*

Disclaimer

This note is based on the research and contains the views of the author on the above subject. The note is intended to initiate sharing of knowledge on Companies Bill, 2013 and cannot be construed to be any professional or legal advice.

Any error may be communicated to the author at: csarpitshah@gmail.com