Dissecting the new Law

Enforcement of 98 Sections

Of the Companies Act, 2013

An Analysis

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Enforcement of 98 Sections of the Companies Act, 2013

In exercise of power confirmed by the Companies Act, 2013, the Central Government appointed the 12th day of September, 2013 as the date on which the following provisions of the Companies Act came into force viz.

Section No.	*Corresponding Section to Co's Act, 1956*	Subject	Brief Description and Change in Provision	Remarks
2(1)	*2(1)*	Abridged Prospectus	The definition of abridged prospectus has been changed by inclusion that the salient features of the Abridged Prospectus shall be specified by SEBI and not the Central Government.	No impact
2(3)	*2(1A)*	Alter or Alteration	The definition has been changed by inclusion of a new word "substitution".	No impact
2(4)	*2(1B)*	Appellate Tribunal	It means National Company Law Appellate Tribunal. There has been no change in the definition.	No impact
2(5)	*2(2)*	Articles	It means "Articles of Association" of the Company. There has been no change in the definition.	No impact
2(6)	-	Associate Company	Associate Company means a company in which other company has a significant influence i.e. control of at least 20% of its total share capital or business decisions under an agreement.	Company will have to account for its associate companies
2(8)	-	Authorized Capital or Nominal Capital	It signifies the maximum amount of share capital of the company. This is a new definition.	No impact
2(9)	*2(5)*	Banking Company	No change in Definition.	No impact
2(10)	*2(6) & 252(3)*	Board of	No change in Definition.	No impact

Section No.	*Corresponding Section to Co's Act, 1956*	Subject	Brief Description and Change in Provision	Remarks
		Directors		
2(11)	*2(7)*	Body Corporate	Definition has been altered to include the corporation sole i.e. one person company	No impact
2(12)	*2(8)*	Book and paper	The definition has been changed to include books of accounts, managers and registrar in definition of book and paper and these books of accounts can be kept in electronic mode also.	Books can be kept in electronic mode also
2(14)	*2(9) & 8*	Branch Office	The company has been permitted to designate any establishment of the company as Branch Office. Under the Companies Act, 1956 the branch office meant: "*any establishment caring on the same or substantial some activity as carried by own head office of the company and any establishment engaged in production processing or manufacturing*". Further under the 1956 Act, the Central Government had the power to declare any office of the company as branch office. These provisions have been done away with.	It is upon the discretion of the company to designate any establishment as its branch office.
2(15)	-	Called up capital	This is a new definition. It means such part of the capital which has been called for payment.	No impact.
2(16)	*124*	Charge	Under this act, the meaning of charge has defined. It means an interest or lien created on the property or asset from the company or any undertaking or	No impact.

Section No.	***Corresponding Section to Co's Act, 1956***	**Subject**	**Brief Description and Change in Provision**	**Remarks**
			both as security. It specifically includes mortgage.	
2(17)	-	Chartered Accountant	Chartered Accountant has been defined as a Chartered Accountant in practice and not in whole time employment.	No impact.
2(18)	-	Chief Executive Officer (CEO)	Under this act statutory recognition has been given to Chief Executive Officer (CEO) and such person designated as CEO is also included in the definition of Key Managerial Personnel (KMP)	As CEO is a KMP, he will be treated as a Related Party.
2(19)	-	Chief Financial Officer (CFO)	Under this act statutory recognition has been given to Chief Financial Officer (CFO) and such person designated as CFO is also included in the definition of Key Managerial Personnel (KMP)	As CFO is a KMP, he will be treated as a Related Party.
2(20)	*2(10) & 3*	Company	Company means incorporated under this act and/or under any previous company law.	No impact.
2(21)	*2(23) & 3*	Company Limited by Guarantee	No change in definition. An OPC can also be a company limited by guarantee.	No impact.
2(22)	*2(23) & 12(2)(a)*	Company Limited by shares	No change in definition	No impact.
2(24)	*2(45)*	Company Secretary or Secretary	Company Secretary is defined as under Section 2 (1)(c) of the Company Secretaries Act, 1980 and who is appointed by the company to perform the function of the company secretary under this act.	No impact.

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2(25)	*2(45A)*	Company Secretary in Practice	No change in definition.	No impact.
2(26)	*428*	Contributory	The scope of the tern "Contributory" does not cover: i. The holder of fully paid up shares ii. The person alleged to be a contributory.	No impact.
2(27)	-	Control	The new definition given under this act includes the right to appoint majority of directors or control the management or policy decision excisable by person or person acting individually or in consort directly or indirectly including by virtue of their shareholding or management rights or shareholders agreement, voting agreement or in any manner.	Aligned the provision with SEBI Takeover Regulations, 2011
2(28)	-	Cost Accountant	It is a new definition. It means a Cost Accountant as defined under section 2(1)(b) of the Cost and Works Accountant Act, 1959.	No impact.
2(29)	*2(11), 2(14), 10 & 622*	Court	The definition covers High Court, District Court, Court of session, and Metropolitan Magistrate & Judicial Magistrate of first class. The new companies act provides for special courts; however this provision has not yet been enforced.	No impact.
2(30)	*2(12)*	Debentures	Definition of debentures has been expanded by including any instrument evidencing a debt	Any instrument evidencing a debt will be

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			whether creating any charge or assets in the company or not.	treated as debenture
2(32)	*2(12A)*	Depository	No Change in Definition	No impact.
2(34)	*2(13)*	Directors	The words *"includes any person occupying the position of a director"*, under the erstwhile 1956 Act removed.	Director would mean only a Director appointed to the Board of the Company
2(35)	*2(14A)*	Dividend	No Change in Definition	No impact.
2(36)	*2(15)*	Document	The definition has been altered in such way that it will also include document in electronic form also	Documents of the company may be kept in electronic form.
2(37)	*2(15A)*	Employees' Stock Option	Under new definition employees stock option may be given to the directors, officers or employees of the holding and subsidiary company also. The definition has been aligned with SEBI (ESOP Scheme) Guidelines. The definition mentions 'directors instead of 'whole-time directors'	The definition is wider in scope and indicates that ESOP can be given to Non Executive Directors. *However ESOP cannot be given to Independent Directors as per Section 149(9).*
2(38)	*59(2)*	Expert	The definition of the expert has been changed to include Chartered Accountant, Company Secretary or Cost Accountant.	CA, CS & CWA specifically included in definition of an Expert
2(40)	-	Financial Statement	Financial statement under this act also includes cash flow statement (except in case of one person companies, small companies or	Cash Flow Statement becomes mandatory

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			dormant companies). It also covers a statement of changes in equity if applicable.	along with statement of changes in equity (if applicable) for all companies.
2(43)	*Explanation to 372A (b), 2(29A) & 293(1)(d).*	Free Reserves	The 2013 Act replaces multiple definitions of "free reserves" with one definition for all purposes. "free reserves" means reserves as per the latest audited balance sheet of the company are available for distribution for dividend .	Common definition of Free reserves applicable.
2(44)	-	Global Depository Receipt	This is a new definition. It is defined as "*any instrument in the form of a depository receipt by whatever name called created by a foreign depository outside India and authorized by a company making an issue of such depository receipts*".	No impact.
2(45)	*2(18) & 617*	Government Company	No Change in Definition	No impact.
2(46)	*2(19), 2(47) & 4*	Holding company	Definition of holding company has been changed to the extent that now only a **company** can be a holding company. Under the 1956 Act a body corporate could also be a holding company.	A company incorporated outside in India cannot be a holding company for the purpose of this new Act as it is a Body corporate.
2(49)	*300(1)*	Interested Directors	Under this Act the indirect interest of a director has been defined as a director interested through any office relatives or firm, body	The implications will have to be examined as the definition is

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			corporate or other associate of individuals on which he or any office relatives is a partner, director or a member.	very wide.
2(50)	-	Issued Capital	It is a new definition. It is defined as *"such capital as the company issues from time to time for subscription"*	No impact.
2(51)	-	Key Managerial Personnel	It is a new definition. It includes: a. CEO or Managing Director or Manager b. Secretary c. Whole time Director d. Chief Financial Officer e. Such other officer as may be prescribed.	KMP has been included in the definition of "officer in default"
2(52)	*2(23A)*	Listed Company	No change in definition	No impact.
2(53)	*2(24)*	Manager	No change in definition.	No impact.
2(54)	*2(26)*	Managing Director	The definition of Managing Director has been amended to the extent that the words: "*subject to superintendence, control and director of board of directors*" have been deleted. That means managing Director of a company can exercise his power without such restriction.	No impact.
2(55)	*2(27) & 41*	Members	Subscriber to memorandum included in the definition of member. The erstwhile act provided that a "*bearer of share warrant of the*	No impact.

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			company is not a member". Such provision is omitted.	
2(56)	*2(28)*	Memorandum	No change in definition.	No impact.
2(57)	*2(29A)*	Net Worth	The definition of net worth has been changed under this new act in order to calculate net worth of a company. It requires deduction of accumulated losses, deferred expenditure and miscellaneous expenditure not returns of. Further all figures for competitive of net worth should be as per the audited balance sheet.	The figure of Net worth will be as per the latest audited Balance sheet only.
2(58)	-	Notification	It is a new definition. It is defined as *"a notification published in the Official Gazette and the expression "notify" shall be construed accordingly"*	No impact.
2(59)	*2(30)*	Officer	This definition includes all the Key Managerial Personnel.	CEO & CFO included in definition of Officer.
2(60)	*2(31), 5 & 7*	Officer in default	The scope of this expression has been widened by including share transfer agents, registrars and merchant bankers to the issue or transfer as officers in default in respect of issue of transfer of any shares of the company. Further CEO and CFO have also been included in the definition of officer in default. Every directors of the company in respect of contravention of any	CEO, CFO, and the directors who do not object to the contraventions are included in the definition.

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			provisions of the act who is aware of such contravention by virtue of receipt by him of proceedings of board or participation by them in such proceeding without objecting to the same are also covered new definition of officer in default.	
2(61)	-	Official Liquidator	This is a new definition. It Is defined as *"Official Liquidator appointed under sub-section (1) of section 359"*	No impact.
2(63)	*189*	Ordinary or Special Resolution	No change in definition.	Votes cast in electronic mode/ postal Ballot included.
2(64)	*2(32)*	Paid up share capital	No change in definition.	No impact.
2(65)	*192A*	Postal Ballot	No change in definition. Voting through Electronic mode made applicable.	No impact.
2(66)	*2(33)*	Prescribed	No change in definition	No impact.
2(67)	*2(34) & 3(1)(ii)*	Previous Company Law	The Registration of Companies (Sikkim) Act, 1961 included. However this sub clause has not been made applicable yet.	No impact.
2(68)	*2(35) & 3*	Private Company	The definition has modified changed to include one person company. The maximum number of members in a private company has been increased to 200 persons.	It has been clarified that a private co. which is a Subsidiary of a public company shall be treated as a deemed public company.

Section No.	*Corresponding Section to Co's Act, 1956*	Subject	Brief Description and Change in Provision	Remarks
2(69)	*62(6)(a)*	Promoter	Promoter means a person whose name mentioned as such in prospectus or identified by the company his 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 advise, direction or instruction the board of directors is accustomed to act. However if such person has given advise or direction in a professional capacity that person will not be included in the definition of promoter.	Under the erstwhile Act, the definition was only section specific. Under the new act, this general definition is applicable to all sections which refer to promoter.
2(70)	*2(36)*	Prospectus	Definition has been expanded to included red herring prospectus and self prospectus. Document inviting public deposits was covered in definition of prospectus. This is omitted from the new act. The words *"shares or debentures"* replaced with *"any securities of the Company"*	No impact.
2(71)	*2(37) & 3*	Public Company	It has been clarified in this act that a subsidiary of public company shall be deemed to be a public company even if a subsidiary company continues to be a private company in this article.	No impact.
2(72)	*4A*	Public Financial	Under this new Act IDBI, IFCI and UTI which were mentioned and as	No impact.

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		Institutions	public financial institutions under the erstwhile act are no longer covered.	
2(73)	*2(39)*	Recognized Stock Exchange	Under this new Act the Central Government does not have power to notify any Stock Exchange situated outside India as recognized Stock Exchange.	It means any Recognized stock exchange under SCRA
2(74)	-	Register of Companies	This is a new definition. It means the register of companies maintained by ROC on paper or in any electronic mode under this act.	No impact.
2(75)	-	Registrar	No change in definition	No impact.
2(76)	-	Related Party	Related party with reference to a company has been defined 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	Related party transactions are required to be approved by the board unless the transaction is in the ordinary course of business and done at arm's length. Special Resolution required in case the transaction exceeds certain sum or in case the companies' paid up share capital exceeds Rs. 1 crore prior and such

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			whose directions Board , manager or managing director is accustomed to act except in a professional capacity g. any company which is— • a holding, subsidiary or an associate company of such company; or • a subsidiary of a holding company to which it is also a subsidiary; h. The draft Rules prescribe the following persons with reference to a company as a Deemed Related Party: • a director or KMP of the holding, subsidiary or associate company of such company or his relative • Members of Core Management Team (excluding the Board of Directors) comprising all members of management one level below the executive directors, including the functional heads of the company or its holding, subsidiary or associate company.	Related parties shareholders are not permitted to vote on such resolutions. Functional heads included as deemed Related Party.
2(77)	*2(41) & Schedule 1A*	Relative	The draft rules define relatives as: 1. Father **including step-father** 2. Father's father	Step Father has been included in the list of relatives and

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			3. Father's mother 4. Mother including step-mother 5. Mother's mother 6. Mother's father 7. Son including step-son 8. Son's wife 9. Son's son 10. Son's daughter 11. Daughter including step-daughter 12. Daughter's husband 13. Brother including step-brother 14. Sister including step-sister The following relatives have been excluded from the list of relatives under the erstwhile Companies Act, 1956: 1. Son's Son's wife 2. Son's Daughter's Husband 3. Daughter's Son 4. Daughter's Son's Wife 5. Daughter's Daughter 6. Daughter's Daughter's Husband 7. Brother's Wife 8. Sister's Husband	many relatives have been excluded from the list of relatives as per the new act.
2(78)	*Explanation to Sec.198*	Remuneration	Definition of remuneration under this act means any sums or money equivalent given or passed to any person for services rendered by him or perquisites as definition in Income Tax Act, 1961 are covered.	Definition exhaustive.
2(79)	*2(42)*	Schedule	There were 16 schedules under 1956 Act. Now 12 of them have been omitted and 4 of them have been retained with changes and 3 new schedules added under this	Schedules for: Code for Independent Directors; Infrastructural

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			Act. Thus there are total 7 schedules under this act.	projects & CSR Activities added.
2(80)	*2(43)*	Scheduled Bank	No change in Definition.	No impact
2(81)	*2(45AA)*	Securities	No change in Definition.	No impact
2(82)	*2(45B)*	SEBI	No change in Definition.	No impact
2(84)	*2(46)*	Shares	Wherever the word share is used in the act it would invariable include stock as well	No impact
2(86)	*2(86)*	Subscribed capital	No change in Definition.	No impact
2(87)	*2(19), 2(47) & 4*	Subsidiary Company or Subsidiary	Definition of subsidiary company has been modified as a company becomes a subsidiary company of a holding company which controls the composition of board of directors or exercise of controls more than ½ of total share capital (including preference share capital)	Preference Shares included in calculation of holding.
2(88)	*Explanation II of Section 79A*	Sweat Equity Shares	No change in Definition.	No impact
2(89)	*2(48)*	Total voting power	No change in Definition.	No impact
2(90)	*2(49A)*	Tribunal	No change in Definition.	No impact
2(91)	-	Turnover	This is a new definition. Turnover means the aggregate value of realization of amount made from sale, supply or distribution of goods or on account of services rendered or both by the company during the financial year.	No impact

Section No.	*Corresponding Section to Co's Act, 1956*	Subject	Brief Description and Change in Provision	Remarks
2(92)	*12(2)(c)*	Unlimited company	No change except there can be not only public / private unlimited company but there can also be a one person company (OPC).	No impact
2(93)	-	Voting Right	This is a new definition. It means the right of a member of a company to vote for any meeting of the company or by means of a postal ballot.	No impact
2(94)	*Explanation to 269*	Whole time Director	Includes a director in whole time employment of the company	No impact
2(95)	*2(31A)& 2A*	Meaning of certain words or expression not defined in the act.	Such words are to be understood as per definition of SCRA 1956, SEBI Act, 1992 and Depository Act, 1996.	No impact
19	*42*	Subsidiary company not to hold shares in its holding company.	A Company nor its nominee can hold shares of its holding company. The holding company also cannot allot/transfer shares to its subsidiary company.	Previously only a Body corporate could not be a member of its holding company.
21	*54*	Authentication of documents, proceedings and contracts.	Earlier this provision was applicable only to authentication of documents and proceedings. The current provision also applies to authentication of contracts. Authority for authentication can also be given to KMP under authority of Board.	CEO, CFO can also authenticate documents proceedings and contracts. Common seal is not required for usual commercial documents including contracts.

Section No.	*Corresponding Section to Co's Act, 1956*	Subject	Brief Description and Change in Provision	Remarks
22	*47 & 48*	Execution of bills of exchange, etc.	A bill of exchange, hundi or promissory note shall be binding upon the company if drawn by Authorized Person.	Power of attorney requires common seal.
23	-	Public offer & Private Placement	Public Offer defined for the first time. 1. A public company may issue securities to public through prospectus or through a rights issue or a bonus issue or through private placement. 2. A private company may issue securities by way of rights issue or bonus issue.	The private placement restrictions have not yet been enforced.
24	*55A*	Power of SEBI to regulate issue and transfer of securities, etc.	Issue and transfer of securities and non-payment of dividend shall be administered by SEBI for: 1. listed companies or 2. companies intending to get their securities listed on any recognized stock exchange in India	For non listed companies these shall be regulated by the Central Government.
25	*64*	Document containing offer of securities for sale to be deemed prospectus	Any document by which securities are offered to public shall be considered as deemed prospectus and will attract all the liabilities thereon.	No impact
29	*68B*	Public offer of securities to be in dematerialized form.	Under the 1956 Act, every Listed Company making an IPO of any security for Rs.10 crore or more was required to issue the same in demat form.	Aligned with requirements of SEBI.

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			The 2013 Act, makes it mandatory for every company making a public offer (IPO/FPO/OFS) ; and such other class of public companies shall issue the securities only in dematerialised form.	
30	*66*	Advertisement of prospectus	The advertisement of prospectus shall specify: a. contents of memorandum, i.e. objects, liability & amount of share capital, b. names of the signatories to the memorandum c. capital structure of the company	The exemption provided by the erstwhile act which exempted specifying such disclosures in the advertisement withdrawn.
31	*60A*	Shelf prospectus	Previously this section was applicable only to Public Financial Institutions/ PSU Banks/ Scheduled Banks whose main object was financing. Under the current Act, it is applicable to all companies and shall be regulated by SEBI. Shelf Prospectus shall be valid for a period of 1 year and the validity shall commence from the date of opening of the first offer of securities under that prospectus.	No impact
32	*60B*	Red Herring Prospectus	The new act envisages filing of only Red Herring Prospectus and Final Prospectus. A company shall file Red Herring Prospectus with the Registrar at	The filing of Information Memorandum is done away with.

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Section No.	*Corresponding Section to Co's Act, 1956*	Subject	Brief Description and Change in Provision	Remarks
			least 3 days prior to the opening of the subscription list and the offer and it shall carry the same obligations as applicable to a prospectus. On closure of the offer the company shall file with the Registrar and the SEBI all the details not included in the Red Herring Prospectus.	
33	*56(3)*	Issue of application forms for securities	The requirement applicable to shares and debentures in the erstwhile act has now been extended to all securities. Penalty provisions changed from maximum Rs. 50,000/- to fixed amount of Rs. 50,000/-	Penal Provisions have not been enforced yet.
34	*63*	Criminal liability for misstatements in prospectus	Under the erstwhile act, the statements made by an expert or a person in the capacity as Auditor, Legal Adviser, attorney, solicitor, banker or broker of the company/intended company were exempted from criminal liability for misstatements in prospectus. Such exemption has been omitted.	Every person who authorizes the issue of such misleading prospectus shall be liable u/s 447 (Punishment for fraud) of the Act.
35	*62*	Civil liability for misstatements in prospectus	This section makes a distinction between an innocent mis-statement and a fraudulent mis-statement. A Class Action Suit may be filed by aggrieved persons. Sec. 35(1)(e) pertains to civil	The, director, promoter, person authorizing the issue of prospectus, and a person named in the prospectus, shall

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			liability of an expert. This is yet to be enforced.	remain liable.
36	*68*	Punishment for fraudulently inducing persons to invest money.	The erstwhile act provided for penalty for *fraudulently inducing persons to invest money in shares and debentures.* Under the new act its scope has been widened to state *"fraudulently inducing persons to invest money in securities"* A class action suit may be filed by aggrieved persons and the penal provisions have been referred u/s 447 (Punishment for fraud)	Fraudulently inducing any person to enter into an arrangement with a view to obtain credit facilities from Bank/FI is covered under this section.
37	-	Action by affected persons.	A suit may be filed or any other action may be taken u/s 34 or 35 or 36 by any person, group of persons or any association of persons affected by any misleading statement or the inclusion or omission of any matter in the prospectus.	A class action suit can be filed if there is any misstatement in prospectus or if fraudulently inducing persons to invest money.
38	*68A*	Punishment for personation for acquisition, etc., of securities.	The words *"shares"* have been replaced with *"securities"*. The new act provides for disgorgement provisions wherein the court may order disgorgement of any gain & credit it to IEPF.	Liable u/s 447 for making of application under fictitious names makes multiple applications to company in different name for acquiring or subscribing to securities.
39	*69 & 75*	Allotment of securities by company.	Section 39(1) of the new act applies to all "securities offered to	No allotment to the public for

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			public for subscription" whereas the erstwhile act provided only for "shares offered to public". The amount payable on application on every security shall not be less than 5% of the nominal amount of the security or such other percentage or amount, as may be specified by the SEBI. Sec. 69 under the erstwhile act was applicable to both public and private companies. Sec. 39 of the new Act is applicable only to public offer which can be made by Public companies only. Filing of Return of Allotment, has not yet been enforced	subscription shall be made unless the amount stated in the prospectus as the minimum amount has been subscribed and the sums payable has been received.
40	*73 & 76*	Securities to be dealt with in stock exchanges	The 1956 act only required only application for listing to be made to one or more recognized stock exchange (RSE) The 2013 Act requires listing permission be obtained from one or more RSE's before making public offer. Sub-section (6), which is not enforced, pertains to payment of commission.	It is now necessary to obtain listing permission before making public offer.
44	*82*	Nature of shares or debentures	No change in Definition.	No impact
45	*83*	Numbering of shares.	No change in Definition.	No impact
49	*91*	Calls on	No change in Definition.	No impact

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		shares of same class to be made on uniform basis		
50	*92*	Company to accept unpaid share capital, although not called up	No change in Definition.	No impact
51	*93*	Payment of dividend in proportion to amount paid up	No change in Definition.	No impact
57	*116*	Punishment for personation of shareholder	Under the new act the word "shareholder" has been replaced with "any security holder" The new act specifies fine which was not specified under the 1956 Act.	Fine for personation shall not be less than Rs. 1 Lac extending upto Rs. 5 Lac.
58	*111*	Refusal of registration and appeal against refusal	Appeal against the company for not registering transfer shifted to NCLT. (Previously CLB) Any contract or arrangement between two or more persons in respect of transfer of securities enforceable as contract.	The time limit for sending notice of refusal of registration by private company reduced from 2 months to 30 days
59	*111 & 111A*	Rectification of register of members	Aggrieved person to approach NCLT for relief. (Previously CLB) Foreign members/ debenture holders may prefer an appeal to a competent court outside India to be specified by Central Govt. such	Penal provisions increased to imprisonment for a term of 1 year or a fine not less than Rs. 1 Lac extending

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			a provision did not exist under the erstwhile act.	upto Rs. 5 Lac or both
60	*148*	Publication of authorized, subscribed and paid-up capital	Penal provision for officer in default under Sec. 60 of the new act modified to Rs. 5000 for each default. (Previously: fine which may extend upto Rs. 10000)	No impact
65	*98*	Unlimited company to provide for reserve share capital on conversion into limited company	No change in Definition.	No impact
69	*77AA*	Transfer of certain sums to capital redemption reserve Account	Requirement of transfer to Capital Redemption Reserve u/s 77AA of the erstwhile act, applied when Buy Back was out of free reserves. Requirement under the new act applies when Buy Back is out free reserves or securities premium account.	No impact
70	*77B*	Prohibition for buy-back in certain circumstances	The new act that prohibition on Buy Back to continue till 3 years till defaults are remedied. Under the erstwhile act prohibition on buy back ceased immediately when default ceased to subsist.	Sec 70(2) has not yet been enforced. *No company shall, directly or indirectly, purchase its own shares or other specified securities in case such company has not complied with the*

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				provisions u/s 92, 123, 127 & 129
86	*142*	Punishment for Contravention	Imprisonment or fine for persons contravening Chapter VI relating to "charges" The substantive provisions relating to charges have not been enforced.	Penal provisions made more stringent may cover imprisonment for a term extending upto 6 months.
91	*154*	Power to close register of members or debenture holders or other security holders.	Company may close register of members, debenture holders or of other security holders for any period or periods not exceeding 45 days in each year and not exceeding thirty days at any one time. Previous notice needs to be given, in prescribed manner, of atleast 7 days or such lesser period as SEBI may specify for Listed Companies and other companies intending to get listed	The words "register of other security holders" included along with register of members and debenture holders
100	*169 & Table A of Schedule I*	Calling of Extraordinary general meeting	The Board whenever may deem fit call an EGM. The new act omits the provision regarding signing of requisition by Joint holders. Under the new act there is no bar on holding a meeting called by requisitionists themselves after expiration of 3 month period from the date of requisition	The provisions providing for deduction of the fees/expenses for calling the meeting from the managerial remuneration, has not been enforced.
102	*173*	Statement to be annexed	The new act clarifies what facts are material facts as "those that	Additional disclosure

Section No.	*Corresponding Section to Co's Act, 1956*	Subject	Brief Description and Change in Provision	Remarks
		to the notice	may enable members to understand the meaning, scope and implication of the items of business & to take decision thereon. Where transacting any special business by a Company is likely to impact another Company and if shareholding interest of Company's every promoter, director, manager, and of every other KMP in that other Company is of 2% (previously 20%) and above, the same is to be set out in the statement.	requirements in the explanatory statement. Special Business will have to be examined in this context
103	*174*	Quorum for meetings	Increase in quorum requirements for public companies having more than 1000 members. 5 members personally present if the number of members on date of meeting are not more than 1000. 15 members personally present if the number of members on date of meeting are more than 1000 but not more than 5000. 30 members personally present if the number of members on date of meeting are more than 5000. Adjournment of meeting if quorum is not present within half an hour and cancellation of meeting, if called by requisitionists.	In case of an adjourned meeting or of a change of a day, time or place of adjourned meeting the company shall give not less than 3 days notice to the members either individually or by press announcement.
104	*175*	Chairman of	No change in Definition.	No impact

Section No.	*Corresponding Section to Co's Act, 1956*	Subject	Brief Description and Change in Provision	Remarks
		meetings		
105	*176 & Schedule IX*	Proxies	The new act provides that a person appointed as a proxy shall act on behalf of such member or number of members not exceeding 50 and such number of shares as may be prescribed and certain classes of companies will be prescribed which will not be eligible to appoint proxies. However such provisions have not yet been made applicable.	Provisions which have not been enforced require prescription of rules.
106	*182 & 183*	Restriction on Voting Rights	As per the new act any company (public or private) cannot prohibit any member from voting unless non payment of calls / lien on shares	No impact
107	*177 & 178*	Voting by Show of hands	No change in Definition.	No impact
111	*188*	Circulation of members resolution	Under the new act members holding 10% of voting rights (previously 5% of voting rights or 100 members holding paid up value of shares of Rs. 1 Lac) can give requisition of any resolution intended to be moved at a meeting. Powers of CLB transferred to NCLT for application of relief for abuse of rights by requisitionists. Exemption to Banking company removed (it was exempted from this section under the erstwhile act)	The new act allows requisition for circulation of statement at AGM's as well and the 1000 word limit w.r.t. items of business as imposed under the erstwhile act has been omitted.

Section No.	*Corresponding Section to Co's Act, 1956*	Subject	Brief Description and Change in Provision	Remarks
112	*187A*	Representation of President and Governors in meetings	No change in Definition.	No impact
113	*187*	Representation of Corporations at meeting of Companies and of Creditors	Section 113 (1) (b) is not enforced pertains to representation of creditors.	No impact
114	*189*	Ordinary & Special Resolution	Votes cast electronically as well as votes cast by postal ballot will be counted for this purpose.	No impact
116	*191*	Resolutions passed at adjourned meeting	Resolution passed at an adjourned meeting of Company shall be treated as having been passed on the date on which it was passed and not any earlier date	No impact
127	*207*	Punishment for failure to distribute dividends	No change in Definition.	No impact
133	*211 (3C)*	Central Government to prescribe accounting standards	The Central Government may prescribe accounting standards or any addendum as recommended by ICAI in consultation with and after examination of the recommendations made by the National Financial Reporting Authority	MCA has issued a clarification circular on 13th September stating: *Existing AS to continue to apply till the standards of accounting are prescribed in consultation and*

Section No.	*Corresponding Section to Co's Act, 1956*	Subject	Brief Description and Change in Provision	Remarks
				recommendation with NFRA
161	*260, 262 & 313*	Appointment of additional director, alternate director and nominee director.	Alternate Director: • Alternate Director can be appointed by BOD if a director is absent from *India* (Previously *"state")* for a period of not less than 3 months. Such Alternate director shall vacate office when the original director returns to *India*. • An alternate director to an Independent Director will also have to fulfill the criteria for Independence under this Act. Specific provision for nominee director added under the new act. If a person fails to get appointed as a director in a General Meeting then he cannot be appointed as an additional director.	A person appointed as an alternate director cannot hold any other alternate directorship in another company. However this provision has not been enforced yet. Nominee director will not be treated as an Independent Director.
162	*263*	Appointment of directors to be voted individually.	Applicable to all companies under the new act (previously applicable only to public companies)	No impact
163	*265*	Option to adopt principle of proportional representation for appointment of directors.	No change in Definition.	No impact

Section No.	*Corresponding Section to Co's Act, 1956*	Subject	Brief Description and Change in Provision	Remarks
176	*290*	Defects in appointment of directors not to invalidate actions taken	No change in Definition.	No impact
180	*293*	Restrictions on Powers of Board	Sec. 293 of the erstwhile act applied only to public companies whereas Sec. 180 of the 2013 act applies to all companies Sec. 293 of the erstwhile act required Ordinary Resolution to exercise certain powers whereas Sec. 180 of the 2013 act requires special resolution for the same. There is a new definition of "undertaking", and "substantially the whole of the undertaking" (20% of Net Worth/value of undertaking.) Sec. 180 (1)(b) of the new act covers the powers to invest the amount of compensation received as a result of any merger or amalgamation. (Previously, compulsory acquisition)	Every special resolution in relation to borrowing money shall specify the total amount up to which monies may be borrowed by the Board and that in relation to sale, lease or disposal of undertaking, the special resolution may stipulate conditions as may be specified in resolution.
181	*293 (1) (e)*	Company to contribute to bona fide and charitable funds, etc.	The erstwhile act specified the limit Rs.50,000 or 5% of Avg. Net profits computed as per Section 349 & 350 during the 3 preceding FY whichever is greater. Section 181 of the new act specifies 5% of Avg. Net profits during the 3 preceding FY. *However it does not require that profits should be computed in*	Donations made for CSR purposes will not be counted for this section.

Section No.	*Corresponding Section to Co's Act, 1956*	Subject	Brief Description and Change in Provision	Remarks
			accordance u/s 198 of the 2013 Act. **Prior permission** in General Meeting required if contributions made in excess of specified limits. (prior permission was not required earlier)	
182	*293A*	Prohibitions and restrictions regarding political contributions	A Company, (except Government Company) having existence for more than 3 financial years, may contribute any amount directly or indirectly to any political party subject to a maximum of 7.5% (*previously 5%*) of average net profit during immediately preceding 3 financial years, in any financial year. The new act does not require disclosure of amounts contributed for any political purpose. It only requires disclosure of amounts contributed to any political party.	There is no bar on contribution for any political purpose to any person. (*as these words are omitted in the new act*) Monetary penalties for officer in default reduced from 3years to 6 months.
183	*293B*	Power of Board and other persons to make contributions to national defence fund etc.	No change in Definition.	No impact
185	*295, 296*	Loans to Directors	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	A private company of which any such director is a director or member is

Section No.	*Corresponding Section to Co's Act, 1956*	Subject	Brief Description and Change in Provision	Remarks
			connection with any loan taken by him or such other person. 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	included in the expression "to any other person in whom director is interested".
192	-	Restriction on non-cash Transactions involving directors	Special resolution will be required for acquiring assets for consideration other than cash by the company from its directors or by director from holding, subsidiary or associate company.	The section also extends to persons connected with the director
194	-	Prohibition on forward dealings in securities of company by director or key managerial personnel	The new act has imposed a prohibition on directors or KMPs of companies from making forward dealings in securities of company, its holding, subsidiaries/ associates.	The section is applicable to listed and unlisted companies
195	-	Prohibition on insider trading of securities	The new act has imposed a prohibition on persons including directors or KMPs from insider trading.	The section is applicable to listed and unlisted companies

Section No.	*Corresponding Section to Co's Act, 1956*	Subject	Brief Description and Change in Provision	Remarks
202	*318*	Compensation for loss of office of managing or whole-time director or manager	No change in Definition.	No impact
379	*591*	Application of Act to foreign companies	Every foreign company in which 50% of the paid up capital is held by any Indian citizen and/or companies incorporated in India shall comply with additional provisions as may be prescribed with regard to the business carried on by it in India as if it were a company incorporated in India. Foreign company is defined as: *Any company or body corporate 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 activity in India in any other manner*	Rules yet to be prescribed.
382	*595*	Display of name, etc., of foreign company.	No change in Definition.	No impact
383	*596*	Service on foreign company	Documents may be sent under electronic mode	No impact

Section No.	*Corresponding Section to Co's Act, 1956*	Subject	Brief Description and Change in Provision	Remarks
386	*602*	Interpretation	Only the meaning of Director and Place of Business has been enforced. Definitions of "prospectus" & "secretary" omitted.	No impact
394	*619A*	Annual reports on Government companies	No change in Definition.	No impact
405	*615*	Power of Central Government to direct companies to furnish information or statistics	Enhanced penalty imposed.	No impact
407 to 414	-	NCLT	-	-
439	*621, 624*	Offences to be non-cognizable	Enforcement of this section provides congnizability to several offences.	Several provisions made non cognizable.
443	*624A*	Power of Central Government to appoint Company prosecutors	The company prosecutors shall conduct prosecutions arising out of the Act and shall have the same powers and privileges as in section 24 of Code on Civil Prosecutors	This section empowers to the Central Government to proceed with the appointment of company prosecutors.
444	*624B*	Appeal against acquittal	The Company prosecutor or such other person can present appeal from order of acquittal from a court to the appellate court	No impact

Section No.	Corresponding Section to Co's Act, 1956	Subject	Brief Description and Change in Provision	Remarks
445	-	Compensation for accusation without reasonable cause	The provisions of section 250 of Code of Criminal Procedure, 1973 shall apply mutatis mutandis.	The section pertains to special courts, and special courts are yet to be constituted.
447	-	Punishment of fraud	The new act defines fraud as: i. Any act, omission ii. Concealment of any fact iii. abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss Any person who is found to be guilty of fraud, shall be punishable with: • imprisonment for a term which shall not be less than six months but which may extend to ten years and • shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in fraud.	Section 447 has been referred to in several sections. Enforcement of this section brings a very important and rigorous prosecution machinery into force.

Section No.	*Corresponding Section to Co's Act, 1956*	Subject	Brief Description and Change in Provision	Remarks
			• where the fraud in question involves public interest, the term of imprisonment shall not be less than three years.	
448	*628*	Punishment for false statement	Punishment for making false statement or omitting any material fact in return, report. This shall be taken as fraud.	Imprisonment enhanced to maximum of 10 years
449	*629*	Punishment where no specific penalty or punishment is provided	No change in Definition.	No impact
451	-	Punishment in case of repeated default	If same punishment is committed more than once within 3 years then punishable with twice the amount and imprisonment	No impact
452	*630*	Punishment for wrongful withholding of property	Punishment for employee or officer who wrongfully obtains possession of any property including cash	No impact
453	*631*	Punishment for improper use of "Limited" or "Private Limited".	No change in Definition.	No impact
456	*631*	Non disclosure of information in certain cases.	No change in Definition.	No impact
457	*635AA*	Protection of action taken in good faith	No change in Definition.	No impact

Section No.	*Corresponding Section to Co's Act, 1956*	Subject	Brief Description and Change in Provision	Remarks
458	*637*	Delegation by Central Government of its powers and functions	Powers can be delegated including SEBI for listed companies	No impact
459	*637A*	Powers of Central Government or Tribunal to accord approval, etc., subject to conditions and to prescribe fees on applications	No change in Definition.	No impact
460	*637B*	Condonation of delay in certain cases	No change in Definition.	No impact
461	*638*	Annual report by Central Government	No change in Definition.	No impact
462	-	Power to exempt class or classes of companies from provisions of this Act.	It has given powers to Central Government to exempt class or classes of companies from provisions of this Act.	No impact
463	*633*	Power of court to grant relief in certain cases	No change in Definition.	No impact

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Section No.	*Corresponding Section to Co's Act, 1956*	Subject	Brief Description and Change in Provision	Remarks
467	*641*	Power of Central Government to amend Schedules	No change in Definition.	No impact
468	*643*	Powers of Central Government to make rules relating to winding up	No change in Definition.	No impact
469	*642*	Power of Central Government to make rules	Occurrence of the word "prescribed" 416 times, a major part of the Act is to be enforced by way of rules	First set of Draft rules uploaded on website for public comments.
470	-	Power to remove difficulties	Central Government may make consistent orders to remove difficulties for removing the difficulty	No impact

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 Act, 2013 and cannot be construed to be any professional or legal advice.

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