E-NEWSLETTER **September, 2013**

CORPORATE JOURNAL

"TO FACILITATE OVERALL PROFESSIONAL DEVELOPMENT WITH ENLIGHTENED INFORMATION"

COMPANIES ACT, 2013

"BE THE WIND TO BLOW THE LEAVE ALONGWITH,
STOP BEING LEAVES WHICH BLEW ALONG WITH THE WIND."

⇒ INSIDE

Articles / other materials and suggestions are invited from the Members for publication in forthcoming Issues. All articles submitted will be subjected to review and published only after accepted for publication.

Kindly send the articles and other relevant material for publication along with your photograph at ankursrivastavacs5985@gmail.com. We assure that we empower you with the knowledge you seek.

============================ FROM THE EDITOR ============================

CS Ankur Srivastava
Editor

Dear Professional Colleagues & Friends,

First of all congratulations to all the stakeholders of Corporate World for the New Companies Act. Even the transparent and interactive process of Ministry to finalize the detailed set of rules thereunder is also commentable. I am submitting this special issue on the brand new, growth oriented and futuristic **Companies Act, 2013.**

Companies Act, 2013 has been enacted and part thereof has also been notified w.e.f. 12.09.2013, remaining part will come in force on such date(s) as may appoint by the Central Government from time to time.

The new Act has introduced number of innovative concepts and dispensed with certain requirement of 1956 Act. However, it has given the teeth to the Companies Act, the penalty clauses have been re-defined taking the cognizance of the lapse. Fraud has been defined. Officer in default shall be WTD and KMP and it extends to all the directors. In more of the provisions there is a strict fine and imprisonment as well that too not limited for a short period.

New Act will trigger a demand for Corporate professionals mainly Company Secretaries. It has accelerated the transformation of Company Secretaries into Corporate Secretary. Company Secretary has now been placed with the Class A group of MD / WTD / CEO / CFO. With this not only the positions has been promoted but also the role has now been re-developed as a Chief Governance Officer of the Company along with the additional responsibility and liability to shoulder.

I hereby like to acknowledge the support of the readers and contributors of this e-newsletter who has by way of their continued feedback and support made this endeavour of mine successful. The team of Corporate Journal is thankful to all of you.

All the Best and keep contributing towards the betterment of our profession.

Happy Reading.

CS Ankur Srivastava
Editor

================================ **ARTICLE** ==================================

COMPANIES ACT, 2013
AN ACT TO CONSOLIDATE AND AMEND THE LAW RELATING TO COMPANIES

CS Ankur Srivastava

The Companies Bill 2012 was passed in Rajya Sabha on 8 August 2013 (during the monsoon session of the parliament). Earlier, the bill was passed by the Lok Sabha on 18 December 2012. It has also got the Presidential assent and has now become the **Companies Act, 2013**.

The existing Companies Act, 1956 has been amended at least 25 times in the past 57 years, with many of its provisions found to be outdated and inadequate.

The passage of the bill, which is spread across nearly 30 sections and over 300 pages, was widely welcomed by stakeholders, including industry bodies, political leaders and consultants.

The next step is to finalize the Rules and define the procedural aspects of this Act. The Ministry of Corporate Affairs has put the draft rules for public comments. The draft rules are available at the website of Ministry at www.mca.gov.in. The relevant portions of the Act will be notified, in a step by step manner, along with the rules applicable.

Corporate Affairs Minister Sachin Pilot had earlier said the government plans to adopt a transparent and interactive process to finalize a detailed set of rules to be adopted under the new Companies Bill.

The new Act comprises of 29 chapters, 470 Sections and 7 Schedules as against 658 sections and 14 Schedules in the Companies Act, 1956. In 470 Sections the word "as may be prescribed" has been used at around 336 places.

The Act extents the whole of India and different provisions of the Act will be applicable on such date(s) as the Central Government, by notification in the official gazette, may appoint and different dates may be appointed for different provisions of the Act.

Several significant concepts have been defined for the first time under Companies Act, 2013 such as :

Financial Statement in relation to a company, includes—

(i) a balance sheet as at the end of the financial year;

(ii) a profit and loss account, or in the case of a company carrying on any

activity not for profit, an income and expenditure account for the financial year;

(iii) cash flow statement for the financial year;

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(iv) a statement of changes in equity, if applicable; and

(v) any explanatory note annexed thereto

Provided that the financial statement, with respect to One Person Company, small company and dormant company, may not include the cash flow statement;

Independent Director means a director other than a managing director or a whole-time director or a nominee director,—

(a) who, in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience;

(b) (i) who is or was not a promoter of the company or its holding, subsidiary or associate company;

(ii) who is not related to promoters or directors in the company, its holding, subsidiary or associate company;

(c) who has or had no 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;

(d) none of whose relatives has or had pecuniary relationship or transaction with the company, its holding, subsidiary or associate company, or their promoters, or directors, amounting to two per cent. or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year;

(e) who, neither himself nor any of his relatives—

(i) holds or has held the position of a key managerial personnel or is or has been employee of the company or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed;

(ii) is or has been an employee or proprietor or a partner, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of—

(A) a firm of auditors or company secretaries in practice or cost auditors of the company or its holding, subsidiary or associate company; or

(B) any legal or a consulting firm that has or had any transaction with the company, its holding, subsidiary or associate company amounting to ten per cent. or more of the gross turnover of such firm;

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(iii) holds together with his relatives two per cent. or more of the total voting power of the company; or

(iv) is a Chief Executive or director, by whatever name called, of any nonprofit organisation that receives twenty-five per cent. or more of its receipts from the company, any of its promoters, directors or its holding, subsidiary or associate company or that holds two per cent. or more of the total voting power of the company; or

(f) who possesses such other qualifications as may be prescribed.

Key Managerial Personnel, in relation to a company, means—

(i) the Chief Executive Officer or the managing director or the manager;

(ii) the company secretary;

(iii) the whole-time director;

(iv) the Chief Financial Officer; and

(v) such other officer as may be prescribed;

One Person Company means a company which has only one person as a member;

Promoter means a person—

(a) who has been named as such in a prospectus or is identified by the company in the annual return referred to in section 92; or

(b) who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or

(c) in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act:

Provided that nothing in sub-clause (c) shall apply to a person who is acting merely in a professional capacity;

Small Company means a company, other than a public company,—

(i) paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than five crore rupees; or

(ii) turnover of which as per its last profit and loss account does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than twenty crore rupees:

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Provided that nothing in this clause shall apply to—

(A) a holding company or a subsidiary company;

(B) a company registered under section 8; or

(C) a company or body corporate governed by any special Act;

Important provisions at a glance:

Classification & Registration

• Concept of One Person Company (OPC limited) introduced;

• Concept of Small companies have been introduced which shall be subjected to a lesser stringent regulatory framework;

• Provision for Conversion of Companies already registered has been introduced;

• Registration process has been made faster and compatible with e-governance.

• For the first time, articles may contain provisions for entrenchment;

• A declaration, in the prescribed form, required to be filed with the Registrar at the time of registration of a company that all the requirements of the Act in respect of registration and matters precedent or incidental thereto have been complied with, will be required to signed by both - a person named in the articles as a director, manager or secretary of the company as well as by an advocate, a chartered accountant, cost accountant or company secretary in practice, who is engaged in the formation of the company.

Registered office

• A company shall, on and from the 15th day of its incorporation and at all times thereafter have a registered office capable of receiving and acknowledging all communications and notices as may be addressed to it.

• Company is required to furnish to the Registrar verification of its registered office within 30 days of its incorporation in the prescribed manner.

• Where a company has changed its name(s) during the last two years, it shall paint or affix or print, along with its name, the former name or names so changed during the last two years.

• Notice of change, verified in the manner prescribed, shall be given to the Registrar, within 15 days of the change, who shall record the same.

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Commencement of business

- A company having a share capital shall not commence business or exercise any borrowing powers unless a declaration is filed with Registrar by a director verified in the manner as may be prescribed that:
- every subscriber to the memorandum has paid the value of shares agreed to be taken by him;
- Paid-up capital is not less than Rs. five lakhs in the case of public company and one lakh in case of a private company.
- the company has filed with the Registrar the verification of its registered office.

Acceptance of Deposits

Under new Companies Act, there is elaborated provisions for acceptance and / or renewal of deposits. A company may, subject to passing of a resolution in general meeting and subject to such rules as may be prescribed in consultation with the Reserve Bank of India, accept deposits from its members on such terms and conditions, including the provision of security, if any, or for the repayment of such deposits with interest, as may be agreed upon between the company and its members, subject to the fulfillment of the following conditions, namely:—

(a) issuance of a circular to its members including therein a statement showing the financial position of the company, the credit rating obtained, the total number of depositors and the amount due towards deposits in respect of any previous deposits accepted by the company and such other particulars in such form and in such manner as may be prescribed;

(b) filing a copy of the circular along with such statement with the Registrar within thirty days before the date of issue of the circular;

(c) depositing such sum which shall not be less than fifteen per cent. of the amount of its deposits maturing during a financial year and the financial year next following, and kept in a scheduled bank in a separate bank account to be called as deposit repayment reserve account;

(d) providing such deposit insurance in such manner and to such extent as may be prescribed;

(e) certifying that the company has not committed any default in the repayment of deposits accepted either before or after the commencement of this Act or payment of interest on such deposits; and

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(f) providing security, if any for the due repayment of the amount of deposit or the interest thereon including the creation of such charge on the property or assets of the company:

Provided that in case where a company does not secure the deposits or secures such deposits partially, then, the deposits shall be termed as ''unsecured deposits'' and shall be so quoted in every circular, form, advertisement or in any document related to invitation or acceptance of deposits.

Registration of Charges

Companies Act, 2013 requires the Company to register the particulars of EVERY CHARGE created by it on its property or assets or any of its undertaking including pledge.

Annual Return

Every company shall prepare a return in the prescribed form containing the particulars as they stood on the close of the financial year. Annual Return is required to be signed by :

(i) A director and the Company Secretary, or where there is no Company Secretary, by a Company Secretary in whole-time practice.

(ii) It means that now in respect of all the companies (except one person companies and small companies), whether private or public, listed or unlisted, the annual return has to be signed by either a company secretary in employment or by a company secretary in practice i.e. where no Company Secretary is appointed by the company, the Annual Return is compulsorily required to be signed by the Company Secretary in practice.

(iii) in addition to the above, 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 that the annual return discloses the facts correctly and adequately and that the Company has complied with all the provisions of the Act.

(iv) It means, in case of a listed company and other prescribed companies, even if the Annual Return is signed by the Company Secretary in employment, it is further required to be certified by the Company Secretary in Whole time practice.

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(v) In relation to a One Person Company and Small Company, the annual return is required to be signed by the Company Secretary, or where there is no Company Secretary, by one director of the company.

(vi) Every listed company shall file a return in the prescribed form with the Registrar with respect to change in the number of shares held by promoters and top ten shareholders of such company, within fifteen days of such change.

Place of Keeping Registers

The new Act permits a company to keep its registers or copies of returns at any other place other than the registered office in India (not necessarily within the city, village or town in which the registered office is situated) if following conditions are fulfilled:

1. More than 10% of the total members entered in the register of members reside at that place;
2. The keeping of registers or copies at that place is approved by a special resolution passed by the members in the general meeting;
3. The Registrar has been given a copy of the proposed special resolution in advance;

General Meeting

1. Every AGM shall be called during business hours, i.e. between 9 A.M. to 6 P.M. on any day that is not a National Holiday;
2. The Concept of Statutory Meeting has been omitted;
3. First AGM is required to be held within 9 months from the end of the first financial year.
4. A general meeting of a company may be called by giving not less than clear twenty-one days' notice either in writing or through electronic mode in such manner as may be prescribed;
5. To encourage wider participation of shareholders at General Meetings, the Central Government may prescribe the class or classes of companies in which a member may exercise their vote at meetings by electronic means.
6. One person companies have been given the option to dispense with the requirement of holding an AGM.

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7. Every listed company shall prepare a Report on each Annual General Meeting including confirmation to the effect that the meeting was convened, held and conducted as per the provisions of the Act and the Rules made there under. A copy of the report shall be filed with the Registrar within 30 days of the conclusion of the AGM.

8. Quorum of the public company has been increased from 5 to 30 members personally present depending upon the number of members as under:

   a. Upto 1000 members = 5 members personally present

   b. 1001 to 5000 members = 15 members personally present

   c. More than 5000 members= 30 members personally present

Corporate Social Responsibility

Every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during any financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director. The Board's report shall disclose the composition of the Corporate Social Responsibility Committee. Every company satisfying any of the above criteria has to mandatorily spend 2% of the average net profits of the 3 immediately preceding financial years on Corporate Social Responsibility.

Auditors

Every company has to appoint, at the first Annual General Meeting, individual or a firm (firm shall include LLP) as an auditor who shall hold office till the conclusion of sixth Annual General Meeting and thereafter till the conclusion of every sixth AGM. Accordingly, the appointment of auditors is to be made for 5 years. The appointment is subject to the ratification of the members at every annual general meeting.

Listed and certain other prescribed classes of companies cannot reappoint:-

(a) an individual as auditor for more than one term of five consecutive years;

(b) an audit firm as auditor for more than two terms of five consecutive years:

All notices of, and other communications relating to, any general meeting shall be forwarded to the auditor of the company, and the auditor shall attend either by himself or through his authorised representative, who shall also be qualified to be an auditor, any general meeting and shall have right to be heard at such meeting on any part of the business which concerns him as the auditor.

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Cost Audit

The previous approval of Central Government is no longer required for appointment of Cost Auditor as section 148 of the Act has dispenses with this requirement. Remuneration of the Cost Auditor also will be decided by the members.

Directors

1. The Board shall consists individuals as directors;
2. Maximum 15 directors. Company may appoint more than 15 directors after passing special resolution in this regard;
3. Such class or classes of companies as may be prescribed shall have a woman director;
4. Every company shall have at least one of the directors who has stayed in India for 182 days or more in the previous calendar year;
5. Every listed company shall have atleast 1/3rd independent directors;
6. An independent director shall hold office for a term up to five consecutive years on the Board of a company, but shall be eligible for reappointment on passing of a **special resolution** by the company and disclosure of such appointment in the Board's report. No independent director shall hold office for more than two consecutive terms, but such independent director shall be eligible for appointment after the expiration of three years of ceasing to become an independent director;
7. Every person proposed to be appointed as a director by the company in general meeting or otherwise, shall furnish his Director Identification Number and a declaration that he is not disqualified to become a director under this Act;
8. Consent is to be filed within 30 days and the director shall act as director only after filing of such consent;
9. A person who is not a retiring director be eligible for appointment to the office of a director at any general meeting, if he, or some member intending to propose him as a director, has, not less than fourteen days before the meeting, left at the registered office of the company, a notice in writing under his hand signifying his candidature as a director or, as the case may be, the intention of such member to propose him as a candidate for that office, along with the deposit of **<u>one lakh rupees or such higher amount as may be prescribed</u>** which shall be refunded to such person or, as the case may be, to the member, if the person proposed gets elected as a director or gets more than twenty-five per cent. of total valid votes cast either on show of hands or on poll on such resolution.

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10. No person shall hold office as a director, including any alternate directorship, in more than twenty companies at the same time. Provided that the maximum number of public companies in which a person can be appointed as a director shall not exceed ten. **The members of a company may, by special resolution, specify any lesser number of companies in which a director of the company may act as directors.**
11. The provisions of qualification shares have been omitted;

Meeting of the Board

1. Every Company shall hold first meeting of its Board of Directors within 30 days of its incorporation;
2. Four meetings of the Board of Directors should be hold every year in such a manner that not more than 120 days shall intervene between 2 consecutive board meetings;
3. The participation of directors in a meeting of the Board may be either in person or through video conferencing or other audio visual means, as may be prescribed, which are capable of recording and recognising the participation of the directors and of recording and storing the proceedings of such meetings along with date and time;
4. Not less than 7 days notice is to be given for board meeting which may be given electronically;
5. Participation of Directors through video conferencing shall also be counted for the purpose of quorum;
6. Prohibition on insider trading on Directors and Key Managerial Personnel;

Managerial Personnel

1. No company shall appoint or re-appoint any person as its managing director, whole-time director or manager for a term exceeding five years at a time;
2. Most of the provisions of schedule XIII of earlier Companies Act, 1956 have been incorporated in this Chapter;
3. No person shall be appointed as MD as well as Chairperson at a same time except articles provides otherwise;
4. Every company belonging to such class or classes of companies as may be prescribed shall have the following whole-time key managerial personnel,—

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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

Every whole-time key managerial personnel of a company shall be appointed by means of a resolution of the Board containing the terms and conditions of the appointment including the remuneration.If the office of any whole-time key managerial personnel is vacated, the resulting vacancy shall be filled-up by the Board at a meeting of the Board within a period of six months from the date of such vacancy.

Company Secretary & Secretarial Audit:

1. Every listed company and a company belonging to other class of companies as may be prescribed shall annex with its Board's report, a secretarial audit report, given by a company secretary in practice, in such form as may be prescribed.
2. Functions of Company Secretary have been prescribed which includes :
   a. to report to the Board about compliance with the provisions of this Act, the rules made thereunder and other laws applicable to the company;
   b. to ensure that the company complies with the applicable secretarial standards;
   c. to discharge such other duties as may be prescribed.

Compromises, Arrangements and Amalgamations

1. No compromise or arrangement shall be sanctioned by the Tribunal unless a certificate by the company's auditor has been filed with the Tribunal to the effect that the accounting treatment, if any, proposed in the scheme of compromise or arrangement is in conformity with the accounting standards prescribed.
2. Separate provisions have been provided for the merger or amalgamation between two small companies or between a holding company and a wholly owned subsidiary company.
3. Provision for cross border amalgamations between Indian Companies and companies incorporated in the jurisdictions of such countries as may be notified from time to time by the Central Government.

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4. Specific provision for purchase of minority shares in case an acquirer or person acting in concert with the acquirer become holder of 90% or more of the issued capital of the company, either directly or by virtue of any amalgamation, share exchange, conversion of securities or any other reason.

Winding up

1. Only two modes of winding up (i) By Tribunal; and (ii) voluntary;
2. Powers of courts have been shifted to Tribunal;
3. Certain new grounds for winding up have been introduced and some has been omitted;
4. Circumstances in which company may be wound up by Tribunal:
    a. if the company is unable to pay its debts;
    b. if the company has, by special resolution, resolved that the company be wound up by the Tribunal;
    c. if the company has acted against the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality;
    d. if the Tribunal has ordered the winding up of the company under Chapter XIX;
    e. if on an application made by the Registrar or any other person authorised by the Central Government by notification under this Act, the Tribunal is of the opinion that the affairs of the company have been conducted in a fraudulent manner or the company was formed for fraudulent and unlawful purpose or the persons concerned in the formation or management of its affairs have been guilty of fraud, misfeasance or misconduct in connection therewith and that it is proper that the company be wound up;
    f. if the company has made a default in filing with the Registrar its financial statements or annual returns for immediately preceding five consecutive financial years; or
    g. if the Tribunal is of the opinion that it is just and equitable that the company should be wound up.

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================================== **ARTICLE** ===================================

Restructuring and Liquidation

The entire rehabilitation and liquidation process has been made time bound.

1. Winding up is to be resorted to only when revival is not feasible.
2. The Tribunal may appoint an interim administrator or a company administrator from the panel of Company Secretaries, CAs, CWAs, etc. maintained by the Central Government.
3. The Company Administrator shall prepare a scheme of revival and rehabilitation.
4. If revival scheme is not approved by the creditors, the Tribunal shall order for winding up of the company

National Company Law Tribunal

The Central Government shall, by notification, constitute, with effect from such date as may be specified therein, a Tribunal to be known as the National Company Law Tribunal consisting of a President and such number of Judicial and Technical members, as the Central Government may deem necessary, to be appointed by it by notification, to exercise and discharge such powers and functions as are, or may be, conferred on it by or under this Act or any other law for the time being in force.

Thanks & Regards:
CS Ankur Srivastava
E-mail: ankursrivastavacs5985@gmail.com

================================ ARTICLE ================================

COMPANY SECRETARY & COMPANIES ACT- 2013

CS Shruti Srivastava

New Company Law has been enacted which has tremendously enhanced the role, power, duties of the Company Secretaries. It has proved a growth oriented step towards transformation of Company Secretaries to Corporate Secretaries.

The New Act has drastically re-developed the role of Company Secretary along with the enhanced participation of the Company Secretary in Practice. Let us discuss in detail the major prospects that have been triggered with the Companies Act, 2013.

Under New Companies Act the role of the Company Secretary has been defined for the first time which has given an inclusive list as given below:

The functions of the company secretary shall **include**,—

(a) to report to the Board about compliance with the provisions of this Act, the rules made thereunder and other laws applicable to the company;

(b) to ensure that the company complies with the applicable secretarial standards;

(c) to discharge such other duties as may be prescribed.

Accordingly, the Company Secretary has to shoulder the responsibility to head the entire legal functioning of the Company and compliance of every law not only the Corporate Law but also every single applicable law which applies to the Company.

The Company Secretary has to ensure that the Company shall mandatorily follow the applicable Secretarial Standards. It means the Company has to comply with the Secretarial Standards which are applicable to it and the responsibility to ensure the same is to be taken by the Company Secretary

Clause (c) has extensive scope which will transform the Company Secretary into a Global Corporate Secretary.

Definition of Company Secretary under New Law:

"company secretary" or "secretary" means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 who is appointed by a company to perform the functions of a company secretary under this Act;

"company secretary in practice" means a company secretary who is deemed to be in practice under sub-section (2) of section 2 of the Company Secretaries Act, 1980;

Company Secretary has been defined as expert under the New Act as under:

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“expert” includes an engineer, a valuer, a chartered accountant, a company secretary, a cost accountant and any other person who has the power or authority to issue a certificate in pursuance of any law for the time being in force;

What the EXPERT CS can do/Advise : Apart from the regular compliance of Companies Act the Expert CS can advise the Management on the following matters

- Advise on Matters to be stated in prospectus
- Advise on Amalgamations/ Arrangements
- Advise Company Administrator
- Act as member of SFIO
- Act as Mediator & Conciliator
- Professional assistance to Company Liquidator
- Advise on other applicable laws

There was much Hue and Cry about the removal of section 383A which will in turn reduce the scope of Company Secretary as a profession. However, now it is clarified that the New Act has put the Company Secretary among the Top Management Persons and recognized him as a Key Managerial Personnel of the Company. Please have a view on drafting of the definition of the KMP as given herein below:

“key managerial personnel”, in relation to a company, means—

(i) the Chief Executive Officer or the managing director or the manager;

(ii) the company secretary;

(iii) the whole-time director;

(iv) the Chief Financial Officer; **and**

(v) such other officer as may be prescribed;

Note: The word AND indicate that such classes of Companies as may be prescribed must have all the above KMPs.

Appointment of KMP: Every company belonging to such class or classes of companies, as may be prescribed, shall have the above (all I to V) whole-time key managerial personnel. Every whole-time key managerial personnel of a company shall be appointed by means of a resolution of the Board containing the terms and conditions of the appointment including the remuneration.

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If the office of any whole-time key managerial personnel is vacated, the resulting vacancy shall be filled-up by the Board at a meeting of the Board within a period of six months from the date of such vacancy. It is the new provision, the vacancy caused in the office of Company Secretary need to be filled within 6 months.

Company Secretary has been placed just below the Managing Director / CEO and above WTD and CFO of the Company. CS has been placed amongst Class A category persons they are supposed to shoulder Class A responsibility in Class A manner. Now Company Secretary has to come ahead behind the shelter of Companies Act and has to develop himself as a KMP of the Company not only in terms of Companies Act but also in a real sense.

Signing / Certification of Annual Return: Under New Act, Annual Return of every company need to signed / certified by the Company Secretary in following manner:

d. A director and the Company Secretary, or where there is no Company Secretary, by a Company Secretary in whole-time practice.

e. It means that now in respect of all the companies (except one person companies and small companies), whether private or public, listed or unlisted, the annual return has to be signed by either a company secretary in employment or by a company secretary in practice i.e. where no Company Secretary is appointed by the company, the Annual Return is compulsorily required to be signed by the Company Secretary in practice.

f. in addition to the above, 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 that the annual return discloses the facts correctly and adequately and that the Company has complied with all the provisions of the Act.

g. It means, in case of a listed company and other prescribed companies, even if the Annual Return is signed by the Company Secretary in employment, it is further required to be certified by the Company Secretary in Whole time practice.

h. In relation to a One Person Company and Small Company, the annual return is required to be signed by the Company Secretary only, or where there is no Company Secretary, by one director of the company.

If the Company Secretary in Practice certifies the Annual Return otherwise than in conformity with the requirements of this section or the rules made thereunder, he shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.

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Secretarial Audit: Every listed company and a company belonging to other class of companies as may be prescribed shall annex with its Board's report, a secretarial audit report, given by a company secretary in practice, in such form as may be prescribed. Now Secretarial Audit has made mandatory for listed and certain other class of Companies. This has tremendously enhanced the role of Company Secretary in Practice. It is a comprehensive Audit of the Corporate Laws which is to be reported by the Company Secretary in Practice. In case of any adverse remark is made by the Company Secretary in Practice, the Board of Directors, in their Directors' Report, shall explain in full any qualification or observation or other remarks made by the company secretary in practice in his report.

In addition to above It promises improved corporate governance norms, enhanced disclosures and transparency, and increase in the accountability of company Secretaries.

To Conclude I must say, that the New Companies Act, has given us an opportunity to re-establish ourselves as an **Expert** of not only the companies act but also in other Corporate and allied laws and act as a **Key Managerial Personnel** of the Company.

With Kind Regards:

Shruti Srivastava

Practicing Company Secretary

Shruti Agarwal & Associates

Kanpur

Email: csshrutisrivastava@gmail.com

================================ ARTICLE ==================================

COMPANIES ACT - 2013

After much Hue and cry, Rajya Sabha passed Companies Bill, 2012 on Thursday, 2013 and gave *idi* just before this Holy Festival to small investors, employees, society as a whole, Corporates and Professionals. This bill will be beneficial to above mentioned stakeholders in following ways:

CS Ankit Misra

1. **Small Investors: (clause 241, 245)** In addition to sec 397, 398 available in Companies Act, 1956, clause 245 of Companies Act, 2013 provides for class action suit by shareholders of Company on fulfilling the conditions mentioned therein.

2. **Employees:** Companies Act, 1956 was silent in respect of providing safeguards to employees. But Companies Act, 2013 takes cares of rights of employees as well like clause 218 and other indirect measures.

3. **Society:** First time in the history of Companies Act, provisions for Corporate Social Responsibilities are made mandatory for bigger companies which will enforce Corporates to return 2% of their 3 years average profit to the society under which it is working. This approach will be of either ‘ expend or explain’.

4. **Corporates:** Companies Act, 2013 primarily focuses on ‘Self Governance’ compliance for corporate resulting into withdrawal of section like section 297, sec 314 etc. This will enhance shareholders participation in Company instead of Central Government.

5. **Professionals:** Members of all three premier institutes ICSI, ICAI & ICWAI will get benefited from Companies Act, 2013 as various provisions are inserted which made them certifying authorities under clauses of Act. However, alongwith giving certifying rights to these professionals, Act also cast higher penalty in case of contravention of provisions of Act.

Some of the crucial provisions for stakeholders are discussed as under:

Cont…

PROVISIONS FOR DIRECTORS:

Section 2 (51) Definition of Key Managerial Personnel (KMP) introduced first time. KMP includes [clause 2(51)]:

i) CEO or MD;

ii) Company Secretary;

iii) Whole Time Director;

Maximum Number of Directors : 15

Woman Director :

At least one woman director shall be on the Board of listed companies

Committees of Board: (clause 177-178)

Following Committees of directors mandatory for listed companies and other classes of companies :

(i) Audit Committee (ii) Nomination and Remuneration Committee
(iii) Stakeholder's Relationship Committee

Managerial Remuneration [clause 197]

Provisions relating to limits on remuneration provided in the existing Act being included in the Bill. Maximum limit of 11% (of net profits) being retained.

For companies with no profits or inadequate profits remuneration shall be payable in accordance with new Schedule of Remuneration (Schedule V) and in case a company is not able to comply with Schedule V, approval of Central Government would be necessary.

Appointment of Key Managerial Personnel [Clause 203(1)]

Every company belonging to such class or classes of companies as may be prescribed shall have the wholetime key managerial personnel.

Unless the articles of a company provide otherwise or the company does not carry multiple businesses, an individual shall not be the chairperson of the company as well as the managing director or Chief Executive Officer of the company at the same time [Proviso to Clause 203(1)]

Cont…

Provided that nothing contained above shall apply to such class of companies engaged in multiple businesses and which has appointed one or more chief executive officers for each such business as may be notified by the Central Government.

Every Company Secretary being a whole-time KMP shall be appointed by a resolution of the Board which shall contain the terms and conditions of appointment including the remuneration.

If the office of any whole-time KMP is vacated, the same shall be filled up by the Board at a meeting of the Board within a period of six months from the date of such vacancy [Clause 203 (2) & (4)].

If a company does not appoint a Key Managerial Personnel, the penalty proposed is :

— On company - one lakh rupees which may extend to five lakh rupees.

— On every director and KMP who is in default - 50,000 rupees and 1,000 rupees per day if contravention continues.

Changes in shareholding of promoters and top ten shareholders

A return to be filed with the Registrar with respect to change in the number of shares held by promoters and top ten shareholders (to ensure audit trail of ownership) by a listed company.

Independent Directors

Concept of independent directors has been introduced for the first time in Company Law: [clause 149(5)]

All listed companies shall have at least one-third of the Board as independent directors.

Public Companies having paid up share capital of one hundred crore rupees or more, or net worth of one hundred Crore rupees or more, whichever is higher;

or

(ii) Public Companies which have, in aggregate, outstanding loans or borrowings or debentures or deposits, exceeding two hundred crore rupees.

The independent director has been clearly defined in the Bill.

Nominee director nominated by any financial institution, or in pursuance of any agreement, or appointed by any government to represent its shareholding shall not be deemed to be an independent director.

Cont…

An independent director shall not be entitled to any remuneration other than sitting fee, reimbursement of expenses for participation in the Board and other meetings and profit related commission as may be approved by the members.

An Independent director shall not be entitled to any stock option.

Only an independent director can be appointed as alternate director to an independent director. [clause 161(2)].

Duties of directors (clause 166)

For the first time, duties of directors have been defined in the Bill. A director of a company shall :

i. act in accordance with the articles of the company;
ii. 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 company, its employees, the shareholders, the community and for the protection of environment;
iii. exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment;
iv. not involve in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company;
v. not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates and if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company;
vi. not assign his office and any assignment so made shall be void.

Related Party Transactions

For the purposes of first proviso to sub-section (1) of section 188,

(i) a company having a paid-up share capital of rupees one crore or more shall not enter into a contract or arrangement with any related party; or
(ii) a company shall not enter into a transaction or transactions, where the transaction or transactions to be entered into

Cont…

(iii) (a) individually or taken together with previous transactions during a financial year, exceeds five percent of the annual turnover or twenty percent of the net worth of the company as per the last audited financial statements of the company, whichever is higher, for contracts or arrangements as mentioned in clauses (a) to (e) of sub-section (1) of section 188; or

(b)relates to appointment to any office or place of profit in the company, its subsidiary company or associate company at a monthly remuneration exceeding one lakh rupees as mentioned in clause (f) of sub-section (1) of section 188; or

(c) is for a remuneration for underwriting the subscription of any securities or derivatives thereof of the company exceeding ten lakh rupees as mentioned in clause (g) of sub-section (1) of section 188;

except with the prior approval of the company by a special resolution.

The explanatory statement to be annexed to the notice of a general meeting convened pursuant to section 101 shall contain the following particulars:

(a) name of the related party ;

(b) name of the director or key managerial personnel who is related, if any;

(c) nature of relationship;

(d) nature, material terms, monetary value and particulars of the contract or arrangement;

(e) any other information relevant or important for the members to take a decision on the proposed resolution.

Every contract or arrangement entered into with a related party shall be referred to in the Board's Report along with the justification for entering into such contract or arrangement [Clause 188(2)].

Any arrangement between a company and its directors in respect of acquisition of assets for consideration other than cash shall require prior approval by a resolution in general meeting and if the director or connected person is a director of its holding company, approval is required to be obtained by passing a resolution in general meeting of the holding company [Clause 192].

Cont…

CORPORATE SOCIAL RESPONSIBILITY (CLAUSE 135)

Every company having net worth of rupees 500 crore or more, or turnover of rupees 1000 crore or more or a net profit of rupees 5 crore or more during any financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director.

The CSR Committee shall formulate and recommend Corporate Social Responsibility Policy which shall indicate the activity or activities to be undertaken by the company as specified in schedule VII and shall also recommend the amount of expenditure to be incurred on the CSR activities.

The Board of every company shall ensure that the company spends in every financial year atleast 2% of the average net profits of the company made during the three immediately preceding financial years in pursuance of its CSR policy.

Where the company fails to spend such amount, the Board shall in its report specify the reasons for not spending the amount. The approach is to 'expend' or explain'.

The company shall give preference to local areas where it operates, for spending amount earmarked for Corporate Social Responsibility (CSR) activities.

Secretarial Audit (Clause 204)

Every listed company and a company belonging to other class of companies as may be prescribed shall annex with its Board's report a Secretarial Audit Report, given by a Company Secretary in Practice, in such form as may be prescribed.

It shall be the duty of the company to give all assistance and facilities to the Company Secretary in Practice, for auditing the secretarial and related records of the company.

The Board of Directors, in their report shall explain in full any qualification or observation or other remarks made by the Company Secretary in Practice in his report.

If a company or any officer of the company or the Company Secretary in Practice, contravenes the provisions of this section, the company, every officer of the company or the Company Secretary in Practice, who is in default, shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

Secretarial Standards Introduced [Clause 118(10) & 205]

For the first time, the Secretarial Standards has been introduced and provided statutory recognition.

Cont…

Clause 118(10) reads as:

"Every company shall observe Secretarial Standards with respect General and Board Meetings specified by the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980 and approved by the Central Government."

Clause 205 casts duty on the Company Secretary to ensure that the company complies with the applicable Secretarial Standards.

It is the beginning of a new era where non financial standards have been given importance and statutory recognition besides Financial Standards.

GENERAL MEETINGS

To encourage wider participation of shareholders at General Meetings, the Central Government may prescribe the class or classes of companies in which a member may exercise their vote at meetings by electronic means [clause 108].

AUDITORS

A company shall appoint an individual or a firm as an auditor at annual general meeting who shall hold office till the conclusion of sixth annual general meeting.

However, the company shall place the matter relating to such appointment for ratification by members at every annual general meeting.

No listed company or a company belonging to such class or classes of companies as may be prescribed, shall appoint or re-appoint-

(a) an individual as auditor for more than one term of five consecutive years; and
(b) an audit firm as auditor for more than two terms of five consecutive years:
Provided that-
(i) an individual auditor who has completed his term under clause (a) shall not be eligible for re-appointment as auditor in the same company for five years from the completion of his term;
(ii) an audit firm which has completed its term under clause (b), shall not be eligible for re-appointment as auditor in the same company for five years from the completion of such term:

Members of a company may resolve to provide that in the audit firm appointed by it, the auditing partner and his team shall be rotated at such intervals as may be resolved by members.

The limit in respect of maximum number of companies in which a person may be appointed as auditor has been proposed as twenty companies. (clause 141)

Cont…

Auditor cannot render any of the following services, directly or indirectly to the company or its holding company or subsidiary company:

- Accounting and book-keeping service
- Internal audit
- Design and implementation of any financial information system
- Actuarial services
- Investment advisory services
- Investment banking services
- Rendering of outsourced financial services
- Management services
- Other prescribed services

Cost Audit (clause 148)

The Central Government after consultation with regulatory body may direct class of companies engaged in production of such goods or providing such services as may be prescribed to include in the books of accounts particulars relating to utilisation of material or labour or to such other items of cost.

If the Central Government is of the opinion, that it is necessary to do so, it may, direct that the audit of cost records of class of companies, which are required to maintain cost records and which have a net worth of such amount as may be prescribed or a turnover of such amount as may be prescribed, shall be conducted in the manner specified in the order.

'cost auditing standards' have been mandated.

Serious Fraud Investigation Office (clause 211)

Statutory status to SFIO has been proposed. Investigation report of SFIO filed with the Court for framing of charges shall be treated as a report filed by a Police Officer. SFIO shall have power to arrest in respect of certain offences of the Bill which attract the punishment for fraud. Those offences shall be cognizable and the person accused of any such offence shall be released on bail subject to certain conditions provided in the relevant clause of the Bill.

Secretarial Standards Introduced [Clause 118(10) & 205]

For the first time, the Secretarial Standards has been introduced and provided statutory recognition

Cont…

Clause 118(10) reads as:

"Every company shall observe Secretarial Standards with respect General and Board Meetings specified by the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980 and approved by the Central Government."

Clause 205 casts duty on the Company Secretary to ensure that the company complies with the applicable Secretarial Standards.

Report on annual general meeting [clause 121]

Every listed company shall prepare a Report on each Annual General Meeting including confirmation to the effect that the meeting was convened, held and conducted as per the provisions of the Act and the Rules made there under.

The report shall be prepared in the manner to be prescribed. A copy of the report shall be filed with the Registrar within 30 days of the conclusion of the AGM. Non-filing of the report has been made a punishable offence.

Regards,
CS ANKIT MISRA
M.Com., ACS
Sources: MCA AND ICSI

NEW COMPANY LAW

India Inc will soon usher into a new era of more liberal, growth oriented and competitive regulatory frame work. Presently corporate entities are governed by a nearly six decade old enactment - Companies Act, 1956 which is going to be replaced by the Companies Act, 2013.

It was earlier passed by Lok Sabha in December 2012. It is hoped that the new provisions may be made applicable in more than one installment as the process of framing the rules is under way but in any case the new law will be in force by the current fiscal end.

The new law shall comprehensively replace the existing law comprising of 658 plus sections which also makes it the longest piece of law in the country. It aims at business friendly corporate regulation, pro- business initiative, good corporate governance, e-governance and enhanced accountability of management & disclosure norms, audit responsibility, protection of investors and shareholders, better framework for insolvency regulation and participation and contribution of corporates in corporate social responsibilities.

The new Act shall, *inter alia* provide for the following –

a) e governance

b) good corporate governance

c) CSR initiatives

d) enhanced disclosure norms

e) enhanced management accountability / transparency

f) audit accountability

g) investor protection and activism

h) protection of minority shareholders

i) framework for insolvency regulation

j) stricter enforcement

Cont…

k) facilitating mergers / acquisitions

l) key managerial persons

m) one person company

n) role of independent directors

o) functions of company secretary

p) secretarial standards

q) constitution of national financial reporting authority

r) class action suits

s) constitution of national company law tribunal, etc.

Various new concepts have been introduced in the new company law such as independent directors and their term. One person company, e-voting in general meetings by shareholders, class action suits, enhanced role of independent directors, mandatory women director on company boards, rotation of auditors, mandatory spends by companies on social responsibilities and setting up of national company law tribunals are some of them.

For the first time, company law talks of independent directors, their tenure and liability. While there will be data bank of directors maintained for being appointed, the law also prescribes the code of conduct for independent directors.

Learning from Satyam fiasco, now audit firms and auditors shall be subject to rotation to have checks and balances in place and avoid so called friendly nexus between the auditor and auditee. The focus is on ensuring independence and accountability of auditor. A new regulatory body called National Financial Reporting Authority (NFRA) will be set up to ensure monitoring and compliance of accounting and auditing standards and to oversee quality of service of professionals associated with compliance.

The new law also empowers employees as vigil mechanism through whistle blowing has been made to evolve a process to encourage ethical corporate behavior and reward employees.

Cont…

The focus is also or Corporate Social Responsibilities (CSR) as companies (both public and private) shall be required to spend certain percentage of net profits (upto two percent) on various specified CSR activities as taken up by the companies as per their CSR policy. Each company will have to have a board level CSR committee to formulate CSR policy and monitor such activities.

For implementation of provisions, the Central Government shall notify the dates from which different provisions shall be applicable. The machinery provisions in the form of Rules are under drafting stage and it is expected that the draft rules shall be soon released by Ministry of Corporate Affairs for public comments. It is hoped that the new Companies Act, 2013 may become operational by this fiscal end.

While the new law will have far reaching impact on corporate India, professionals and upliftment of social activities, it would also be tough for corporates to comply or else explain or get punished. Corporate governance and enabling environment are the basic tenets of new law. If complied in true spirit, it will transform corporate culture for the good...

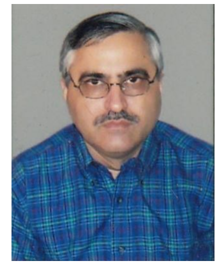
With Warm Regards :

TEAM - TAX INDIA SERVICES

Hello Dear Friends,

Greetings of the Day..!

It is my pleasure to share with you all, my weekly USD/INR hedging guide aimed at providing guidance to Importers and Exporters to hedge their forex exposure.



CMA D.S. Kapoor

USD / INR

Weekly Chart **dated 02.09.2013**

Last week, it opened at 63.690, high / low at 68.8000 / 63.6380, and closed at 65.7000 as against earlier week's closing at 63.1900.

Last week, it was expected that that the coming week should be full of volatility, wherein movements may be on both the sides within 64.75 – 62.25.

During the week, the currency opened at 63.69 on Monday and during all round frenzy, it galloped to 68.80 on 28th. Later on, it met profit booking after strong RBI invention on 28th night and started correcting from 29th onwards and finally closed at 65.70 on 30th. Because of the fact that technical factors do not count much in typical situations like present / currency in uncharted territory, it has become quite difficult to set any perfect target and thus, the currency had been moving beyond our expectations. It has now closed below 3DMA (67.01) and below 5DMA (66.32). But, it is still much above 3WMA (63.51) and 5WMA (62.46) and these levels are likely to act as major supports during days to come.

Cont…

Attention is invited to the following facts regarding movements in USD / INR during last six years:

1. From the bottom of 39.02 in Jan'08, top was made in Mar'09 at 51.13. Thus, there was about 31% depreciation in Rupee in 14 months time. After this top, bottom was made in April'10 at 44.05. Thus, there was about **58% appreciation** in Rupee of its earlier depreciation achieved in a period of 13 months. There were range bound movements from April'10 to July'11.

2. From the bottom of 43.85 in July'11, top was made in Dec'11 at 54.32. Thus there was about 24% depreciation in Rupee in 6 months time. After this top, bottom was made in Feb'12 at 48.60. Thus, there was about **55% appreciation** in Rupee of its earlier depreciation in a period of two months.

3. From the bottom of 48.60 in Feb'12, top was made in June'12 at 57.32. Thus there was about 18% depreciation in Rupee in 5 months time. After this top, bottom was made in Oct'12 at 51.35. Thus, there was **68% appreciation** in Rupee of its earlier depreciation in a period of 4 months.

4. From the bottom of 51.35 in Oct'12, top was made in Nov'12 at 55.88. Thus there was about 9% depreciation in Rupee in 2 months time. After this top, bottom was made in April'13 at 53.65. Thus there was **49% appreciation** in Rupee of its earlier depreciation in a period of five months.

   (Total depreciation in Rupee from 2008 till date is about 77%)

5. Now, if we assume 68.80 achieved during the last week as the probable top, depreciation would come to about 28% in 4 months time.

Now taking probable future appreciation in Rupee:

At the lower end of 49%, the possible bottom rate comes to around 61.40

At average 58%, the possible bottom rate comes to around 60.00

At the higher end of 68%, the possible bottom rate comes to around 58.50.

Thus, the above gives a probable bottom range for USD/ INR to be 61.40 - 60.00 – 58.50. How much period it may take, remains a question.

Going Forward, we expect the coming week also to remain once again quite volatile. On the higher side, the currency may move towards 67.10 – 67.50 and on the lower side, it is expected to get strong support around 65.50. Only on decisive breaking of 65.50, it can move towards 64.00 - 63.25 level.

Importers are advised to hedge part of short term payables partly on market rates and partly on rates coming around 65.50. Hedging of medium & long term payables may still be postponed at the moment and we should wait for reduction in volatility and consequently in forward premium too. Buying call options may also be done for part of the medium term payables, once the rate reaches around 64 or below.

Cont…

========================= FOREX HEDGING GUIDE=========================

Exporters, as advised last week, should hedge Short, Medium & Long Term receivables around current levels and also on any uptick towards 67.00.

Major Resistances	**: 66.50 / 67.10 / 67.50**
Major Supports	**: 65.50 / 64.75 / 64.00**

Regards,

D. S. Kapoor
Cost Accountant
E-Mail: dskapoor@sify.com
Mobile: 9628411116

Ministry of Corporate Affairs

Government of India

सत्यमेव जयते

STOPPING OF PHYSICAL PAYMENT OF CHALLANS OF VALUE ABOVE ` 50,000/-

The Ministry had reviewed the processes involved in delivery of important services to stakeholders and with a view to improving service delivery time, decided to accept payments of value upto ` 50,000/- for MCA21 services **only in electronic mode** w.e.f. 27.3.2011. It was also intimated in the same circular No. HQ/9/2002-Computerisation dated 9th March, 2011 that payments of value above ` 50,000/- would also be made in electronic mode only w.e.f. 1.10.2011.

With a view not to cause any inconvenience to the stakeholders, the decision with regard to stopping online payment facility was not put to effect pending enabling of alternative mechanism for payment. line payment facilities through NEFT (National Electronic Fund Transfer) facility have since been introduced. In addition, “Verify Payment” feature has also been introduced to enable stakeholders to check status of their online payments. In view of this, it is proposed to stop payment through physical challan for payments of value above ` 50,000/- also, most of which are payment for Form 1 and Form 5 service.

Any of the stakeholders having any observation/suggestion/objection to the above proposal for stopping payments through physical challan for payments of value above ` 50,000/- may kindly give comments by e-mail at MCA.egovcomments@mca.gov.in or to Mr. Shyam Sunder, Deputy Director, e-Governance Cell, Ministry of Corporate Affairs, Room No. 508, 5th Floor, Shastri Bhawan, New Delhi-110001 by **20th September, 2013.**

================================= UPDATES =================================

Ministry of Corporate Affairs
Government of India

CIRCULARS/ NOTIFICATIONS ISSUED DURING THE PERIOD

Ref No.	Date	Description
General Circular No. 14/2013	03.09.2013	Relaxation of last date and additional fee in filing of e-Form 23C for Appointment of Cost Auditor

NEW COMPANIES ACT, 2013 NEW

Companies Bill, 2012 has obtained the Presidential assent on 29th August, 2013 and on 30th August, 2013 the notification of New Companies Act, 2013 has also been published in the Gazette of India.

The Ministry of Corporate Affairs has put the draft rules for public comments and will notify the relevant portions of this Act, in a step by step manner, along with the rules applicable.

Suggestions on Draft Rules under Companies Act 2013

Ministry of Corporate Affairs has put the Draft Rules under Companies Act, 2013 for comments of the Public. The draft Rules for 16 chapters as listed below under the Companies Act 2013 are made live for public comments in 1st phase. The last date of receiving comments on these rules is 08/10/2013:

Chapter I - Preliminary

Chapter II - Incorporation of Company and Matters Incidental Thereto

Chapter VI - Registration of Charges

Chapter VIII - Declaration and Payment of Dividend

Chapter IX - Accounts of Companies

Chapter X - Audit and Auditors

Cont…

================================= **UPDATES** =================================

Chapter XI - Appointment and Qualification of Directors

Chapter XII - Meeting of Board and its Powers

Chapter XVI - Prevention of Oppression and Mismanagement

Chapter XVIII - Removal of Name of Companies from the Register of Companies

Chapter XIX - Revival and Rehabilitation of Sick Companies

Chapter XXII - Companies Incorporated Outside India

Chapter XXIV - Registration Offices and Fees

Chapter XXVI - Nidhi

Chapter XXVII - National Company Law Tribunal and Appellate Tribunal

Chapter XXIX - Miscellaneous

The e-platform for receiving suggestions on draft rules under the Companies Act 2013 has been developed in a user friendly and interactive manner, and will facilitate collation and analysis of suggestions/comments received on the draft rules. Stakeholders are requested to use this platform for providing their suggestions and comments on the draft rules.

Ministry of Corporate Affairs
Government of India

Appointment of Cost Auditors : Last date of filing e-form extended upto 31st October, 2013 with no additional Fee

The companies have now reason to relax as now no additional fee will be applicable for late filing of e-form 23C upto 31st October 2013.

Ministry of Corporate Affairs had issued a Cost Audit Order dated 6th November, 2012 applicable from the year 2013-14 onward suppressing all the earlier cost audit orders. Through this order the MCA had put at rest all the confusions with regard to the applicability of the cost audit on various industries. The new order dated 6th November 2012 was based on first four digits of CETA code.

Problem:

The companies are required to file form 23C (for appointment of Cost Auditor) within 90 days of the commencement of the year i.e. 29th June 2013 for the year 2013-14. Form 23C with regard to the appointment of the cost auditor was designed based on the earlier categorization of Industries. The old form 23C was not able to accommodate the changes with regard to Industry specifications to be mentioned as per the new cost audit order and the companies were not able to file Form 23C with regard to the Cost Auditor Appointment for the year 2013-14 though the last date of appointment was 29th June 2013.

Action By MCA

After incorporating the same in e form23C and to avoid any unnecessary burden of fee on the stakeholders due to above, the Ministry has issued Circular no 14/2013 dated 03rd September, 2013 extending the last date of filing and relaxing the additional fee applicable on e-form 23C upto 31st October, 2013.

Now 23C e-form can be filed for appointment of cost auditor **with normal fee upto 31st October, 2013 or within 90 days of the commencement of company's financial year to which appointment relates, whichever is later.**

भारतीय प्रतिभूति और विनिमय बोर्ड
Securities and Exchange Board of India

SEBI (BUY BACK OF SECURITIES) (AMENDMENT) REGULATIONS, 2013

SEBI has issued a notification on 8th August, 2013 and issued SEBI (BUY BACK OF SECURITIES) (AMENDMENT) REGULATIONS, 2013 to amend the Securities and Exchange Board of India (Buy back of Securities) Regulations, 1998. Accordingly, certain amendments were made in the buyback regulations as under:

1. No offer of buy-back for fifteen per cent or more of the paid up capital and free reserves of the company shall be made from the open market.

2. A company shall not make any offer of buy-back within a period of one year reckoned from the date of closure of the preceding offer of buy-back, if any;

3. The company shall ensure that atleast fifty per cent of the amount earmarked for buy-back, as specified in resolutions, is utilized for buying-back shares or other specified securities;

4. Simultaneously with the issue of such public announcement, the company shall file a copy of the public announcement with the Board along with the fees specified;

5. The company shall submit the information regarding the shares or other specified securities bought-back, to the stock exchange on a daily basis in such form as may be specified by the Board and the stock exchange shall upload the same on its official website immediately;

6. The buy-back offer shall open not later than seven working days from the date of public announcement and shall close within six months from the date of opening of the offer;

7. In relation to Buy-back of physical shares or other specified securities new sub regulation 15A and 15B have been inserted accordingly:
    a. a separate window shall be created by the stock exchange, which shall remain open during the buy-back period, for buyback of shares or other specified securities in physical form.

Cont…

b. the company shall buy-back shares or other specified securities from eligible shareholders holding physical shares through the separate window specified in clause (a), only after verification of the identity proof and address proof by the broker.

c. the price at which the shares or other specified securities are bought back shall be the volume weighted average price of the shares or other specified securities bought-back, other than in the physical form, during the calendar week in which such shares or other specified securities were received by the broker:

d. The Company shall, before opening of the offer, create an escrow account towards security for performance of its obligations under these regulations, and deposit in escrow account 25 per cent of the amount earmarked for the buy-back as specified in the resolution;

8. The company shall extinguish and physically destroy the security certificates so bought back during the month in the presence of a Merchant Banker and the Statutory Auditor, on or before the fifteenth day of the succeeding month. And all the securities bought-back must be extinguished within seven days of the last date of completion of buyback;

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RESERVE BANK OF INDIA
www.rbi.org.in

Foreign Direct Investment – Reporting of issue / Transfer of Shares to/by a FVCI

As per Regulations 9 and 10 and para 9 of Schedule I to the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 notified vide Notification No. FEMA 20 / 2000 -RB dated May 3, 2000, transfer of equity shares / fully and mandatorily convertible debentures/ fully and mandatorily convertible preference shares (hereinafter referred to as 'shares') of an Indian company, from a person resident outside India (non-resident) to a person resident in India (resident) or vice versa, has to be reported to an Authorized Dealer bank within 60 days of transactions. Further, the receipt of consideration for issue of shares as well as the issue of shares of an Indian company, to a non-resident has to be reported to the Reserve Bank of India through an Authorized Dealer bank within 30 days of the transaction.

It has been observed that SEBI registered FVCIs making investments in an Indian Company under FDI Scheme in terms of Schedule 1 of Notification No. FEMA.20 / 2000 - RB dated May 3, 2000, as amended from time to time, also report the same transaction under Schedule 6 of the Notification ibid, resulting in double reporting of the transaction.

Now, It is clarified vide RBI circular dated 12/07/2013 that wherever a SEBI registered FVCI acquires shares of an Indian company under FDI Scheme in terms of Schedule 1 of Notification No. FEMA 20 / 2000-RB dated May 3, 2000, such investments have to be reported in form FC-GPR (in case of allotment) / FC-TRS (in case of transfer) only, as applicable. Where the investment is under Schedule 6 of the Notification ibid, no FC-GPR/FC-TRS reporting is required. Such transactions would be reported by the custodian bank in the monthly reporting format as prescribed by RBI from time to time.

A SEBI registered FVCI while making investment in an Indian company may determine upfront whether the said investment is under FDI or FVCI scheme and report accordingly.

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Reserve Bank of India has announced measures to rationalise Foreign Exchange Outflows by Resident Indians.

In view of above, it has been decided to rationalize the regulations governing the overseas direct investments. In terms of the extant provisions under the Foreign Exchange Management Act, 1999 (FEMA, 1999) on overseas direct investments, the total overseas direct investment (ODI) of an Indian Party in all its Joint Ventures (JVs) and / or Wholly Owned Subsidiaries (WOSs) abroad engaged in any bonafide business activity should not exceed 400 per cent of the net worth of the Indian Party as on the date of the last audited balance sheet under the Automatic Route.

It has now been decided:

a. To reduce the existing limit of 400 per cent of the net worth of the Indian Party to 100 per cent of its net worth under the Automatic Route. Accordingly, AD Category - I banks may allow overseas direct investments under the Automatic Route up to 100 per cent of the net worth of the Indian party, as on the date of the last audited balance sheet;

b. To reduce the existing limit of 400 per cent of the net worth of the Indian company, investing in the overseas unincorporated entities in the energy and natural resources sectors, under the automatic route, to 100 per cent of the net worth of the Indian company investing in the overseas unincorporated entities in the energy and natural resources sectors, as on the date of last audited balance sheet; and

c. Any ODI in excess of 100% of the net worth shall be considered under the Approval Route by the Reserve Bank of India.

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UPDATES

In respect of the Navaratna Public Sector Undertakings (PSUs), ONGC Videsh Limited (OVL) and Oil India Ltd (OIL), the extant provision for investing in overseas unincorporated entities and the overseas incorporated entities in the oil sector (i.e., for exploration and drilling for oil and natural gas, etc.), which are duly approved by the Government of India, without any limits under the automatic route, would however continue as hitherto.

The above provisions shall come into effect with immediate effect and would apply to all fresh Overseas Direct Investment proposals on a prospective basis but would not apply to the existing JV/WOS set up under the extant regulations.

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RESTRICTION ON IMPORT OF GOLD BY NOMINATED BANKS /AGENCIES/ENTITIES

Reserve Bank of India had issued a Circular no. 15 dated 22/07/2013 certain restrictions were imposed on the import of various forms of gold by nominated banks/nominated agencies/ premier or star trading houses/SEZ units/EoUs which have been permitted to import gold for use in the domestic sector.

Government of India and the Reserve Bank of India have been receiving several requests for clarifications on the operational aspects of the scheme of imports put in place in terms of the above circular. There have also been representations to change certain aspects of the scheme. Taking into account all these representations and in consultation with the Government of India, it has been decided to issue the following clarifications/modifications in supersession of all the earlier instructions:

1. Import of gold in the form of coins and medallions is now prohibited.
2. It shall be incumbent on all nominated banks/nominated agencies and other entities to ensure that **at least one fifth, i.e., 20%,** of every lot of import of gold imported to the country is exclusively made available for the purpose of exports and the balance for domestic use. This shall be monitored by customs authorities, and will be implemented port-wise only.
3. Further, nominated banks/ nominated agencies and other entities shall make available gold for domestic use only to the entities engaged in jewellery business/bullion dealers and to banks authorised to administer the Gold Deposit Scheme against full upfront payment. In other words, supply of gold in any form to the domestic users other than against full payment upfront shall not be permitted.
4. The nominated banks/agencies/refineries and other entities shall ensure that there is no front loading of imports, particularly in the first and second lots of imports. Such imports shall be linked to normal quantities of gold supplied to the exporters by the nominated banks/agencies and shall not exceed the highest quantity supplied during any one year out of last three years. The quantity thus arrived at, however, will not be imported in one or two lots only.

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As a thumb rule, imports of more than maximum of two months of requirements of the exporters in a lot would be considered unusual. Illustratively, if the gold supplied to exporters by a bank during the last three years is say, 30 tonnes, 40 tonnes and 60 tonnes respectively, imports in terms of this circular shall be based on highest of three i.e. 60 tonnes. Further, import of 50 tonnes(two months export of 10 tonnes for exports and 4 times the amount for domestic use, totalling 50 tonnes) will be considered unusual. In case of nominated banks not having a previous record of having supplied gold to the exporters they would need to seek prior approval from RBI before placing orders for import of gold for the first lot under the 20/80 scheme.

5. The 20/80 principle would also apply for the henceforth import of gold in any form/purity including gold dore, whereby 20 per cent of the gold imported shall be provided to the exporters. This will be administered and monitored at the refinery level for each consignment at the time of such imports. This will also be monitored by the customs authorities. The refinery shall make available for domestic use only to the entities engaged in jewellery business/bullion dealers and to the banks authorised to administer the Gold Deposit Scheme against full upfront payment and sale of gold against any other form of payment shall not be permitted. Further, the import of gold dore is permitted only against a licence issued by DGFT.
6. Any authorisation such as Advance Authorisation/Duty Free Import Authorization (DFIA) is to be utilised for import of gold meant for export purposes only and no diversion for domestic use shall be permitted.
7. Entities/units in the SEZ and EoUs, Premier and Star trading houses are permitted to import gold exclusively for the purpose of exports only.
8. AD Category I banks are advised to strictly ensure that foreign exchange transactions effected by / for their constituents are compliant with the above instructions. Head Offices of nominated agencies / International Banking Divisions of banks would be responsible for monitoring operations of the revised scheme taking into account transactions put through different centres. In respect of gold released for the purpose of exports, AD Category I banks will also put in place a special mechanism to monitor realization of export proceeds as per the extant regulations and any contraventions/ unusual developments in this regard should be reported forthwith to the concerned Regional Office of the Reserve Bank of India.
9. Government of India will be issuing separate instructions, if any, to the customs authorities/DGFT to operationalise and monitor the above requirements for import of gold.

================================ **UPDATES** ================================

Director General of Foreign Trade

Public Notice No. 22/(RE-2013)/ 2009-2014, Dated : 12th August, 2013

OPTION TO CLOSE CASES OF DEFAULT IN EXPORT OBLIGATION

In exercise of powers conferred under Paragraph 2.4 the Foreign Trade Policy, 2009-2014, the Director General of Foreign Trade hereby provides a procedure to close cases of default in Export Obligation under (a) Duty Exemption Scheme (para 4.28 of the HBP v1and (b) EPCG Scheme (para 5.14 of HBPv1 RE-2012).

All pending cases of the default in meeting Export Obligation (EO) can be regularised by the authorization holder on payment of applicable customs duty, corresponding to the shortfall in export obligation, along with interest on such customs duty; but the interest component to be so paid shall not exceed the amount of customs duty payable for this default.

In line with the existing policy the customs duty could be paid either in cash or by way of debiting of any valid duty credit scrips issued under Chapter 3 of the Foreign Trade Policy. The interest component however, has to be paid in cash only.

Any authorisation holder choosing to avail this benefit must complete the process of payment on or before 31st March 2014.

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