NEW INDIAN COMPANY LAW
THE COMPANIES ACT, 2013 (HIGHLIGHT)

OBJECTIVE –

The objective behind the Companies Act, 2013 is lessor Govt. approvals and enhanced self-regulation coupled with emphasis on corporate democracy.
The 2013 Act delinks the procedural aspect from the substantive law and provide greater flexibility in rule- making to enable adaption to the changing and economic and technical environment.

KEY POINTS

1. **Types of companies**

a) Maximum number of members in a private company increased from 50 to 200 Limit of number of members in an association or partnership (without incorporation) to be increased up to 100
b) One Person Company (OPC) - a new vehicle for individuals for carrying on business with limited liability
c) Corporate Social Responsibility (CSR) 2% of average net profits of last 3 years to be mandatorily spent on CSR by companies having
- net worth of 5 billion or more; or
- turnover of 10 billion or more; or
- net profit of 50 million or more

2. **Loan to Directors**

No company shall directly or indirectly advance any loan (including loan represented by a book debt) or give guarantee or provide security in connection with uch loan to any director / related persons. An exception to the above rule is made for MD or a whole time director (WTD) if such loan is in accordance with the terms of services extended to all employees or is approved by shareholders by special resolution.

3. Audit and Accounting

To align with the provisions of the Income tax Act, companies to have a uniform financial year - ending on 31 March each year. Consolidation of financials for a company having a subsidiary, associate or a joint venture made mandatory. National Financial Reporting Authority (NFRA) to be constituted by Central Government to provide for dealing with matters relating to accounting and auditing policies and standards to be followed by companies and their auditors. Mandatory audit rotation for listed and prescribed classes of companies. Restriction placed on provision of specified non-audit services by an auditor to ensure independence and accountability of the auditor. Mandatory internal audit for prescribed classes of companies.

4. Management, administration and corporate governance

At least 1 director of a company shall be a person who has stayed in India for 182 days or more in the previous calendar year.
Listed and prescribed class of companies to have at least 1 woman director. Prescribed class of companies to have whole-time Key Managerial – Personnel (KMP) .
Chief Finance Officer to be a whole time KMP for prescribed classes of companies. Electronic voting for Board and shareholders meetings introduced.
Following committees of the Board made mandatory for listed and prescribed classes of companies:

– Audit committee
– Stakeholder relationship committee
– Nomination and Remuneration committee
– Corporate Social Responsibility committee

5. Inter corporate loans / investments

Loans, guarantee and security made to any person (the 1956 Act dealt only with body corporate) will attract the 2013 Act compliance requirement
Rate of interest on loan granted cannot be lower than the prevailing yield of 1 year, 3 year, 5 year or 10 year Government Security closest to the tenure of the loan.

6. Mergers & Acquisitions

Restriction placed on multi-layer investment subsidiaries. Merger of Indian company with a foreign company allowed. Fast track merger for small companies and between holding company and its wholly owned subsidiary introduced. Person/group of persons holding 90% or more equity shares by virtue of amalgamation etc. can purchase the remaining equity shares of the company from minority shareholders. Any valuation of shares/assets etc. required under 2013 Act to be performed by a Registered Valuer.

7. Verification of Registered Office by a professional

Company to furnish verification of its registered office within 30 days of incorporation.
Verification to be done by the professional engaged in company incorporation.
Only after such verification form being filed with ROC a Company can obtain Certificate of Commencement required by all the companies having share capital, including private limited companies.

8. Prohibition on Acceptance of Deposits from Public

On and after the commencement of the new Act, no company shall invite, accept or renew deposits under the Act from the public except in a manner provided under the Chapter V of new Act.

Exceptions:-

i. Banking companies
ii. a company as the Central Government may, after consultation with the Reserve Bank of India, specify in this regard i.e. a class of notified companies may be allowed.
iii. Board Meeting

- Participation of Directors can be ensured through Video Conferencing.
- Notice for Board Meeting to be issued in writing to every director 7 days prior to meeting and to be sent by hand delivery or by post or by electronic means [Clause 173(3)].
- First board meeting to be held within 30 days of incorporation and thereafter 4 board meetings to be held every year. Time gap between two board meetings should not exceed 120 days.