THE COMPANIES ACT, 2013

The Companies Bill, 2012 has been passed by the Lok Sabha on 18th December, 2012 and also passed by the Rajya Sabha on 8th August, 2013 and subsequently, the Companies Bill got president's assent on 29th August, 2013. Now, it is **The Companies Act, 2013** which replaces the 60 years old the Companies Act, 1956.

Good Bye ………… The Companies Act, 1956

Welcome to ………….The Companies Act, 2013

The Companies Act, 2013 is a progressive and forward looking which focuses on corporate governance, disclosures and transparency, increases accountability of company management and auditors and also protects the interest of investors particularly small and minority investors and stricter enforcement processes.

It gives bigger and better role to the Company Secretaries in the areas of *secretarial audit, restructuring, liquidation, valuation and much more*.

CS Rajnish Kumar
[FCS & LL.B (D.U.)]

31st August, 2013

Notification issued by the ICSI for CS Executive / Professional December, 2013 Examination.

ATTENTION STUDENTS

Clarification about Applicability of the Companies Bill, 2012 for Company Secretaries December, 2013 Examination.

Students appearing in the **'Company Law' paper of 'Executive Programme'** and Company Secretarial Practice paper of the **'Professional Programme'** respectively may take note of the following changes applicable for December 2013 Examination:

1. Highlights of the Companies Bill, 2012 as passed by the Parliament on 8th August, 2013 will be applicable under the topics Historical Development of Concept of Corporate Law in India/Contemporary Developments.

2. All Circulars, Clarifications/Notifications issued by the Ministry of Corporate Affairs effective six months prior to the date of examination.

Note: the above notification is issued by the ICSI and available @ www.ICSI.edu.

GENERAL INFORMATION

The Companies Act, 2013	**The Companies Act, 1956**
This Companies Act, 2013 has 470 sections and divided into 29 chapters.	The Companies Act, 1956 has 658 sections and divided into XII parts and also contains XV Schedules.
The Companies Act, 2013 is a forward looking legislation and focuses on more disclosures and better governance of a Company. The new act is aligned with global best practices to improve corporate governance practices in the Companies. It also intends serve the interest of individual professional like artisans, craftsman etc by giving recognition to the One Person Company. The new act gives more power and flexibility to the members of the Companies in place of Govt. approvals. New Initiatives under the Companies Act, 1956 • One Man Company • Class Action suit • Limits on subsidiaries Companies (upto 2 layers for investment companies) • Constitution of NCLT & NCLAT • Employees protection in failed companies (the company shall pay 2yrs salary in case of winding -up) • Mandatory appointment of a woman Director • Introduction of one Financial Year • Introduction of Secretarial Audit and recognition of Secretarial Standard • Introduction of Corporate Social Responsibility • Introduction of rotation of the appointment of Auditors after 4 years • Uniform financial year	The Companies Act 1956 is completely regulated and controlled by the Govt. of India.

DEFINITIONS

Definition	The Companies Act, 2013	The Companies Act, 1956
Listed company	A company which has any of its securities listed on any recognised stock exchange.	Not Available
Associate Company	A Company is considered to be an associate company of the other, if the other company has significant influence over such company (not being a subsidiary) or is a joint venture company. Significant influence means control of at least 20% of total share capital of a company or of business decisions under an agreement.	Not Available
Dormant Company	Where a company is formed and registered under this Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company may make an application to the Registrar for obtaining the status of a dormant company.	Not Available
Expert	"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.	Not Available
Foreign company	Foreign company means any company or body corporate incorporated outside India which,- (i) Has a place of business in India whether by itself or through an agent, physically or through electronic mode; and (ii) Conducts any business activity in India in any other manner.	Not Available
Key Managerial Personnel (KMP)	Key Managerial Personnel (KMP), in relation to a company, means- (i) Chief Executive Officer or Managing Director or Manager, (ii) The Company Secretary; (iii) The whole-time director; (iv) The Chief Financial Officer; and (v) Such other officer as prescribed	Not Available

Officer who is in default	Officer who is in default, means any of the following officers of a company, namely:- (i) Whole-time director; (ii) Key managerial personnel; (iii) Where there is no key managerial personnel, such director or directors as specified by Board in this behalf and who has or have given consent in writing to the Board to such specification, or all the directors, if no director is so specified; (iv) Any person who, under the immediate authority of the Board or any key managerial personnel, is charged with any responsibility including maintenance, filing or distribution of accounts or records, authorises, actively participates in, knowingly permits, or knowingly fails to take active steps to prevent, any default; (v) Any person in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act, other than a person who gives advice to the Board in a professional capacity; (vi) Every director, in respect of a contravention of any of the provisions of this Act, who is aware of such contravention by virtue of the receipt by him of any proceedings of the Board or participation in such proceedings without objecting to the same, or where such contravention had taken place with his consent or connivance; (vii) In respect of issue or transfer of any shares of a company, share transfer agents, registrars and merchant bankers to the issue or transfer.	Officer who is in default means all the following officers of the company, namely : (i) The managing director or managing directors ; (ii) The whole-time director or whole-time directors ; (iii) The manager ; (iv) The secretary ; (v) Any person in accordance with whose directions or instructions the Board of directors of the company is accustomed to act ; (vi) Any person charged by the Board with the responsibility of complying with that provision :Provided that the person so charged has given his consent in this behalf to the Board ; (vii) Where any company does not have any of the officers specified in clauses (a) to (c), any director or directors who may be specified by the Board in this behalf or where no director is so specified, all the directors : Provided that where the Board exercises any power under clause (f) or clause (g), it shall, within 30 days of the exercise of such powers, file with the Registrar a return in the prescribed form
Promoter	Promoter means a person - (i) Who has been named as such in a prospectus or is identified by the company in the annual return, or (ii) Who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or (iii) In accordance with whose advice, directions or instructions the Board of Directors is accustomed to act. Provided that nothing in sub-clause (c) shall apply to a person who is acting merely in a professional capacity.	Not Available

Subsidiary company	Subsidiary company in relation to any other company (that is holding company), means a company in which the holding company - • Controls the composition of the Board of Directors; or • Exercises or controls more than one half of the total share capital (instead of equity share capital as prescribed under the 1956 Act) either at its own or together with one or more of its subsidiary companies. Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.	"HOLDING COMPANY" AND "SUBSIDIARY" For the purposes of this Act, a company shall, subject to the provisions of sub-section (3), be deemed to be a subsidiary of another if, but only if, - (i) That other controls the composition of its Board of directors ; or (ii) That other - a. Where the first mentioned company is an existing company in respect of which the holders of preference shares issued before the commencement of this Act have the same voting rights in all respects as the holders of equity shares, exercises or controls more than half of total voting power; b. Where the first-mentioned company is any other company, holds more than half in nominal value of its equity share capital ; or c. The first mentioned company is a subsidiary of any company which is that other's subsidiary.
Small company	Small company has been defined as a company other than a public company having a paid-up share capital of which does not exceed 50 lakh rupees or such higher amount as may be prescribed not exceeding Rs.5 crore or turnover of which does not exceed two crore rupees or such higher amount as may be prescribed not exceeding twenty crore rupees. [Clause 2(85)].	Not Available

Spl. Note: As per the Companies Act, 2013, the number of persons in any association or partnership not to exceed such number of persons as may be prescribed (not exceeding 100). The restriction does not to apply to an association or partnership, constituted by professionals who are governed by special Acts.

CLASSIFICATION AND REGISTRATION

	The Companies Act, 2013	**The Companies Act, 1956**
Classification of Companies	Concept of One Person Company (OPC Ltd.) introduced and the Concept of Small companies have also been introduced which shall be subjected to a lesser stringent regulatory framework. The above two types of Companies are in addition to the Private and Public Companies.	The old Companies Act is mainly based on Private and Public Companies.

Spl. Note:
One Person Companies (OPC) is a class of companies distinct from public and private companies. The one person company may not find it difficult to comply with the provisions of the Companies Act, 2013 and shall use OPC Ltd. as last word of the Company.

Under Section – 2(42) "One Person Company" means a company which has only one person as a member. In other words, a company which has only one person as a member and where legal and financial liabilities are limited to the Company only and not to the person. Further, It can be formed as a Private Limited Company.

Small Company means as a company other than a public company having a paid-up share capital of which does not exceed Rs. 50 lakhs or such higher amount as may be prescribed not exceeding Rs.5 crore or turnover of which does not exceed Rs. 2 crores or such higher amount as may be prescribed not exceeding Rs. 20 crore.

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. A Company is required to furnish to the ROC **verification** of its registered office within 30 days of its incorporation. Notice of change shall be given to the ROC within 15 days of the change. The changed address shall also be verified by the Company.	A company shall file its registered office address at the time of submitting documents of incorporation. No verification is required. Notice of change shall be filed within 30 days to the ROC

Spl. Note: The verification of address shall keep check on fake or wrong addresses of Registered Office. Any change of the registered office outside the local limit of any city, town or village shall be done only with the approval of members via special resolution.

PROSPECTUS AND ALLOTMENT OF SECURITIES

	The Companies Act, 2013	**The Companies Act, 1956**
Public issue or Private Placement	**Public Offer** includes initial public offer (IPO) or further public offer (FPO) of securities to the public by a company, or an offer for sale of securities to the public by an existing shareholder, through issue of a prospectus. **Private Placement** means any offer of securities or invitation to subscribe securities to a select group of persons by a company (other than the public offer) through issue of a private placement offer letter.	Public issue or Private Placement is not defined
Spl. Note: The definition of above terms shall bring more clarity and understanding.		
Share capital and debentures (Default)	If a company with intent to defraud, issues a duplicate certificate of shares, the company including defaulting officers shall be punishable with fine which shall not be less than 5 times the face value of the shares involved in the issue of the duplicate certificate but which may extend to 10 times the face value of such shares or rupees 10 crores, whichever is higher.	No such provisions
	Where any depository has transferred shares with an intention to defraud a person, it shall be liable for punishment for fraud.	No such provisions
	A Company cannot issue shares at discount except issue of sweat equity shares.	A Company can issue shares at discount (10%) subject to the confirmation of CLB.
	A company limited by shares cannot issue any irredeemable preference shares and such preference shares shall be redeemable within 20 years from the date of issue except Preference shares issued for infrastructural projects subject to redemption.	Same provisions except preferences shares for infrastructure projects.
	Reduction of share capital to be made subject to confirmation by the National Company Law Tribunal (NCLT).	Confirmation required from the High Court in place of NCLT.
Spl. Note: No reduction of share capital shall be allowed if a company is in arrears for payment of deposits whereas no such conditions under the Companies Act, 1956		

BOARD AND GOVERNANCE

<table>
<tr><th></th><th>The Companies Act, 2013</th><th>The Companies Act, 1956</th></tr>
<tr><td>Number of directors</td><td>
<table>
<tr><th></th><th>Public Co.</th><th>Private Co.</th><th>A Person Co.</th></tr>
<tr><td>Minimum</td><td>3</td><td>2</td><td>1</td></tr>
<tr><td>Maximum</td><td>15</td><td>15</td><td>15</td></tr>
</table>
More directors can be added by only passing of special resolution.

<u>Woman director</u>
At least one woman director shall be on the Board of such class or classes of companies as may be prescribed.

<u>Resident Director</u>
Every company shall have at least one director who has stayed in India for a total period of not less than 182 days in the previous calendar year.
</td><td>
<table>
<tr><th></th><th>Public Co.</th><th>Private Co.</th></tr>
<tr><td>Minimum</td><td>3</td><td>2</td></tr>
<tr><td>Maximum</td><td>12</td><td>12</td></tr>
</table>
Maximum no. of director in a company shall not exceed 12. More directors can be added by passing special resolution with CG approval

<u>Woman director</u>
No concept of Woman Director.

<u>Resident Director</u>
No concept of Resident Directors
</td></tr>
<tr><td colspan="3"><u>Spl. Note:</u> The Companies Act, 2013 introduces fresh new concepts of “Woman Director” and “Resident Director”.</td></tr>
<tr><td>Appointment of Key Managerial Personnel (KMP)</td><td>
Every company belonging to such class of companies as prescribed shall have whole time key managerial personnel.

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 6 months from the date of such vacancy.

In case of default, the penalty is:
• On company – Rs. 1 lakh to Rs. 5 lakh.
• On every director and KMP – one time penalty Rs. 50,000 and Rs. 1,000 per day if contravention continues.
</td><td>
No Concept of KMP

Same provisions except remuneration

Timeline for appointment is 1 year as per the CS rules.

No one time penalty and Rs.500/- per days if contravention continues.
</td></tr>
<tr><td colspan="3"><u>Spl. Note:</u> Under the Companies Act, 1956, the companies are appointing a company secretary reluctantly and for such non-compliances, the provision of section 383A imposes penalty only Rs. 500 Per day. In addition, the rules of appointment of company secretaries also provide several ways for the Companies to skip the appointment of a company secretary.</td></tr>
</table>

<table>
<tr><th></th><th>The Companies Act, 2013</th><th>The Companies Act, 1956</th></tr>
<tr><td>Independent Directors</td><td>The New act defines the concept of Independent Directors.

All listed companies shall have at least 1/3 of the Board as independent directors.

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.</td><td>No Concept of Independent Directors. The listing agreement defines the Independent director under Clause 49 (Corporate Governance).</td></tr>
<tr><td>Notice of Board Meeting</td><td>At least 7 days' notice is required to be given for a Board meeting.

The notice may be sent by physical mode or electronic means to every director at his address registered with the company.

A Board Meeting may be called at shorter notice subject to the condition that at least one independent director, if any, shall be present at the meeting.</td><td>No such provisions</td></tr>
<tr><td colspan="3"><u>Spl. Note:</u> The company shall send a notice to every director at his registered address or E-mail ID at least 7 days in advance by hand delivery or by post or by electronic means. A Board meeting may be called at shorter notice to transact urgent business. Notice of Board Meeting may also be send by E-mail or Fax.</td></tr>
<tr><td>Participation of directors through video-conferencing</td><td>The participation of directors in a Board Meeting may be either in person or through video conferencing or other audio visual which are capable of recording and recognising the participation of the directors.</td><td>The physical presence of the directors is required for a valid Board Meeting.</td></tr>
<tr><td colspan="3"><u>Spl. Note:</u> The directors may participate in the board meeting via video conferencing or teleconferencing or other audio visual way of participating in the Board Meeting. The participation of directors in the Board Meeting via video conferencing or teleconferencing or other audio visual way, shall also be counted for the purpose of quorum.</td></tr>
</table>

	The Companies Act, 2013	**The Companies Act, 1956**
Resignation of director	A director may resign from his office by giving notice in writing. The Board shall, on receipt of such notice, intimate the ROC and also place such resignation in the subsequent general meeting. The director shall also forward a copy of resignation alongwith detailed reasons for the resignation to the ROC. The notice shall become effective from the date on which the notice is received by the company or the date, if any, specified by the director in the notice, whichever is later. If all the directors of a company resign from their office or vacate their office, the promoter or in his absence the Central Government shall appoint the required number of directors to hold office till the directors are appointed by the company in General Meeting.	No such specific provisions about the resignation of the Directors.
Managerial Remuneration	Maximum limit of 11% of net profits. 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.	Same Provision
Disclosures	Every company shall prepare an annual return in the prescribed form and file with ROC within the prescribed time. Annual Return is required to be signed by a director and the Company Secretary, or where there is no Company Secretary, by a Company Secretary in whole-time practice. Penalty on CS for non-compliances of this section: From Rs.50,000/- to Rs. 5,00,000/-	Same provision except certification by the Company Secretary.

Spl. Note: Now, 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.

	The Companies Act, 2013	The Companies Act, 1956
Board's report	Board's Report should disclose the information and details: • Extract of annual return; • Company's policy on director's appointment and remuneration • A statement of declaration by independent directors; • Explanations by the Board on every qualification made by the auditor in his report and by the company secretary in practice in his secretarial audit report; • Particulars of loans, guarantees, or investments made; • Particulars of contracts or arrangements; • The conservation of energy, technology absorption, foreign exchange earnings and outgo; • Statement indicating development and implementation of a risk management policy; • The Boards' Report is to be signed by the Chairperson of the company if he is authorized by the Board and where he is not so authorized, it shall be signed by at least two directors, one of whom shall be a managing director, or by the director where there is one director.	Same provision except few addition requirements.
Corporate Social Responsibility (CSR)	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 3 or more directors, out of which at least 1 director shall be an independent director. The CSR Committee shall formulate and recommend Corporate Social Responsibility Policy 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.	No Provisions
Note: CSR is not applicable to the loss making companies.		

DEPOSITS

	The Companies Act, 2013	The Companies Act, 1956
Deposits	Condition for acceptance of Deposits: • Passing of resolution in a general meeting. • Issue of circular to members including therein a statement showing the financial position of the company, the credit ratings 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. • Filing a copy of the circular along with such statement with the registrar within 30 days before the date of issue of the circular. • Providing deposit insurance. • Certification by the company that it has not defaulted in the repayment of deposits. • Provision of security in respect of deposit & interest & creation of charge on company's properties and assets. An amount of not less than 15% of the deposits maturing during a financial year shall be deposited in deposit repayment reserve account. Where a company fails to repay the deposit and it is proved that the deposits had been accepted with intent to defraud the depositors or for any fraudulent purpose, every officer of the company who was responsible for the acceptance of such deposit shall be personally responsible, without any limitation of liability, for all or any of the losses of the depositors.	Provisions are same except some stringent penalty provisions.
Investment companies	A company can make investment through not more than two layers of investment companies. This shall not affect: • Company from acquiring any other company incorporated in a country outside India; • Subsidiary company from having any investment subsidiary for the purposes of meeting the requirements under any law.	No Definition
Spl. Note: The restriction on the number of step-down subsidiary companies has been introduced to prevent the abuse of diversion of funds through many step-down subsidiaries.		

COMPANY SECRETARY

	The Companies Act, 2013	**The Companies Act, 1956**
Functions of Company Secretary	The functions of the company secretary shall include - • To report to the Board about compliance with the provisions of this Act, the rules made there under and other laws applicable to the company; • To ensure that the company complies with the applicable secretarial standards; • To discharge such other duties as may be prescribed.	Functions of Company Secretary are defined
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. • 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 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 Rs. 1 lakh but which may extend to Rs. 5 lakhs.	No secretarial audit
Secretarial Standards	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.	No recognition for Secretarial Standards
Spl. Note: The Companies Act, 2013 increases the role of a company secretary in many folds and puts responsibility on Company Secretaries.		

GENERAL MEETING & AUDITORS

	The Companies Act, 2013	The Companies Act, 1956
General Meeting	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. 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.	No Electronic voting No such provisions No such provisions
Auditors	Every Company shall, at the 1^{st} Annual General Meeting, appoint an individual or a firm as an auditor at AGM who shall hold office till the conclusion of 6^{th} AGM and thereafter till the conclusion of every 6^{th} Meeting. No listed company or a company belonging to such class, shall appoint or re-appoint- a. an individual as auditor for more than one term of 5 consecutive years; and b. an audit firm as auditor for more than two terms of 5 consecutive years: Provided that an individual auditor or audit firm who has completed his term, shall not be eligible for re-appointment as auditor in the same company for 5 years from the completion of his term;	Rotation of an auditor and audit firm is new provisions.

Spl. Note:

- 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 is 20 companies.
- Auditor cannot render any of the following services, directly or indirectly to the company or its holding company or subsidiary company like Accounting and book-keeping service, Internal audit and Actuarial services etc.

NATIONAL FINANCIAL REPORTING AUTHORITY (NFRA)

	The Companies Act, 2013	**The Companies Act, 1956**
NFRA	The Central Government may notify the constitution of National Financial Reporting Authority with regard to the matters related to accounting and auditing standards. National Financial Reporting Authority shall: (i) Make recommendations to the CG on the formulation and laying down of accounting and auditing policies and standards for adoption by companies. (ii) Monitor and enforce the compliance with accounting standards and auditing standards; (iii) Oversee the quality of service of the professions associated with ensuring compliance with such standards, and suggest measures required for improvement in quality of services; & (iv) Perform such other functions relating to clauses (a), (b) and (c). National Financial Reporting Authority shall: (i) Have the power to investigate, either suo moto or on a reference made to it by the Central Government, for such class of bodies corporate or persons, into the matters of professional or other misconduct committed by any member or firm of chartered accountants, registered under the Chartered Accountants Act, 1949. (ii) Have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit. (iii) Where professional or other misconduct is proved, have the power to make order for- A. imposing penalty of - a. not less than Rs. 1 lakh, but which may extend to 5 times of the fees received, in case of individuals; and b. not less than Rs. 10/- lakhs, but which my extend to 10 times of fees received, in case of firms; B. Debarring the member or the firm from engaging himself or itself from practice as member of the institute for a minimum period of 6 months or for such higher period not exceeding 10 years as may case be.	No Financial Reporting Authority

INVESTOR PROTECTION MEASURES

	The Companies Act, 2013	**The Companies Act, 1956**
	Issue and transfer of securities and non-payment of dividend by listed companies, shall be administered by SEBI. An act of fraudulent inducement of persons to invest money is punishable with imprisonment for a term which may extend to 10 years and with fine which shall not be less than 3 times the amount involved in fraud. A suit may be filed by a person who is affected by any misleading statement or the inclusion or omission of any matter in the Prospectus or who has invested money by fraudulent inducement.	No such provisions
Class Action Suits	For the first time, a provision has been made for class action suits. It is provided that specified number of member(s), depositor(s) or any class of them, may, if they are of the opinion that the management or control of the affairs of the company are being conducted in a manner prejudicial to the interests of the company or its members or depositors, file an application before the Tribunal on behalf of the members or depositors. Where the members or depositors seek any damages or compensation or demand any other suitable action from or against an audit firm, the liability shall be of the firm as well as of each partner who was involved in making any improper or misleading statement of particulars in the audit report or who acted in a fraudulent, unlawful or wrongful manner. The order passed by the Tribunal shall be binding on the company and all its members, depositors and auditors including audit firm or expert or consultant or advisor or any other person associated with the company. (clause 245)	No such provisions

Spl. Note: Specified number of members or depositors may file suit against the Company except the Banking Company in case of any oppression and mismanagement against the minority shareholders. Class suits are very prevalent in the developed countries.

OTHER IMPORTANT PROVISIONS UNDER THE COMPANIES ACT, 2013

Maximum number of members in Private Company

Now, a Private Company can have a maximum of 200 members in place of maximum 50 members.

Note: as per section – 3(1)(III) of the Companies Act, 1956, a Private Company cannot have members exceeding 50. In case of violation of the provisions of the said section, such private company shall cease to be private company.

Return of Allotment for issue of Securities

Under the new Companies Act, the Companies are required to file return of allotment with Registrar of Companies for all types of securities in addition to Equity & Preference Shares.

Note: under the Companies Act, 1956, return of allotment is required to be filed with Registrar of Companies only for Preference shares and equity shares in e-form – 2.

Issue of shares at discount

Shares other than sweat equity cannot be issued at a discount and no approval is required for issue of sweat equity.

As per the earlier provisions, the company can issue shares at discount (maximum - 10%) subject to the approval of Company Law Board.

Holding of 1st Annual General Meeting (AGM) of the Company

The 1st AGM of a company shall be held within 9 months from the closure of the financial year instead of 18 months from the date of incorporation, as provided in the Companies Act, 1956.

CONNECT WITH RAJNISH SIR FOR MORE UPDATES ON THE COMPANIES ACT, 2013 @

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