THE COMPANIES ACT, 2013

IT'S A TIME FOR AWARENESS

DIRECTORS

BE AWARE OF NEW COMPANIES ACT-2013 – IT'S A MUST

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Immediate Compliance for Companies as Per New Companies Act, 2013

PROVISION RELATED TO COMPANY'S STATIONERY INCLUDING LETTER HEAD

As per Companies Act 2013, companies are required to get its **name, address** of its registered office and the Corporate Identity Number (**CIN**) along with **telephone number, fax number**, if any, **e-mail and website** addresses, if any, **printed in all its business letters, billheads, letter** papers and in all its notices and other **official publications from 01.04.2014**.

All the companies are required to **paint or affix its name, and the address** of its registered office, and keep the same painted or affixed, **on the outside of every office or place** in which its business is carried on, in a conspicuous position, in legible letters **in one of the languages in general use in that locality.** Where a company has **changed its name or names during the last two years**, it shall **paint or affix or print**, as the case may be, along with its name, the **former name** or names so changed during the last two years.

If any **default is made** in complying with the requirements of this section, the company and every officer who is in default shall be liable to a **penalty of Rs.1, 000 for every day** during which the default continues but **not exceeding Rs.1, 00,000**.

PROVISION RELATED TO DIRECTORSHIP AND DIRECTORS

As per Companies Act, 2013, directors of the company has to **mention their name & DIN** (Director Identification Number) **with their signature in all the documents** containing the signature of director, director's name & DIN shall also be mentioned along with their Signature.

From the date of commencement of this Act, Every Company is required to have **minimum one resident director**. Here resident means "director **who stayed in India for 182 days** or more in previous calendar year**"** **For existing companies**, company should **comply** the requirement of the resident director **within one year** from the date of notification.

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A person is allowed to hold **directorship in 20 companies only**, out of which not more than 10 could be public companies including private ltd companies. If the person is the director in more than the above mentioned limit, then he has to **resign from the other companies in the excess** of above limit **within one year** from the commencement of the act.

PROVISIONS RELATED TO ALLOTMENT OF SHARES AND SHARE APPLICATION MONEY

Under Companies Act, 2013, companies are time bound to **allot the shares within a period of sixty (60) days** from the date of receiving share application. If they fail to allot the shares within prescribed period, then the entire amount should be **repaid by companies within 15 days** to the respective applicants.

Non-repayment within prescribed period would be considered as default & **from the 76th day**, the whole application money held by company will be **treated as deposit and company is liable to pay Interest @ 12%**.

Further, **share application money received by the company for allotment of shares cannot be utilized for any other purpose & a separate bank account shall be maintained** for receiving the application money from the applicant & all the transaction related to allotment shall be done through that account only.

All **offers** covered under this section shall be made only to such persons **whose names are recorded by the company prior to the invitation to subscribe**, and that such persons shall receive the **offer by name**, and that a complete **record of such offers** shall be kept by the company and complete information about such offer shall be **filed with the Registrar within a period of thirty days** of circulation of relevant private placement offer letter.

If a company makes an offer or accepts monies in **contravention of this section**, the company, its **promoters and directors** shall be liable for a **penalty** which may extend to the **amount involved** in the offer or invitation **or Rs. 2 Crore, whichever is higher**, and the company shall also refund all monies to subscribers within a period of thirty days of the order imposing the penalty.

In the light of above mentioned provisions, we opine that all the companies holding share application money as on 31.03.2014**, shall repay the application money, if the same is older than 60 days or allot the shares, if it's received within 60 days before 31.03.2014.**

MANDATORY INTERNAL AUDIT

As per the Companies Act, 2013, every **listed company** and all **other public limited** companies having **paid up capital in excess of Rs. 10 crores or loans or deposits in excess of Rs. 25 crores**, shall appoint **Internal Auditor** who shall be either chartered accountant or cost accountant or other professional as prescribed.

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PROVISIONS RELATED TO LOAN FROM MEMBERS/PUBLIC

All the companies who had taken **Deposit (including Unsecured Loans from members etc.)** shall file the **return to ROC with 3 months** from the commencement of this Act **& repay the** loan to its shareholders **within one year** from the date of commencement of this act.

If a company **fails to repay** the deposit or part thereof or any interest thereon within the time specified, the **company shall be punishable with fine of Rs. 1 crore, which may extend to Rs. 10 crore** and every **officer** of the company who is **in default** shall be punishable with **imprisonment up to 7 years or with fine of Rs. 25 lakh to Rs. 2 crore, or with both.**

For fresh deposits/loan from members or public, there are many procedural formalities like **resolution in general meeting, issuing circular** advertisement to members & news papers, filing circular with ROC, accepting **application form**, taking **insurance of deposits**, issue deposit receipt, maintain special **deposit repayment reserve account** for repayment at the time of maturity, filing of deposit return every year.

There is stringent **penalty of Rs.5000 plus Rs.500 per day of default for** non compliance.

CORPORATE SOCIAL RENSPOSIBILITY

Every company having **net worth of Rs. 500 crore or more, or turnover of Rs.100 crore or more or a net profit of Rs. 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, frame corporate social responsibility policy and **spend at leat 2% of average net profits of last 3 years for corporate social responsibility activity**.

The brief list of **permitted CSR activities** is as under:

- Hunger, Poverty & Malnutrition
- Education
- Empowering Women
- Environmental protection
- National heritage, art & culture
- For Armed Forces
- Sports
- PM's National Relief Fund
- Technology
- Rural Development

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LOAN TO DIRECTORS

No company shall, directly or indirectly, **advance any loan, including any loan represented by a book debt, to any of its directors** (except managing directors) **or to any other person in whom the director is interested or give any guarantee or provide any security** in connection with any loan taken by him or such other person.

The expression **"to any other person in whom director is interested"** means—
(a) any **director** of the lending company, or of a company which is its holding company or any partner or relative of any such director;
(b) any **firm** in which any such **director or relative is a partner**;
(c) any **private company** of which any such director is a **director or member**;
(d) any body corporate at a general meeting of which not less than **twenty five per cent of the total voting power may be exercised or controlled** by any such director, or by two or more such directors, together; or
(e) any body corporate, the Board of directors, managing director or manager, whereof is **accustomed to act in accordance with the directions or instructions of the Board**, or of any director or directors, **of the lending company**.

In case of contravention, the company shall be **punishable with fine of Rs. 5 lacs to 25 lacs, and** the **director** or the other person to whom any loan is advanced or guarantee or security is given, shall be punishable with **imprisonment which may extend to 6 months or with fine of Rs. 5 lacs to 25 lacs, or with both**.

There is an **absolute prohibition** on granting of loans/guarantees/securities to directors and other entities in which directors are interested. No provision for Central Government approval has been made in the Section as in case of old companies act. **The exemption in respect of the transaction between holding company and subsidiary company has been done away with**. The New Act does not provide any transitional provisions regarding transaction entered earlier and still continuing.

TRANSACTIONS WITH RELATED PARTY

The **director's report** would include details of related party transactions requiring consent of the board/special resolution of members along with the **justification for entering** into them.

The **transactions of a company with its related parties which are not in the ordinary course of business or which are in the ordinary course of business but which are not on arm's length** basis, would require the consent of the **Board of Directors** of the company by **Resolution**.

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Related party transactions have been defined to include the following:

- Sale, purchase or supply of any goods or materials
- selling or otherwise disposing of, or buying, property of any kind
- leasing of property of any kind
- availing or rendering of any services
- appointment of any agent for purchase or sale of goods, materials, services or property;
- such related party's appointment to any office or place of profit in the company, its subsidiary company or associate company; and
- underwriting the subscription of any securities or derivatives thereof, of the company:

Additionally, **the prior approval of members by special resolution is required in case of a company having paid up capital of Rs. 1 crore or more or related party transactions exceeding the threshold limit.**

No member shall vote on the special resolution if such member is a related party. However, an exception has been made in the case of wholly owned subsidiary ('WOS'), where a special resolution passed by the holding company would be considered sufficient for entering into transactions between holding company and WOS. However, it would be pertinent to note that a similar clarification has not been given in case of transactions with Sister Subsidiaries, Associated Companies and Joint Ventures.

Central Government approval would no longer be required.

"Relative", with reference to any person, means anyone who is related to another, if—

- they are members of a Hindu Undivided Family;
- they are husband and wife; or
- one person is related to the other in such manner as may be prescribed;

"Related Party", with reference to a company, **means**—

- a director or his relative;
- a key managerial personnel or his relative;
- a firm, in which a director, manager or his relative is a partner;
- a private company in which a director or manager is a member or director;
- a public company in which a director or manager is a director or holds along with his relatives, more than two per cent. of its paid-up share capital;
- anybody corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager;

- any person on whose advice, directions or instructions a director or manager is accustomed to act:
  Provided that nothing in sub-clauses (vi) and (vii) shall apply to the advice, directions or instructions given in a professional capacity;
- any company which is—
  (A) a holding, subsidiary or an associate company of such company; or
  (B) a subsidiary of a holding company to which it is also a subsidiary;
- such other person as may be prescribed;

OTHER PROVISIONS:

Audit Committee, Remuneration Committee and Nomination Committee is required to be constitute in case of Public companies having Paid up capital of Rs. 10 crores or more or the companies having turnover more than Rs. 100 crores or more or having outstanding loans/ debentures/ deposit exceeding Rs. 50 crores or more.

All companies, including private companies, having paid up capital of Rs. 5 crores or more are required **to appoint** the following **whole time KMP (Key Managerial Personnel)**:

- MD/CEO/Manager/WTD;
- Company Secretary
- CFO

Under New Companies Act, 2013, the **Depreciation is required to be calculated on the basis of estimated useful life of assets** provided in the Schedule II of the Act. Even the **carrying amount** at the beginning shall be **depreciated over remaining useful life** of the asset, after commencement of this act.

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ADDITIONALL PROVISIONS FOR LISTED COMPANIES

All the provisions discussed above are applicable to a listed company. In addition, the following provisions will be applicable to listed companies only:

CHANGE IN SHAREHOLDING OF PROMOTES AND TOP TEN SHAREHOLDERS

Under Companies Act, 2013, every listed company will be required to **file a return with the ROC** with respect to the **change in the number of shares held by promoters and top ten shareholders** within 15 days of such a change.

ADDITIONAL PROVISIONS RELATED TO DIRECTORS

Every listed company shall have **one woman director on the Board** of the company. The compliance to this provision needs to be made within one year from the date of commencement.

Every listed public company shall have **at least one-third of the total number of directors as independent directors**. The compliance to this provision needs to be made within one year from the date of commencement.

OTHER PROVISIONS:

Every listed company is required to formulate **Nomination and Remuneration Committee,** which is required to formulate and recommend to the Board of Directors, the company's policies, relating to the remuneration for the directors, key managerial personnel and other employees, criteria for determining qualifications, positive attributes and independence of a director.

The board of a company that has more than 1000 shareholders, debenture-holders, deposit-holders and any other security holders at any time during a financial year is required to constitute a **Stakeholders Relationship Committee**.