COMPARATIVE STUDY

On

Companies aCt, 1956

vis-à-vis

Companies aCT, 2013

Compiled By:

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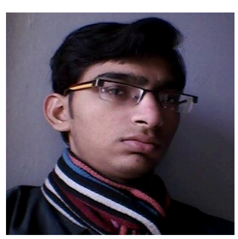

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Background of New Act

- The Companies Bill, 2011, introduced in Lok Sabha on 14th December, 2011, was referred to the Standing Committee on 5th January, 2012. The Standing Committee submitted its report on 26th June, 2012.Incorporating recommendations of the Standing Committee, the Companies Bill, 2012 was introduced and passed in Lok Sabha on 18th December, 2012 And Passed by Rajya Sabha on 8th August, 2013.

- The Companies Bill, 2013, on receiving the assent of Honorable President of India on August 29, 2013, was notified in the Gazette of India on August 30, 2013 as the **Companies Act, 2013**.

Approval by Lok Sabha given on 18th December 2012

Approval by Rajya Sabha given on 8th August 2013

Assent of Honorable President of India on August 29, 2013

Notified in the Gazette of India on August 30, 2013 as the Companies Act, 2013 (18 of 2013)

Structure

Companies Act,1956	Companies Act,2013
13 Parts	***29 Chapters***
658 Sections	***470 Sections***
15 Schedules	***7 Schedules***

Arrangement of Section

Chapter	TiTle	Section of Companies Act,2013	Corresponding SectionS of Companies Act,1956
I	Preliminary	1, 2	1 to 10
II	Incorporation of companies	3 to 22	11 to 54
III	Prospectus and allotment of securities	23 to 42	55 to 81
IV	Share capital and debentures	43 to 72	82 to 123
V	Acceptance of deposits by companies	73 to 76	58A to 58B
VI	Registration of charges	77 to 87	124 to 145
VII	Management and administration	88 to 122	146 to 197
VIII	Declaration and payment of dividend	123 to 127	205 to 207
IX	Accounts of companies	128 to 138	209 to 223
X	Audit and auditors	139 to 148	224 to 233B
XI	Appointment and qualification of directors	149 to 172	252 to 284
XII	Meeting of Board and its powers	173 to 195	285 to 308
XIII	Appointment and remuneration of managerial personnel	196 to 205	309 to 311
XIV	Inspection, Inquiry and Investigation	206 to 229	234 to 251
XV	Compromise, Arrangements and Amalgamations	230 to 240	390 to 396A
XVI	Prevention of oppression and mismanagement	241 to 246	397 to 409
XVII	Registered valuers	247	-
XVIII	Removal of names of companies from the Register	248 to 252	560
XIX	Revival and rehabilitation of sick companies	253 to 269	424A to 424L
XX	Winding up	270 to 365	425 to 559
XXI	Companies authorised to register under this act & Winding up of unregistered companies	366 to 378	565 to 581 & 582 to 590
XXII	Companies incorporated outside India	379 to 393	591 to 608
XXIII	Government companies	394, 395	617 to 620
XXIV	Registration offices and fees	396 to 404	609 to 614A
XXV	Companies to furnish information and statistics	405	615
XXVI	Nidhis	406	620A
XXVII	NCLT and NCLAT	407 to 434	10FB to 10GF
XXVIII	Special Courts	435 to 446	
XXIX	Miscellaneous	447 to 470	621 to 658

Definations

New definitions are introduced in the Companies Act, 2013, some of which are accounting standards, auditing standards, associate company, CEO, CFO, control, deposit, employee stock option, financial statement, global depository receipt, Indian depository receipt, independent director, interested director, key managerial personnel, promoter, one person company, small company, turnover, voting right etc.

- **Private Company** - The limit on maximum number of members increased from 50 to 200. Private company which is a subsidiary of a public company shall be deemed to be a public company.

- **Listed company** - A company which has any of its securities listed on any recognized stock exchange.

- **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 per cent. of total share capital of a company or of business decisions under an agreement.

- **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.

- **"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.

- **"Foreign company"** means any company or body corporate incorporated outside India which :-
  - has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
  - conducts any business activity in India in any other manner.

- **"Key Managerial Personnel (KMP)**, In relation to a company, means-
  - the Chief Executive Officer or the Managing Director or the Manager,

- the Company Secretary;
- the whole-time director;
- the Chief Financial Officer; and
- such other officer as may be prescribed

❖ **"Officer who is in Default",** Means any of the following officers of a company, namely:-

  - Whole-time director;
  - Key managerial personnel;
  - Where there is no key managerial personnel, such director or directors as specified by the Board in this behalf and who has or have given his or their consent in writing to the Board to such specification, or all the directors, if no director is so specified;
  - 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;
  - 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;
  - 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;
  - In respect of the issue or transfer of any shares of a company, the share transfer agents, registrars and merchant bankers to the issue or transfer

❖ **Promoter** mean a person -

  - Who has been named as such in a prospectus or is identified by the company in the annual return, or
  - Who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or
  - In accordance with whose advice, directions or instructions the Board of Directors is accustomed to act.

❖ **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.

- **Small Company** has been defined as a company
  - Other than a public company having a paid-up share capital of which does not exceed fifty 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. [Section 2(85)].

- **Dormant Company**
  - Company other than a public company Having paid up share capital not exceeding fifty lakh rupees or such amount, not exceeding rupees five crores, as may be prescribed OR
  - Having turnover not exceeding rupees two crores or such amount not exceeding rupees twenty crores, as may be prescribed, as per its last profit and loss account
  - Various relaxations in terms of reporting requirement, board meeting and procedure for merger/amalgamation have been introduced.

RING IN THE NEW

ONE PERSON COMPANY (Section 3)

Under the Companies Act, 1956, at least two people are required to form a company. The new concept will provide an opportunity to Indian entrepreneurs to enter in the corporate world An OPC can be formed by subscribing the name of a person to the memorandum and complying with the requirements of the Act in respect of registration. As regards the name of an OPC, new Act provides that the words "one person company" shall be mentioned in brackets below the name of such a company, wherever its name is printed, affixed or engraved.

- Promote Entrepreneurship
- Other than a public limited Company
- MOA have to mention successor
- May have one or more directors
- Less cumbersome
- Restriction on number of members (not exceeding 100)
- Option to dispense with AGM
- Financial Statement may not include cash flow statement

E-GOVERNANCE

E-Governance proposed for various company processes like maintenance and inspection of documents in electronic form, option of keeping of books of accounts in electronic form, financial statements to be placed on company's website, holding of board meetings through video conferencing/other electronic mode; voting through electronic means.

BOARD AND GOVERNANCE

Number of directors

Minimum: Public company - 3 Private - 2 , OPC - 1.

Maximum: limit increased to 15 from 12

- **Woman director**
  At least one woman director shall be on the Board of such class or classes of companies as may be prescribed

- **Resident Director**
  Every company shall have at least one director who has stayed in India for a total period of not less than one hundred and eighty-two days in the previous calendar year. [Section 149(2)].

- **Appointment of Key Managerial Personnel [Section 203(1)]**
  Every company belonging to such class or classes of companies as may be prescribed shall have the whole time 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 Section 203(1)]

  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.

- **Independent Directors**
  - Concept of independent directors has been introduced for the first time in Company Law: [Section 149(5)]
  - All listed companies shall have at least one-third of the Board as independent directors.
  - Such other class or classes of public companies as may be prescribed by the Central Government shall also be required to appoint independent directors.
  - The independent director has been clearly defined in the Act.
  - 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.
  - 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. [Section 161(2)].

- **Person other than retiring director**
  A person other than retiring director stands for directorship but fails to get appointed, he or the member intending to propose him as a director, as the case may be, shall be refunded the sum deposited by him, if he gets more than twenty five per cent of total valid votes [Section 160(1)].

- **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 Registrar and also place such resignation in the subsequent general meeting of the company. [Section 168(1)]. The director shall also forward a copy of resignation along with detailed reasons for the resignation to the Registrar.
  - 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. [Section 168(2)].
  - 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 [Section 168(3)].

- **Participation of directors through video-conferencing**
  - Participation of directors at Board Meetings has been permitted through video-conferencing or other electronic means, provided such participation is capable of recording and recognizing. Also, the recording and storing of the proceedings of such meetings should be carried out [Section 173(2)].
  - The Central Government may however, by notification, specify such matters which shall not be dealt with in the meeting through video-conferencing and such other electronic means as may be prescribed. [Section 173(2)]

- **Notice of Board Meeting**
  - At least seven days' notice is required to be given for a Board meeting. The notice may be sent by electronic means to every director at his address registered with the company. [Section 173(3)].
  - 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. However, in the absence of any independent director from such a meeting, the decisions taken at such meeting shall be final only on ratification thereof by at least one independent director. [Section 173(3)].

- **Duties of directors (Section 166)**
  - For the first time, duties of directors have been defined in the Act. A director of a company shall :
  - Act in accordance with the articles of the company.
  - 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.

- exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment.
- 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.
- 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.

- **Board Committees**
  - Besides the Audit Committee, the constitution of Nomination and Remuneration Committee has also been made mandatory in the case of listed companies and such other class or classes of companies as may be prescribed. [Section 178(1)].
  - The Audit committee shall consist of a minimum of three directors with independent directors forming a majority and majority of members including its Chairperson shall be persons with ability to read and understand the financial statement. [Section 177(2)].
  - The Nomination and Remuneration Committee shall formulate the criteria for determining qualifications, positive attributes and independence of a director and recommend to the Board a policy, relating to the remuneration for the directors, key managerial personnel and other employees [Section 178(3)].
  - The Nomination and Remuneration Committee shall consist of three or more non-executive director(s) out of which not less than one half shall be independent directors. [Section 178(1)].
  - Where the combined membership of the shareholders, debenture holders, deposit holders and any other security holders is more than one thousand at any time during the financial year, the company shall constitute a Stakeholders Relationship Committee. [Section 178(5)].

- **Managerial Remuneration [Section 197]**
  - Provisions relating to limits on remuneration provided in the existing Act being included in the Act. 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.

CORPORATE SOCIAL RESPONSIBILITY (SECTION 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 at least 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 'comply or explain'.
- The company shall give preference to local areas where it operates, for spending amount earmarked for Corporate Social Responsibility (CSR) activities.

COMPANY SECRETARY

- **Functions of Company Secretary (Section 205)**

  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

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- **Secretarial Audit (Section 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.
  - 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.

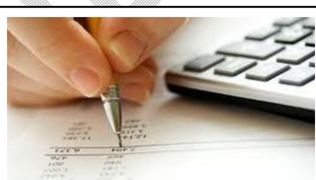
- **Secretarial Standards Introduced [Section 118(10) & 205]**
  - For the first time, the Secretarial Standards has been introduced and provided statutory recognition
  - Section 118(10) reads as:
  - "Every company shall observe Secretarial Standards with respect General and Board Meetings specified by the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980 and approved by the Central Government."
  - Section 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 [Section 108].
- One person companies have been given the option to dispense with the requirement of holding an AGM. [Section 96(1)].

- **Report on annual general meeting [Section 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

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-
- An individual as auditor for more than one term of five consecutive years; and
- An audit firm as auditor for more than two terms of five consecutive years:

Provided that-

- An individual auditor who has completed his term under Section (a) shall not be eligible for re-appointment as auditor in the same company for five years from the completion of his term;
- An audit firm which has completed its term under Section (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. (Section 141)
    - ➢ 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

- **Internal Audit**

  Prescribed class of companies shall be required to appoint an internal auditor to conduct internal audit of the functions and activities of the company. (Section 138)

- **Cost Audit (Section 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.

FINANCIAL STATEMENT (SECTION 2(40)]

- For the first time, the term 'financial statement' has been defined to include:-
  - A balance sheet as at the end of the financial year;
  - 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;
  - Cash flow statement for the financial year;
  - A statement of changes in equity, if applicable; and
  - Any explanatory note annexed to, or forming part of, any document referred to in sub-Section (i) to sub Section (iv):

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

NATIONAL FINANCIAL REPORTING AUTHORITY (NFRA) (SECTION 132)

- The Central Government may be notification constitute a National Financial Reporting Authority to provide for matters related to accounting and auditing standards.
- Notwithstanding anything contained in any other law for the time being in force, the National Financial Reporting Authority shall-
  - Make recommendations to the Central Government on the formulation and laying down of accounting and auditing policies and standards for adoption by companies or class of companies or their auditors, as the case may be;
  - Monitor and enforce the compliance with accounting standards and auditing standards in such manner as may be prescribed;
  - 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 and such other related matters as may be prescribed; and
  - Perform such other functions relating to Section (a), (b) and (c) as may be prescribed

- Notwithstanding anything contained in any other law for the time being in force, the National Financial Reporting Authority shall-
  - 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, in such manner as may be prescribed into the matters of professional or other misconduct committed by any member or firm of chartered accountants, registered under the Chartered Accountants Act, 1949:
  - Provided that no other institute or body shall initiate or continue any proceedings in such matters of misconduct where the National Financial Reporting Authority has initiated an investigation under this section;

INVESTOR PROTECTION MEASURES

- Issue and transfer of securities and non-payment of dividend by listed companies, shall be administered by SEBI by making regulations.(Section24)
- An act of fraudulent inducement of persons to invest money is punishable with imprisonment for a term which may extend to ten years and with fine which shall not be less than three times the amount involved in fraud.(Section 36)
- 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. (Section 37).

Class action

- For the first time, a provision has been made for class action. 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. (Section 245)

Serious Fraud Investigation Office (Section 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 Act 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 Section of the Act.

Fraud defined (Section 447)

The term "Fraud" has for the first time been defined in the Act. Any person who is found to be guilty of fraud, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud. Where the fraud in question involves public interest, the term of imprisonment shall not be less than three years

Prohibition of insider trading
New Section has been introduced with respect to prohibition of insider trading of securities. The definition of price sensitive information has also been included [Section 195].

Prohibition on Forward dealings
Directors and the key managerial personnel of a company are prohibited from forward dealings in securities of the company. (Section 194).

COMPANY LIQUIDATORS (SECTION 275)

The Tribunal may appoint Provisional Liquidator or the Company Liquidator from a panel maintained by the Central Government consisting of Company Secretaries, Chartered Accountants, Advocates and Cost Accountants.

On an appointment as provisional liquidator or Company Liquidator, such liquidator is required to file a declaration in the prescribed form disclosing conflict of interest or lack of independence in respect of his appointment, if any, with the Tribunal.

Professional assistance to Company Liquidator (SECTION 291)
The Company Liquidator may, with the sanction of the Tribunal, appoint one or more professionals including Company Secretaries to assist him in the performance of his duties and functions under the Act.

NATIONAL COMPANY LAW TRIBUNAL AND PPELLATE TRIBUNAL (SECTION 408 AND 410)

The Central Government shall, by notification, constitute, a Tribunal to be known as National Company Law Tribunal and an Appellate Tribunal to be known as National Company law Appellate Tribunal.

SPECIAL COURTS

- For the speedy trial of offences, the Central Government has been empowered to establish special courts in consultation with the Chief Justice of the High Court within whose jurisdiction the judge is to be appointed. (Section 435).

All offences under this Act shall be triable by the Special Court established for the area in which the registered office of the company in relation to which the offence is committed or where there are more special courts than one for such area, by such one of them as may be specified in this behalf by the High Court concerned. (Section 436)

- The Special Court would have the liberty to try summary proceedings for offences punishable with imprisonment for a term not exceeding three years, although it may order for the regular trial. (Section 436).

MEDIATION AND CONCILIATION PANEL (SECTION 442)

- The Central government shall maintain a panel of experts to be called Mediation and Conciliation Panel for mediation between the parties during the pendency of any proceedings before the Central Government or the Tribunal or the Appellate Tribunal under this Act.

CROSS - BORDER MERGERS (SECTION 234)

- The Act has allowed cross border mergers with any foreign company;
- The cross border merger may be made between companies registered under this Act and companies incorporated under jurisdiction of such countries as may be notified by the Central Government.

REGISTERED VALUERS (SECTION 247)

- A new chapter has been inserted in relation to registered valuers.
- Valuation in respect of any property, stock, shares, debentures, securities, goodwill, networth or assets of a company shall be valued by a person registered as a valuer.
- The Central Government shall maintain a register of valuers.
- The valuer shall be a person having such qualification and experience and registered as a valuer in such manner and on such terms and conditions as may be prescribed

RING OUT THE OLD

- Certificate of incorporation is the conclusive evidence **[Section 35]**
- Private company to become public company in certain cases **[Section 43A]**
- Filing of Prospectus or statement in lieu of prospectus by private company on ceasing to be private company **[Section 44]**
- The provisions of section 58AA relating to acceptance of deposits from small shareholders and intimation of default in repayment of deposits thereof has been dropped. Similarly section 58AAA making any offence connected with or arising out of acceptance u/s 58A or 58AA as cognizable has been done away with **[Section 58AA]**
- Statement in lieu of prospectus **[Section 70]**
- Share Warrants **[Section 114]**
- Provision relating to certificate of commencement of business **[Section 149]**
- Appointment of public trustee **[Section 153A]**
- Statutory meeting and statutory report of company **[Section 165]**
- Payment of interest out of capital **[Section 208]**
- Requirement of getting approval from Central Government in case of related party transactions exceeding the limits has been dispensed with **[Section 188]**
- Auditor not to be appointed except with the approval of the company by special resolution in certain cases **[Section 224A]**
- Power of Central Government to direct special audit in certain cases **[Section 233A]**
- Right of company to increase or reduce the number of directors **[Section 258]**

- Time within which share qualification is to be obtained and maximum amount thereof **[Section 270]**

- Appointment of sole selling agents to require approval of company in general meeting **[Section 294]**

- Prohibition of payment of compensation to sole selling agents for loss of office in certain cases **[Section 294A]**

- Power of Central Government to prohibit the appointment of sole selling agents in certain cases **[Section 294AA]**

- Employees' securities to be deposited in post office savings bank or Scheduled Bank **[Section 417]**

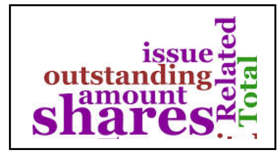
IMPORTANT CHANGES REGARDING INCORPORATION RELATING MATTERS

S. No	Particulars	Companies Act,1956	Companies Act,2013
1.	Types of companies	Private Company Public Company	Private Company Public Company One Person Company
2.	Maximumn number of members for private companies	A private company can have a maximum of 50 members	A private company can have a maximum of 200 members
3.	Commencement of Business	Provision is applicable only to Public limited companies	Now applicable to all companies having share capital.
4.	Registered Office	Companies are required to furnish the details of the Registered office of the company by filing Form 18 at the time of incorporation	A company shall, on and from the 15th day of its incorporation to have a registered office capable of receiving & acknowledging communications and notices as may be addressed to it.
5.	Object Section of MOA	Object Section bifurcated into Main Objects, Incidental or Ancillary Objects and Other Objects	MOA to contain the objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof.

IMPORTANT CHANGES REGARDING BOARD MEETING

S. No	Particulars	Companies Act,1956	Companies Act,2013
1.	First Board Meeting	No specific time stipulated for holding first board meeting	Every company shall hold the first meeting of the Board of Directors within thirty days of the date of its incorporation.
2.	Length of Notice	No specific length of notice specified	Meeting of the Board shall be called by giving not less than seven days' notic
3.	Penalty	Every officer of the company whose duty is to give notice as aforesaid and who fails to do so shall be punishable with fine which may extend to one thousand rupees	Every officer of the company whose duty is to give notice under this section and who fails to do so shall be liable to a penalty of twenty-five thousand rupees.
4.	Time Gap between two meetings	At least one meeting to be held in every quarter.	Not more than one hundred and twenty days shall intervene between two consecutive meetings of the Board

IMPORTANT CHANGES REGARDING SHARE CAPITAL



S No	Particulars	Companies Act,1956	Companies Act,2013
1.	Issue of Shares at a discount	Section 79 permits issue of shares at discount subject to compliance with conditions.	Shares, other than sweat equity shares, cannot be issued at a discount.
2.	Issue of preference shares for more than 20 years	Section 80 prohibits issue of irredeemable preference shares and preference shares Redeemable after 20 years.	Preference shares have to be redeemed within 20 years of issue except for the shares issued for prescribed infrastructure projects provided a certain percentage of shares are redeemed annually at the option of shareholders
3.	Issue of shares on private placement, bonus shares and GDRs	No specific provision for issue of shares on private placement, bonus shares and GDRs exist in the present Act.	Specific provision introduced for issue of shares on private placement, bonus shares and GDRs in the Act
4.	Notice of alteration of share capital	Notice of redemption of preference shares is not required to be filed with ROC.	Company shall file a notice in the prescribed form with the Registrar within a period of thirty days of redemption of redeemable preference shares
5.	Consolidation and division of shares	Company permitted to consolidated or sub divide its shares by passing resolution in general meeting	Consolidation and division which results in changes in the voting percentage of shareholders shall require approval of the Tribunal to be effective

IMPORTANT CHANGES REGARDING DIRECTORS AND THEIR POWERS

S. No	Particulars	Companies Act,1956	Companies Act,2013
1.	Maximum Number of Directors	12, Beyond the Limit Central Government approval is required.	15. More can be appointed by passing S.R. No approval from Central Government is required
2.	Maximum number of Directorship	15; Excluding Private Companies Unlimited Companies, Alternate Directorship and Directorship in Non-Profit Associations	20. Out of which not more than 10 can be Public Companies. Includes Alternate Directorship also. No specific exclusions provided
3.	Composition of Board	Minimum of 2 directors in case of private and 3 in case of public companies. Maximum 12 Directors	Prescribed class of companies are required to appoint at least 1 woman director. At least 1 director should be a person who has stayed in India for a period not less than 182 days in previous year. Listed Companies to have at least one third independent directors. Existing companies to get a transition period of 1 year to comply
4.	Resignation of Director	No specific provisions except that any change in directors to be filed with ROC within 30 days	Director to send copy of resignation letter and detailed reasons for resignation to Registrar within 30 days of resignation
5.	Vacancy of office for not attending board meetings	The office of a director shall become vacant if he absents himself from three consecutive meetings of the Board of directors, or from all meetings of the Board, for a continuous period of three months, whichever is longer, without obtaining leave of absence from the Board	The office of a director shall become vacant in case he absents himself from all the meetings of the Board of Directors held during a period of twelve months with or without seeking leave of absence of the Board
6.	Disclosures in Board's report	Section 217 contains disclosure requirements of Board's report	Additional Disclosures proposed by the Act, namely, Extract of Annual Return , Number of board meetings, CSR initiatives and policy, particulars of loans, guarantees, investments et

IMPORTANT CHANGES REGARDING CHARGES AND THEIR REGISTRATION

S. No	Particulars	Companies Act,1956	Companies Act,2013
1.	Definition	Inclusive definition of charge given in the present Act "Charge to include mortgage".	Charge defined as "charge" means an interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes a mortgage
2.	Registration of all charges	Present Act specifies only 9 types of charges which require registration.	Company are required to register all types of charges within or outside India, on its property or assets or any of its undertakings, whether tangible or otherwise, and situated in or outside India with ROC within 30 days.
3.	Registration of pledge	Pledge of movable property does not require registration with ROC	Act proposes to withdraw this exemption

IMPORTANT CHANGES REGARDING ANNUAL GENERAL MEETING

S. No	Particulars	Companies Act,1956	Companies Act,2013
1.	Maximum time for holding first AGM	18 months from incorporation or 9 months from closure of accounts, whichever is earlier	9 Months from closure of accounts
2.	Time and Day	Every annual general meeting shall be called for a time during business hours, on a day that is not a public holiday	Every annual general meeting shall be called during business hours, that is, between 9 A.M. and 6 P.M. on any day that is not a National Holiday
3.	Length and Mode of Notice	Every annual general meeting shall be called for a time during business hours, on a day that is not a public holiday.	21 days clear notice to be given by all companies Notice may be given in writing or in electronic form in the manner prescribed
4.	Consent for Shorter Notice	Consent to be given by all members entitled to vote at the meeting	Consent to be given by not less than 95% of the members entitled to vote at the meeting
5.	Quorum	Private Companies-2 Members Public Companies-5 Members	PrivateCompanies-2 member .Public ompanies-5 members where total number of members do not exceed 1000. 15 members where total number of members exceed 1000 but do not exceed 5000. 30 members where total number of members exceed 5000
6.	Penalty	Company, and every officer of the company who is in default, shall be punishable with fine which may extend to Fifty thousand rupees and in the case of a continuing default, with a further fine which may extend to two thousand five Hundred rupees for every day after the first during which such default continues.	Company and every officer of the Company who is in default shall be punishable with fine which may extend to one lac rupees and in the case of a continuing default, with a further fine which may extend to five thousand rupees for every day during which such default continues

Some Other Changes

❖ Financial Year

Companies Act 1956

- Companies are allowed to choose freely an accounting year. Though for tax purposes, the financial year runs from the April 1st to March 31st **[Section 2(17)]**
- It cannot be fifteen months but may be shorter than a year.(Sec. 210)

Companies Act, 2013

Financial year for companies will be set from April 1st to March 31st. However:

- A two year period is allowed to existing companies to adjust their accounting years,
- Special provisions have been provided for newly incorporated companies.
- For companies having subsidiaries in India and Indian companies having subsidiaries outside India (special approval process)- special provisions have been provided. **[Section 2(41)]**

❖ Small Companies

Companies Act 1956

- No such concept but SMC is defined in Companies (Accounting Standard) Rules 2006.
- Private Company concept is in both laws.
    - SMC defined:-
    - Not listed or in process of listing
    - Not bank, FI or Insurance company
    - Turnover not exceeding Rs. 50 crores in preceeding year
    - Borrowing not exceeding Rs. 10 crores
    - Holding or Subsidiary which is not a SMC

  (Conditions satisfied at the end of year

Companies Act, 2013

- Having paid-up share capital of not more than Rs. 5 million or amount prescribed, however the prescribed amount must not exceed Rs. 50 million (paid-up share capital with maximum of Rs. 50 million); or
- As per the last profit and loss account, turnover must not exceed Rs. 20 million or amount prescribed, however the prescribed amount must not exceed Rs. 200 million.

❖ Restriction on further offer of Buy Back

Companies Act, 1956

- In case of Buy-Back made by BOD (10% of the total paid up equity capital and free reserves), no further offer of buy back is permissible with in a period of 365 days reckoned from the date of the preceding offer of Buy-Back. **[Section 77A(1)]**

Companies Act, 2013

- No Buy-Back up to period of 1 year from the date of preceding Buy-Back whether approved by BOD or Shareholders.**[Section 68(2)]**

❖ Dividend Transfer to Reserve

Companies Act, 1956

- No Dividend can be declared more than 10% for any F.Y out of the profits of the company for that F.Y, except after the transfer of profit to the reserves such portion of profits of the company for that F.Y, not exceeding 10% of its profits. As specified in declaration of Dividend(Transfer of

Companies Act, 2013

- A company to transfer voluntarily a portion of its profits to the reserves as consider appropriate, before declaration of any dividend. Mandatory transfer to reserve done away.**[Section 123(1)]**

❖ Declaration of dividend in case of in-adequate profits

Companies Act, 1956

- In case of inadequacy or absence of profits in any F.Y, the company can declare dividend out of the reserves only after complying with the companies (Declaration of Dividend out of Reserves) Rules, 1975, wherein the maximum rate of dividend is prescribed as 10%.
  [section 205A(3)]

Companies Act, 2013

- In case of inadequacy or absence of profits in any F.Y, the company can declare dividend out of the accumulated profits transferred to reserve in accordance with the rules to be prescribed.
  [Section 123(1)]

❖ Restriction on Dividend Declaration

Companies Act, 1956

- Interim dividend may be declared Subject to provision of Section 205 and rules frame there under.
- Section 205A, 205C, 206, 206A and 207 also applies to interim dividend.
- Section 2(14A): Dividend includes interim dividend.

Companies Act, 2013

Interim dividend may be declared out of the surplus in the Profit & Loss Account as well as profits of the financial year in which dividend is sought to be declared.

In case company has incurred loss up to the preceding quarter of the current financial year then interim dividend shall not be declared at a rate higher than the average dividend declared by the company during the immediately preceding three financial years.

[Section 123(3)]

❖ Consolidation of Financial Statements

Companies Act, 1956

- By virtue of **Section 41 of listing agreement** If the company has subsidiaries,
  - ➢ It may, in addition to submitting quarterly and year to date stand alone financial results to the stock exchange, shall also submit quarterly and year to date consolidated financial results within forty-five days from the end of the quarter; and
  - ➢ While submitting annual audited financial results prepared on stand-alone basis, it shall also submit annual audited consolidated financial results to the stock exchange within sixty days from the end of the financial year.

Companies Act, 2013

- In case a company has one or more subsidiaries, it shall in addition to stand alone financial statements if all the subsidiaries in the same form and manner as that of its own which shall also be laid before the AGM of the company.
- Further, such companies shall also attach along with its financial statement, a separate statement consisting the salient features of the financial statement of its subsidiaries in such form as may be prescribed.
- For the purpose of above "subsidiary" shall include 'associate company' and 'joint venture'**[Section 129(3)]**

❖ Eligibility for acceptance of deposits from public and shareholders

Companies Act, 1956

- Public companies are permitted to accept deposits from public and shareholders in accordance with Companies (Acceptance of Deposits) Rules 1975.**(Section 58A)**

Companies Act, 2013

- Banking company, NBFC and such other company as the CG may specify, are permitted to accept deposits from public.

❖ Inter-Corporate Loan and Guarantee, Security and Investment

Companies Act, 1956

- Exemption is given to private companies under provisions of inter-corporate loans, advances etc.**[Section 372A]**

Companies Act, 2013

- The provisions related to inter-corporate loans, guarantees, security and investments will also apply to private companies.
- No investment in companies more than two layers
- Listed companies shall take inter corporate loans and deposits not exceeding prescribed limit.(Section 186)
- In case loan, guarantee, security or investment exceeds 60% of paid up capital and free reserve & Security Premium or 100% of free reserves, prior Special Resolution in GM.
- Financial Statement shall contain particulars prescribed in sub-Section (4).Section 186)

❖ Appointment Of Whole Time KMP

Companies Act, 1956

- Public Company having paid-up capital of Rs.5 Crore or more to have WTD or MD (Sec. 269)
- Company Secretary to be appointed Where Paid- up capital is 5 Crore or more (Sec. 383)

Companies Act, 2013

- Every Company belonging to class or classes of companies as may be prescribed shall have KMPs
  - MD or CEO or Manager and in absence of a WTD
  - Company Secretary
  - Chief Financial Officer(Section 203)

❖ Independent Director

Companies Act, 1956

- Sec 292A contains provision of independent director in audit committee (company having paid up capital not less than Rs 5 crores).
- In case of listed company Section 49 governs.
- Where executive chairman half of the board strength should be of independent directors.
- If non-executive chairman is promoters or relative to promoters, in such case, there should be half of the strength of the independent directors.
- Where non- executive director not related to promoters, one third strength of the board should be of independent directors
- Independent director shall mean non-executive director, apart from receiving director's remuneration has no pecuniary relationship, transaction with company, its promoters, not occupying any position may effect independence[Section 49(1A)] of listing Agreement.

Companies Act, 2013

- The Act has introduced the concept of Independent director and is defined in **Section 2(47).**
- **Section 149** lays down that every listed public company shall have at least one-third of the total number of directors as independent directors and the Central Government may prescribe the minimum number of independent directors in case of any class or classes of public companies.
- The company and independent director are required to abide by the provisions specified in Schedule IV.
- 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 re- appointment on passing of a special resolution by the company for another 5 year term. Thereafter 3 years gap.
- The Section seeks to provide that an independent director shall not be entitled to any remuneration, other than sitting fee, reimbursement of expenses for participation in Board meeting and profit related commission as approved by the members. The Section further provides for the provisions of rotation of independent director.

❖ NominationRemunerationCommittee(NRC

Companies Act, 1956

- Governed by Section 49 of listing agreement

Companies Act, 2013

- BOD of listed company or such other company as may be prescribed shall constitute NRC
  - ➢ Consist of 3 or more non executive director
  - ➢ Not less than one half Independent Director
  - ➢ Chairperson of Company may be member but not to chair(Section 178)

❖ Stakeholder Relationship Committee (SRC

Companies Act, 1956

- Governed by Section 49 of listing agreement

Companies Act, 2013

- BOD of listed company or such other company as may be prescribed shall constitute SRC
  - Where shareholders, debenture holders, deposit holders exceeds 1000 in number
  - Chairperson to be non executive director and such other member
  - To resolve grievance of security holders

  (Section 178)

❖ Director's Duties and Liabilities

Companies Act, 1956

- No provision directly.
- Not to hold office of profit. **(Sec 314)**
- General power of board (**Sec 291**
- Certain powers to be excercised by board only in meeting (Sec 292)
- Restriction on power of board (Sec 293 & 293A)

- Board of directors shall not exercise any power or do any act or things which beyond provision of Companies Act, Memorandum & articles of association or otherwise to be exercised in general meeting. (291(1) Proviso)
- Not to assign office. (Sec 312)
- Disclosure of interest(Sec- 299)- Every director who fails to comply with liable to penalty upto Rs 50,000
- Duty to make disclosure of shareholding (Sec-308) and disclosure of interest directly or indirectly in appointment of manager, managing director, whole time director (Sec-302)

Companies Act, 2013

- Duties of the directors towards a company are prescribed in the Act under **Section 166.** A director shall act in accordance with the Companies Act.
- Work in accordance with the articles;
- Work in good faith promoting the object of the company and benefiting its members (shareholder), its employees, the community and for the protection of environment;
- Work with due and reasonable care, skill and diligence; exercising independent judgment;

- Not be involved in a position or activity that may be in a direct or indirect conflict of interest with company, or possibility of conflict;
- Not take or attempt to take any undue advantage either personally or for relatives, partners or associates. If any director is found guilty for achieving undue gain, the director will be liable to reimburse an amount equal to the gain to the company;
- Cannot assign over its office and such assignment made would be held to be void.
- In case of infringement, a director can be fined a minimum of Rs. 100.000 (one hundred thousand rupees) extending to Rs. 500,000 (five hundred thousand rupees).

❖ Definition of Related Party and Relative

Companies Act, 1956

- Related Party is defined in AS-18
- Relatives are defined in Sec.6
  - ➢ Member of HUF
  - ➢ Husband and Wife
  - ➢ Others mentioned in Schedule IA

Companies Act, 2013

- Related Party means
  - Director or his relative
  - KMP or his relative
  - A Firm, in which director, manager or his relative is partner
  - A Private Company, in which director, manager is director or member
  - A Public Company, in which director or manager is a director or holds more than 2% of paid-up capital with relatives.
  - Any Body Corporate whose BOD, MD or manager is accustomed to act in accordance with advice, directions or instructions of a director or manager
  - Any Person whose advice, direction or instructions a director or manager accustomed to act
  - Any Company which is holding, subsidiary or an associate or subsidiary of holding company to which it is also subsidiary
  - Other Person as may be prescribed (Section 2(76))
  - *"Relatives"
    - Member of HUF
    - Husband and Wife
    - As prescribed

    (Section 2(77)

❖ Related Party Transactions (Scope)

Companies Act, 1956

A company cannot enter into the contracts relating to :-

- Sale, purchase or supply of any goods or materials;
- Sale, purchase or supply of any services;
- Underwriting the subsidiaries of any shares, debentures of a company

Companies Act, 2013

A company cannot enter into the contracts relating to :-

- 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 agents for purchase or sale of goods, materials, services or property;
- 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**[Section 188(1)]**

❖ Related Parties Transaction'Approval required

Companies Act, 1956
- Prior consent of the BOD by resolution passed at Board Meeting
- Prior approval of Regional Director, in case paid up capital of the company is exceeding Rs 1 crore

Companies Act, 2013
- Prior consent of the BOD passed by resolution at Board Meeting
- Prior approval of the shareholders, in case the paid up capital of company or transaction amount exceeds prescribed limit.**[Section 188(1)]**

❖ Specified persons with whom contracts are covered

Companies Act, 1956
- Director of the company
- Relative of such director
- A firm in which such director or relative is a partner
- Any other partner of such firm in which director or relative is a partner
- Private company in which such director is a director or member (Sec. 297)
- Public company in which a director hold more than 2% of paid-up share capital. (Sec.300(2)

Companies Act 2013
- Director or his relative
- KMP (key managerial personnel) or his relative
- Firm, in which a director, manager or his relative is a partner
- Private company in which a director or manager is a member or director(Section 2(76) & Section 188
- Public company in which a director or manager is a director or holds along with his relatives, more than 2% of its paid-up share capital

- Any body corporate whose BOD, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager(Section 2(76) & Section 188)
- Any person under whose advice, directions or instructions a director or manager is accustomed to act

❖ Exemptions from Approval of Central Government

Companies Act, 1956

- Purchase/ sale of goods and materials for cash at prevailing market price
- Purchase/ sales of goods and materials or services the cost of which does not exceed Rs. 5000/- in any year during the period of contract
- Any transaction of banking/ insurance company in the ordinary course of such company

Companies Act, 2013

- Any transaction entered by company in its ordinary course of business other than transactions which are not an arm's length basis.**[Section 188]**

❖ Loan to Director

Companies Act, 1956

- Public companies.**[Section 295]**
- No public company shall directly or indirectly make any loan or give any guarantee or provide any security to its directors and other certain specified persons, except with the approval of CG. **[Section 295(1)]**

The said section does not apply to:-

- Private Companies
- Holding to its Subsidiary
- Banking Companies.**[Section 295(2)]**

Companies Act 2013

- Public and Private companies.**[Section 185]**
- No company shall directly or indirectly make any loan including book debt or give any guarantee or provide any security to its directors or to any other persons in whom the director is interested.**[Section 185(1)]**
- The said section does not apply to:-
- Loan to MD/WTD

- As a part of contract of services extended to all its employees; or
- Pursuant to scheme approved by members by special resolution
- A company which in the ordinary course of its business provides loan, guarantee or security for due repayment of any loan and charges interest thereon being not less than bank rate declared by RBI.**[Section 185]**

❖ Compromise, Arrangement and Amalgamation Approval required

Companies Act, 1956

- Approval by majority in number representing 3/4th in value of creditors or members or class thereof present and voting in person or by proxy.
- Approval of High Court (NCLT).**[Section 391(2)]**

Companies Act, 2013

- Approval by majority representing 3/4th in value of the creditors or members or class thereof present and voting in person or by proxy or by postal ballot.
- Approval of High Court (NCLT).**[Section 230(6)]**

❖ Objection to Compromise or Arrangement

Companies Act, 1956

- Objection to Compromise or Arrangement can be made by any shareholder or creditor, as the case may be, irrespective of their shareholding/ outstanding debt.**[Section 396(4)]**

Companies Act, 2013

- Objection to Compromise or Arrangement be made only by:-
  - ➢ Person holding >10% of the shareholding or
  - ➢ Having outstanding debt of >5% of total outstanding debt as per the latest audited balance sheet. **[Section 230(3)]**

❖ BuyBack of securities by scheme of compromise /arrangement

Companies Act, 1956

- A scheme of compromise/arrangement can include any buy back of securities

Companies Act, 2013

- A scheme of compromise or arrangement can include buy back of securities, provided it is in accordance for buy-back provisions.**[Section 230(10)]**

❖ Takeover Offer

Companies Act, 1956

- A scheme of compromise and arrangement cannot include a "takeover offer".

Companies Act, 2013

- A scheme of compromise and arrangement may include "takeover offer" in a prescribed manner. In case of listed companies such takeover offer shall be as per SEBI Regulations.**[Section 230(11)]**

❖ Transfer of Listed Company with Unlisted Company

Companies Act 1956

- No specific provisions for compromise/arrangement between a listed transferor company and an unlisted transferor company and an unlisted transferee company

Companies Act 2013

- In case of compromise/ arrangement between a listed transferor company and an unlisted transferee company. NCLT to provide that transferee company shall remain unlisted company until it becomes listed and exit option be given to the shareholders of the transferor company wherein the exit price to be not less than the price under any SEBI Regulations.**[Section 232(3)(h)]**

❖ Fast Track Merger

Companies Act, 1956

- No specific provision for Fast Track Merger.

Companies Act, 2013

- Fast track provisions made to facilitate merger between two or small companies or between holding company and its wholly owned subsidiary company or such other class of companies as may be prescribed.**[Section 230(11)]**
- Approval required of:-
  - ROC
  - Official liquidator
  - Member or class of members holding at least 90% of total no. of shares
  - Majority of creditors or class of creditors representing 9/10th in value.**[Section 233]**

❖ Merger of Indian Company with Foreign Company

Companies Act 1956

- Indian company cannot be merged with foreign company.

Companies Act, 2013

- Foreign company, may with the prior approval of RBI, merge into Indian company or vice versa. The consideration for merger can be in the form of Cash and/or Depository Receipt. This would apply to foreign companies in jurisdiction as notified by CG.**[Section 234(2)]**

❖ Purchase of Minority shareholding by Majority shareholders

Companies Act, 1956

- No specific provisions for acquisition of Minority shareholders by Majority shareholders

Companies Act, 2013

- Acquirer and/or PAC (person acting in concert) or person/group of persons holding 90% or more of the issued equity capital of the company by virtue of amalgamation, share exchange, conversion of securities or for any other reasons, can purchase the remaining equity shares of the company form minority shareholders at a price determined by registered valuer.
- Minority shareholders may also offer to the majority shareholders to purchase their equity shareholding in the company at the price determined by registered valuer.**[Section 236]**

❖ Grounds for winding-up

Companies Act, 1956

- Several criteria provided for winding-up of company by NCLT such as:-
- If the company has, by special resolution, resolve that the company be wound up
- If the company is unable to pay its debt
- If a company does not commence its business within 1 year from its incorporation or suspends its business for a whole year
- If the minimum no. of members is reduced below 2 in case of private and 7 in case of public company.**[Section 433]**

Companies Act, 2013

- Certain criteria for winding-up by NCLT deleted like minimum number of members falling below prescribed limit, non commencement of business for 1 year etc.

- Additional ground providing for winding-up:-
    - NCTL (national company law tribunal) is of the opinion that
    - The affairs of the company have been conducted in a fraudulent manner

- Company was formed for fraudulent and unlawful purpose
- The persons concerned in the formation or management of its affairs have been guilty of fraud, misfeasance or misconduct in connection therewith.**[Section 271(1)]**

Conclusion

- The Companies Act, 2013 is a progressive and forward looking which promises improved corporate governance norms, enhanced disclosures and transparency, facilitation of responsible entrepreneurship, increased accountability of company managements and auditors, protection of interest of investors particularly small and minority investors, better shareholder democracy, facilitation of corporate social responsibility (CSR) and stricter enforcement processes.
- The new law also transits company secretaries to corporate governance professionals. It brackets them in the category of key managerial personnel and holds them responsible for implementation of all relevant laws applicable to the companies. It envisages a much larger role for them in the areas of secretarial audit, restructuring, liquidation, valuation and much more.


Thank you