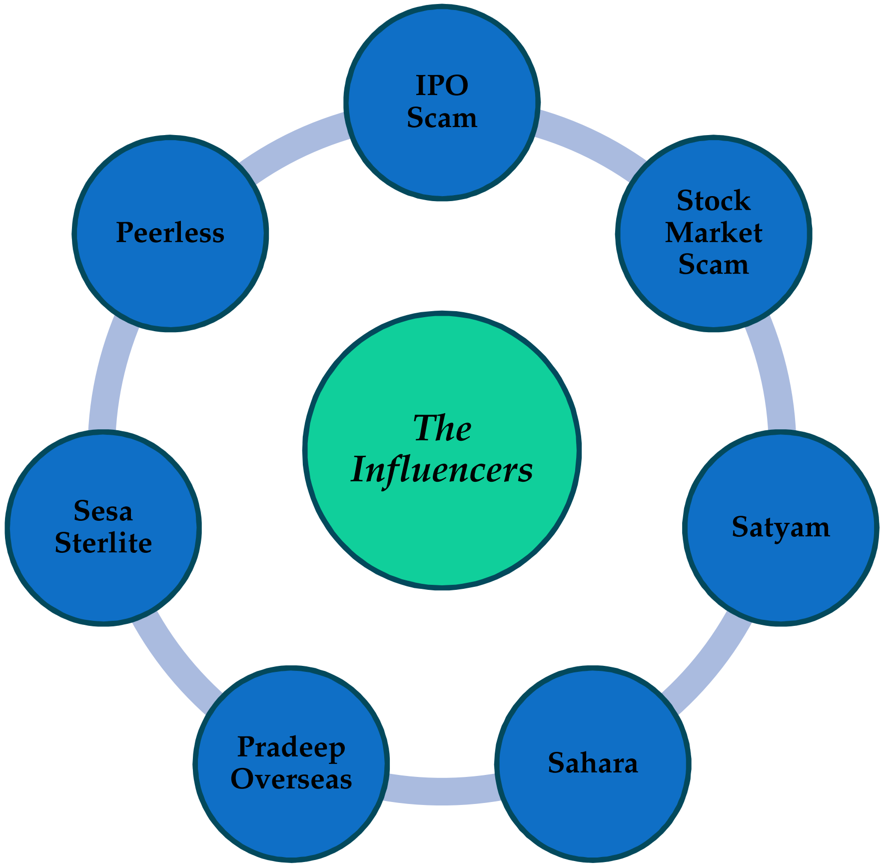
SAS PARTNERS

2013
COMPANIES ACT

The Companies Act, 1956

The Companies Act, 2013

PROMINENT INFLUENCERS TO THE NEW COMPANY LAW



Increased Regulatory Framework

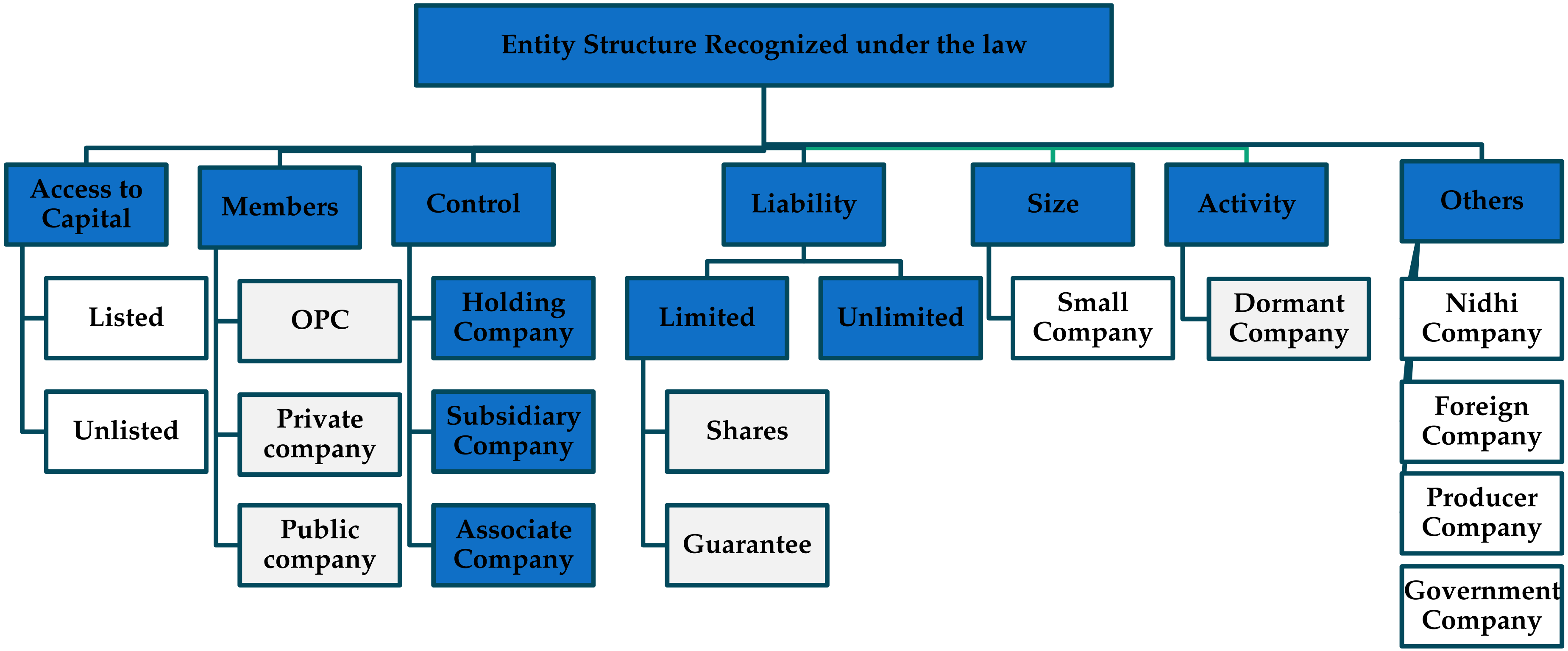
Wider Director and Management Responsibility

Higher Professional Accountability

Emphasis on Investor Protection

To Set Global Benchmarks

PRIVATE LIMITED COMPANIES – A DEGREE OF INDIFFERENCE WITH PUBLIC LIMITED COMPANIES


Entity Structure Recognized under the law
Access to Capital
Listed
Unlisted
Members
OPC
Private company
Public company
Control
Holding Company
Subsidiary Company
Associate Company
Liability
Limited
Shares
Guarantee
Unlimited
Size
Small Company
Activity
Dormant Company
Others
Nidhi Company
Foreign Company
Producer Company
Government Company

FEATURES :

- Minimum capital – INR One Lakh
- Maximum members is 200 (from 50)
- Private Company which is a subsidiary of a company, not being a private company, shall be deemed to be a public company. However it is permitted to keep the same Articles of Association (AOA)

CONDITIONS :

- **restricts** the right to **transfer** its share
- except in case of One Person Company, **limits** the number of its **members** to two hundred excluding present and past employees
- **prohibits** any **invitation** to the public to subscribe for any **securities** of the company

- for any shares in, or debentures has been replaced with **any securities**

➢ **Existing Fourth condition has been taken out –**

- **Prohibits** any invitation or acceptance of deposits from persons other than its members, directors or their relatives

- Hence the deposit can be accepted only from the members or Directors (Rule 5.2.(1) (8) of the Company.

ONE PERSON COMPANY - SECTION – 2(62) AND 3(1)(C)

Promoter shall be a natural person, Indian citizen and resident in India (182 days during previous year)

Has to appoint a nominee with his consent and he shall be natural person, Indian citizen and resident in India and in any event of death etc of the member, nominee becomes member.

ONE PERSON COMPANY – DRAFT RULES (2.1)

No person shall incorporate more than five OPC

Vacancy in nominee to be filled up in 15 days

OPC to convert in to Pvt or Public – when paid up exceeds 50 lakhs or Annual average turn over exceeds 2 crores or balance sheet total exceeds one crore.

OPC can be a Section 8 Company (section 25 of CA 1956)

Change the MOA and AOA within 6 months of conversion

ONE PERSON COMPANY – PROCEDURAL EXEMPTIONS

- Annual Return (Section 92) – The Annual Return is required to be signed by CS, or where there is no CS, by one Director of the company.
- Financial Statement (Section 2 (40)) states that no Cash Flow Statement is required

- Board Meeting once in 6 months
- Clause 122 relating to applicability of chapter VII
- Sec.96 – No general meeting requirements etc. (sec 96)
- The filing requirements are simple

- **Issues** – no transfer provisions – even in model AOA . Only talks about transmission. (Sch I – Table F)
- and in case of more than one director on minutes/ quorum etc

SMALL COMPANY (SECTION 2(85))

"Small Company" means a company other than a public Company

- **with** paid-up capital **not exceeding fifty lakh rupees** or such higher amount as may be prescribed not exceeding **Rs.5 crores**

- **Turnover of which does not exceed two crore rupees** or such higher amount as may be prescribed not exceeding **twenty crore** rupees

Provided this is not applicable to the following:

✓A holding company or a subsidiary company

✓A company registered under section 8

✓A company or body corporate governed by any special Act

SMALL COMPANY – EXEMPTIONS / PRIVILEGES

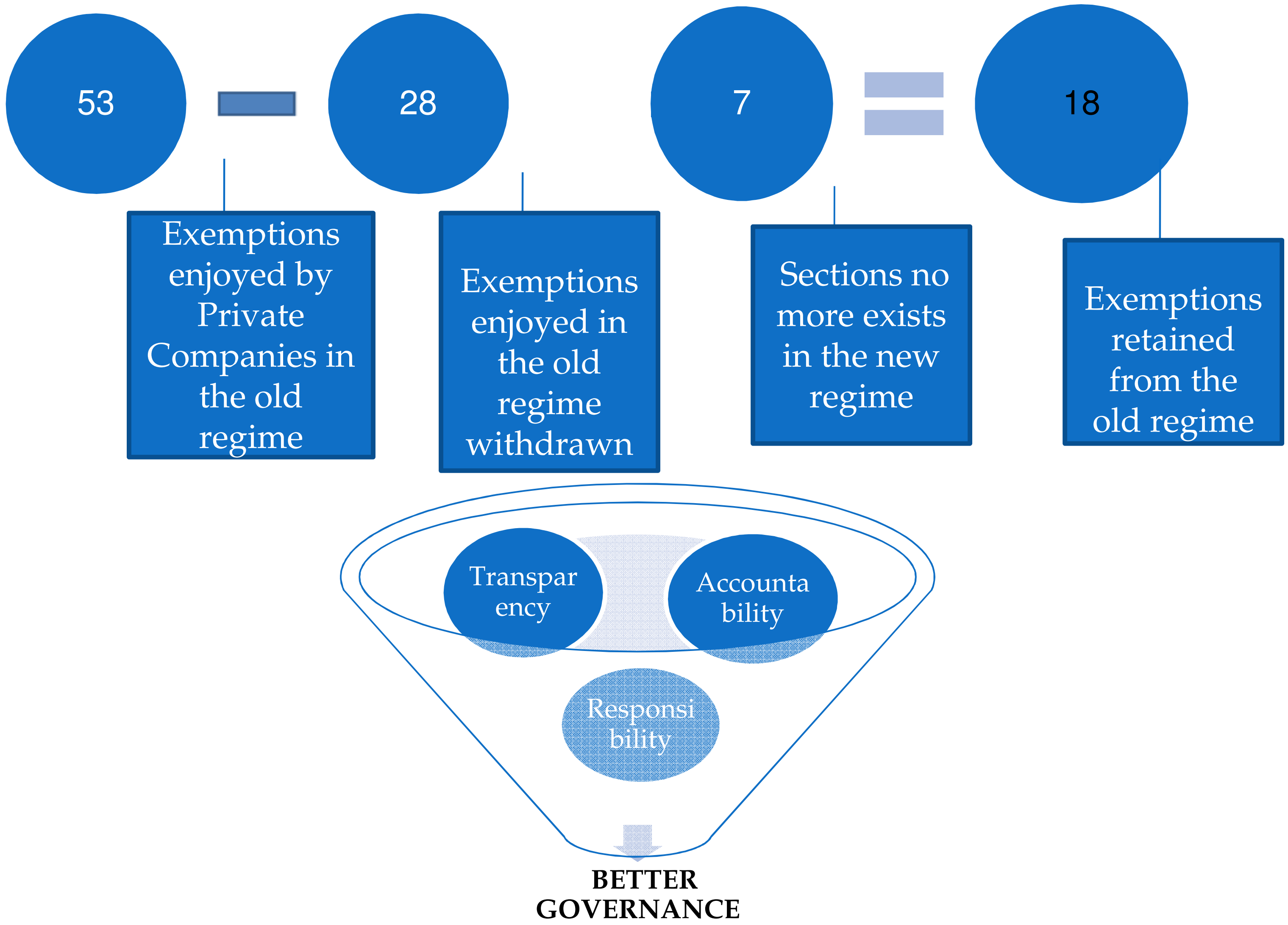
- Annual return need to be signed only by one Director
- No cash flow statements
- Board meeting once in 6 months

ASSOCIATION OF PERSONS – SEC. 464 (SEC. 11 OF CA ,1956)

- The number for association or partnership not to exceed 100 (increased from 20) – Rule 29.12 restricts to 50.

- Restriction not to apply to HUF or an association or partnership constituted by professionals who are governed by special Acts.

JOURNEY OF A PRIVATE LIMITED COMPANY FROM "PRIVATE TO PUBLIC"



MAJOR AREAS OF EXEMPTIONS AVAILABLE TO PRIVATE COMPANIES UNDER THE COMPANIES ACT, 1956 & THE COMPANIES ACT, 2013

SL. No.	CA 1956	CA 2013	DESCRIPTION
1	3(1)(iii) & 3(1)(iv)	2(68)	Minimum Capital – Rs. 1 lac
2	12	3(1)(b)	Minium two persons
3	77	67	No prohibition from giving financial assistance for purchasing its own shares or shares of its holding company
4	252	149	Minium two directors
5	255	152	Retirement by rotation at annual general meetings is not applicable to private companies
6	262	161	Need not follow procedure prescribed in section 262 for filling casual vacancies
7	274	164	Disqualification of appointment of Director - additional grounds are allowed if provided in AOA

SL. No.	CA 1956	CA 2013	DESCRIPTION
8	283 (3)	167	Vacation of office – additional grounds are allowed if provided in AOA
9	292 A	177	No Audit Committee is required
10	309,310 388	196, 197	No restriction on remuneration payable and no C.Govt approval required

EXEMPTIONS WITHDRAWN FOR PRIVATE COMPANIES UNDER THE COMPANIES ACT, 1956 & THE COMPANIES ACT 2013

SL. No.	CA 1956	CA 2013	DESCRIPTION
1	149	11	-Declaration by Director – on minimum subscription payment
			-If registration under any other Act is applicable then copy of the said Certificate
			-Verification of Regi. Office,
			-Document proof , CIN of other Companies in the same address /premises
2	166(2)	96	-No more freedom to fix the time & place of meeting
3	170, 171-186	NIL	-No more freedom to have its AOA on General meetings different from 171 to 186 of CA 1956

EXEMPTIONS WITHDRAWN FOR PRIVATE COMPANIES UNDER THE COMPANIES ACT, 1956 & THE COMPANIES ACT 2013

SL. No.	CA 1956	CA 2013	DESCRIPTION
4	173	102	-Explanatory statements to be given –/ interest of Directors/ KMP/including relatives including details on financial interest.
			-With % of shares and Shareholding of 2% and above to be revealed
5	192	117	-Resolutions needed to be filed with Roc including **180/181** (293 of CA 1956)
6	220	137	-No separate filing of P & L A/C
			-Provision to file provisional B/S if the AGM is adjourned without adopting the B/S

EXEMPTIONS WITHDRAWN FOR PRIVATE COMPANIES UNDER THE COMPANIES ACT, 1956 & THE COMPANIES ACT 2013

SL. No.	CA 1956	CA 2013	DESCRIPTION
7	224 (1B)	139,140,141	- Audit limit – altogether only 20 companies including pvt cos.
			- Rotation ▪ Applicable to all except small Cos & OPC ▪ Partner - period of five years and the Firm for 10 years ▪ The completed period as on date needed to be considered ▪ Shareholders by resolution have the freedom to fix rotation within the firm during the period of 10 years and to conduct the Audit by more than one Auditor
			- Under the same firm includes same net work / same trade mark or brand
			- Rule -10.4 rotation - any break needs to be at least 5 yrs for eligibility
			- All disqualifications u/s 141 is applicable to Pvt Ltd Cos

EXEMPTIONS WITHDRAWN FOR PRIVATE COMPANIES UNDER THE COMPANIES ACT, 1956 & THE COMPANIES ACT 2013

SL. No.	CA 1956	CA 2013	DESCRIPTION
8	264	152	- Consent of Director is compulsory
9	270	152	- Qualification shares is no more required even for public ltd Cos
10	263	162	- No more single resolution – separate resolution is required for the appointment of Directors
11	267	196	**<u>Appointment of MD/ WTD /Manager</u>**
			- No MD or manger together in the same Company
			- No appointment more than 5 yrs + no earlier appoint before one year
			- Age – 21 (reduced from 25) to 70 – with spl resol. To appointment above 70 yrs. No below age (21) allowed
			-No more disqualifications based ethical issues. unsound mind etc.

EXEMPTIONS WITHDRAWN FOR PRIVATE COMPANIES UNDER THE COMPANIES ACT, 1956 & THE COMPANIES ACT 2013

SL. No.	CA 1956	CA 2013	DESCRIPTION
			- Sch V (Sch XIII) Part I
			▪Not sentenced under various Acts (16) – **imprisonment any period and fine exceeding Rs.1000/- for any offence need not moral turpitude**
			▪Not punished Under Smuggling Activities Act
			▪Age limits
			▪If WTD/MD in more than one company then drawing limits as per **Sch V**
			▪Resident of India
			▪Part III applicable – on GM approval and return (within 60 days) to be filed (like old Form 25C) with certification if no Company on employment
12	81(3)(a)	62	Provisions of section 81 prescribing the manner of further issue of share capital, are not applicable to a private company. Section 62 of CA 2013 is applicable to Pvt Cos.

EXEMPTIONS WITHDRAWN FOR PRIVATE COMPANIES UNDER THE COMPANIES ACT, 1956 & THE COMPANIES ACT 2013

SL. No.	CA 1956	CA 2013	DESCRIPTION
13	274	164	**Disqualifications for appointment of Directors**
			- (274 (1) (g)) - Exemptions to Pvt Co.s no more available. Reasons:
			▪ Non filing of B/S or Annual Return for any continuous period of three years
			▪ Non repayment of Deposit/ debenture and its interest or any declared dividend – if failure continuous for one year
			- However A private company may in its articles provide for grounds for disqualification of a director in addition to those laid down in section 274(1)
14	278	165	**Maximum no. of Directorship**
			- Maximum is fixed at 20 including the 10 of Public Cos
			- Members by Spl resol. Can restrict a person on No. of Cos as Director
			- Clarity issue – CA 1956 – sect. 278 – whether Unlimited or Section 25 Cos are excluded

EXEMPTIONS WITHDRAWN FOR PRIVATE COMPANIES
UNDER THE COMPANIES ACT, 1956 & THE COMPANIES ACT 2013

SL. No.	CA 1956	CA 2013	DESCRIPTION
15	293	180	- Consent of shareholders is required by Spl resolution
16	295	185	- No more exempted and no power with C. govt to give exemption
17	300	184	- **Disclosure of interest**
			▪ u/s 184 Interested Director in Pvt . Ltd is not counted for quorum and can not participate for the discussion.
18	303	170	**- Register of Members**
			▪ No more exemption on mentioning the Date of Birth in Register.
			▪Now combined register. It needed to be filed with Roc and even the changes.
19	317	196	- WTD / MD not allowed for more than 5 years
20	349 & 350	198	- Now applicable to pvt Cos
21	388 A	203	– Manager to be manager in other Companies – no more available. MD of one company can be MD or Manager one another Company

PRIVATE PLACEMENT

Private Placement

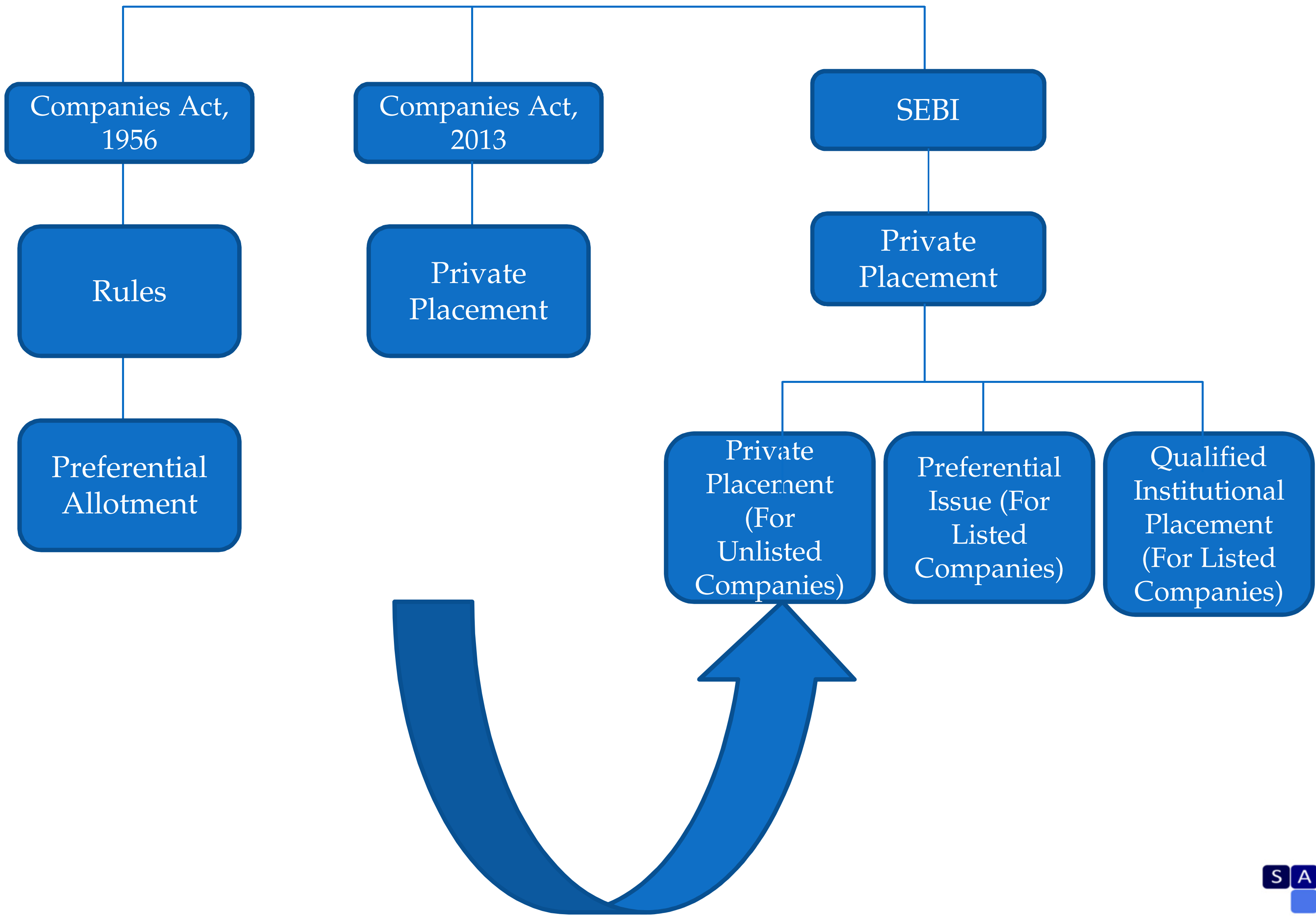
Public Company

Private Company

<u>Brief of Sahara Case:</u>

Sahara Indian Real Estate Corporation Limited (SIRECL) and Sahara Housing Investment Corporation Limited (SHICL) together raised more than Rs. 24,000 Crore from 30 million investors through issue of Optionally Fully Convertible Debentures (OFCD's) and claimed the same to be a Private Placement, thus violating the provisions of the Companies Act and the SEBI Act. The two companies have been asked by the Supreme Court to refund the money to investors along with interest of 15% p.a.

PRIVATE PLACEMENT



REQUISITES FOR PRIVATE PLACEMENT

It covers all **Securities** .

Offer Shall be made by issue of Offer Letter and by Spl. Resolution

Offer shall be made to persons whose name appears in the register on the Record Date

Offer of securities shall not be made to more than 50 persons or higher as may be prescribed in a Financial Year (excluding QIB's and employees offered securities under ESOP. The Rule has prescribed the same at 200 persons.

No fresh offer shall be made unless earlier allotment is completed.

The monies payable on subscription of securities not to be made in cash.

REQUISITES FOR PRIVATE PLACEMENT

Allotted within 60 days from the date of receipt of allotment money. If not allotted it shall be refunded within 15 days from the completion of 60 days.

If the Company fails to refund the same within the stipulated time, it shall be liable to pay interest @ 12% from the expiry of sixtieth day.

Complete details of the offer shall be filed with the Registrar within 30 days from the date of circulation of offer letter

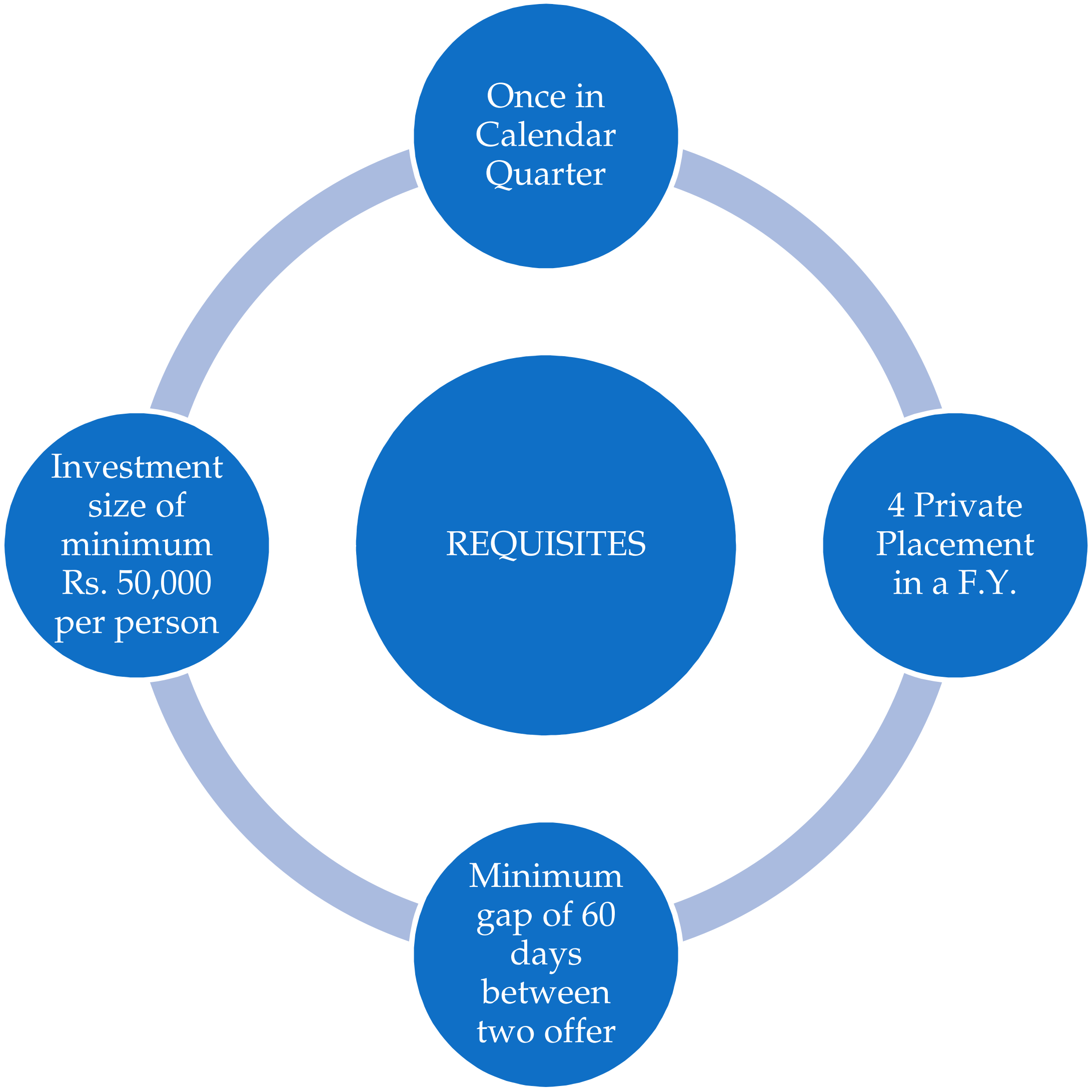
Company shall not release any public advertisement or use marketing tools to inform the public at large

Not to transfer to more than 20 persons in a quarter.

Application money Parked in a separate account

The promoters and Directors shall be liable for a penalty which may extend to the amount involved in the offer or invitation or Two Crore rupees, whichever is higher.

REQUISITES AS PER RULES



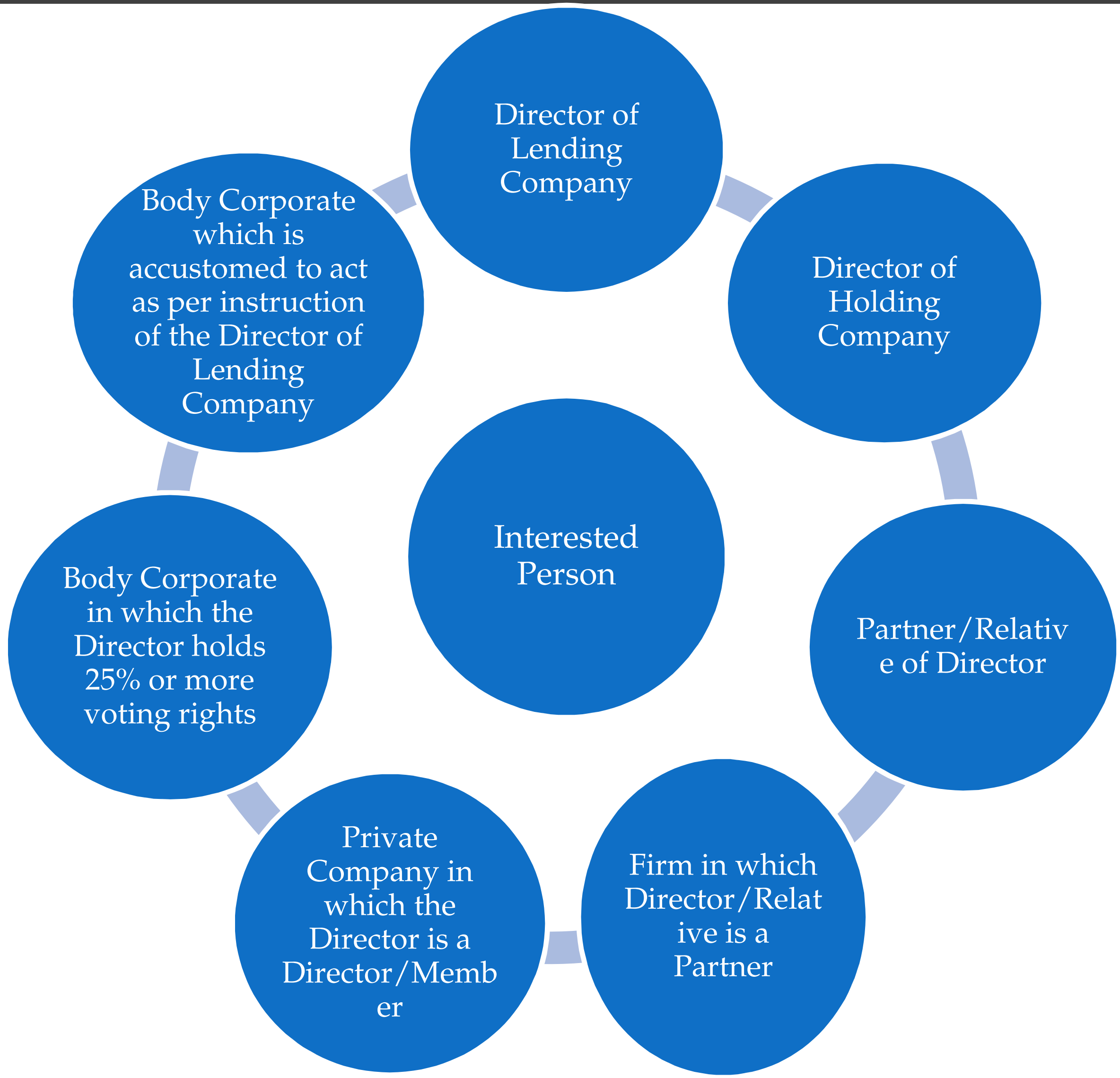
LOAN TO DIRECTORS – NOTIFIED SECTION 185

Public & Private Companies cannot give any loan or provide any security or guarantee in connection with a loan to a Director or any other person in whom the Director is interested, except to MD & WTD under prescribed circumstances

No exemption for giving loan, guarantee or providing security by holding company to it's subsidiary company

However, Section 186 (Not yet notified) empowers the company to give loan or guarantee or provide security in connection with the loan to any person; hence Directors may also be included here. It prescribes the limit, sanctioning authority and fulfillment of other prescribed terms thereof.

LOAN TO DIRECTORS



Deposit Section 2 (31)

- Includes any receipt of money by way of deposit or loan or in any other form by a company, but does not include such categories of amount as may be prescribed in consultation with the RBI

Only from members

- The prohibition to extend invitation or accept deposits from persons other than members, directors or their relatives has been removed from Pvt. Ltd company's definition

DEPOSIT – SECTION 73

Shareholder's approval

↓

Only from members

↓

Secured or unsecured

↓

Circular to all shareholders

↓

Creation of deposit repayment reserve account

↓

To provide deposit insurance – upto Rs. 20000/- is guaranteed

↓

Creating security on the deposits and creation of charge and file the same with ROC

DEPOSIT – SECTION 73

One year to comply with new provision – file in 3 months details with ROC on outstanding deposits and repay in one year

Tribunal can extend the time

No more suo – moto action from NCLT on default – only on application

DEPOSIT – Rules

Public Company can accept deposit from other than members based on turnover or net worth

Net worth 100 crs or turnover 500 crs

Special Resolution

Credit rating

Rules

- Share Application money can be kept only for 60 days, if not allotted repay in another 15 days. Other wise treated as deposit.

- Exemption as per rules still continues (13 exemptions as per rules)

- Rule 2.(1) (b) VIII any amount received by a private company from a person who, at the time of the receipt of the amount, was a director of the company or any amount received from its shareholders including joint shareholders.

Rules

- Security deposit from employees (maximum one year salary)
- Bonds or debentures secured by a first charge or pari passu charge or bonds/debentures compulsorily convertible in to shares of the company within five years
- Supply advance - maximum of 180 days
- From promoters – provided it is pursuance of a Bank loan agreement – it can be from promoters or relatives

Rules

- Limits –
  section 73 – 25% of paid up and FR
  section 76 – 10% from members + 25% from public of paid up and FR
  Govt. Company – 35% of paid up and FR

Issues:

- Less source now
- Cost will go up
- Repayment within one year is tough

LOAN AND INVESTMENT BY COMPANY (SEC 186)

Not more than two layers of investment companies

Exemption

Indian Company acquires a foreign company and that have more investment subsidiaries and that is allowed under laws of that country.

Investment subsidiary for the purpose of meeting the requirement under any law.

LIMITS FOR INVESTMENT

Any loan to person, body corporate, guarantee, security for a loan to any body corporate or acquiring the securities of any other body corporate

Unanimous approval of the Board at the meeting up to 60% of Paid up capital, free reserves and securities premium account or 100 % of free reserves and Securities premium account

Prior approval by special resolution at General meeting above 60% of Paid up Capital, free reserves and securities premium account or 100 % of free reserves and Securities premium account.

LIMITS FOR INVESTMENT

Interest Rate - Not less than the yield of Government Security (close to the tenor of the loan).

Exemptions removed under new Act:	
Exemption to private companies removed	Exemption to Loans, investment and guarantee from a holding company to wholly owned subsidiary – Removed in new Act

FINAL THOUGHTS

"Obviously, the intent is towards simplification, which is critical for India to become more competitive on the ease of doing business." Whether this objective is finally delivered will depend on two things

1 - The Rules that supplement the act and how properly it is enacted / implemented without any vested interest.

2 - The change in attitude towards enforcement.

COMPANIES ACT 2013
Accounts and Audit

Index

- Financial Year
- Financial Statement
- Consolidated Financial Statement
- Associate Company
- Subsidiary Company
- Reopening of Accounts
- Revision of Financial Statement
- Appointment of Auditor
- Disqualification of Auditor
- Duties of Auditor
- NFRA
- Depreciation
- Corporate Social Responsibility
- Dividend
- Related Party and Related Party Transactions
- Internal Audit

Financial Year [Sec 2(41)]

SAS PARTNERS

Transition Period
2 years

April to March

Incorporated On or Before 31st December

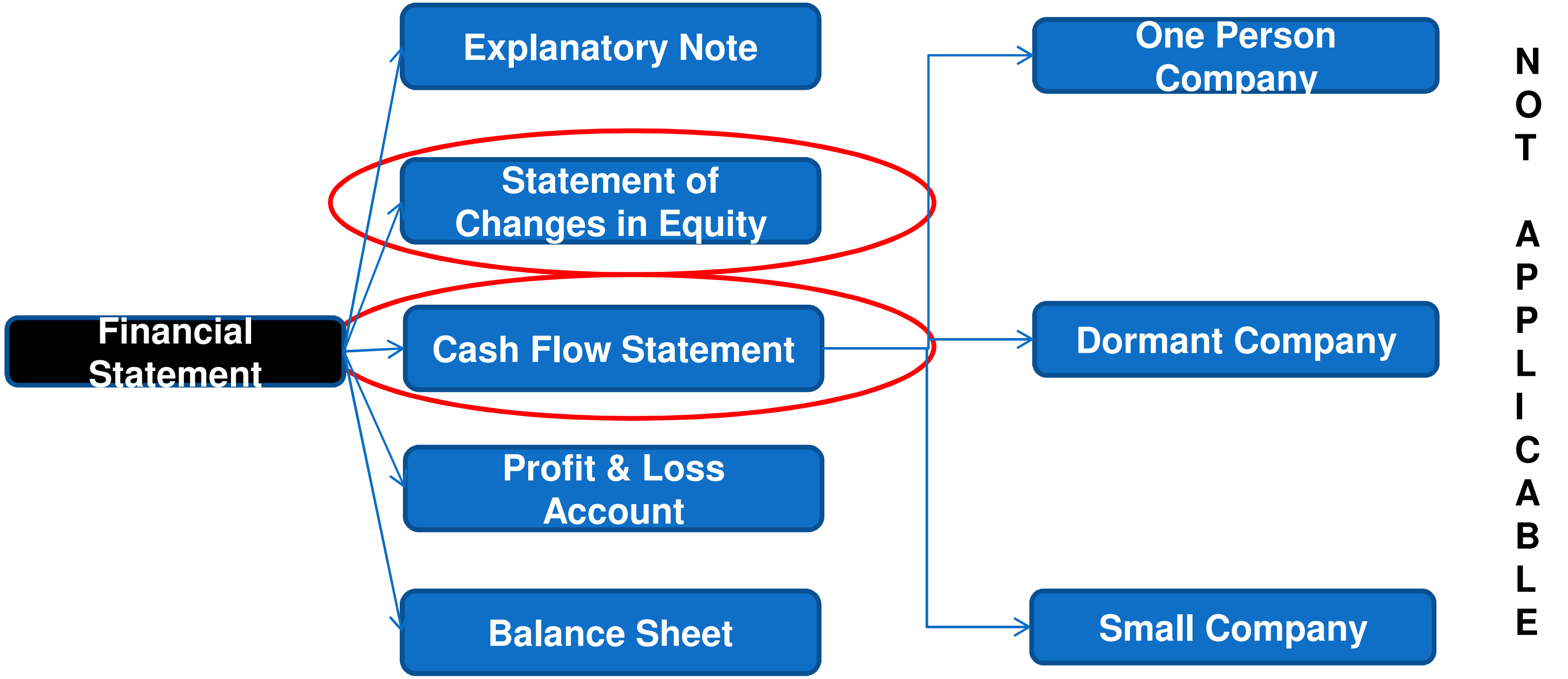
31st March of Current Year

Incorporated On or after 1st January

31st March of Following Year

- Adopt different Financial Year on Application to the Tribunal
- Applicable to company having holding or subsidiary company outside India and Requires to prepare consolidation financial statements outside India.
  (No other reason for application)
- Not necessary 12 months for those companies

Financial Statement [Sec 2(40)]- Notified



DISCUSSION

✓ The Criteria which differentiates Small Company and SMC under Companies Act and Notified AS are Different in terms of:

a) Turnover
b) Paid-up Capital
c) Listing
d) Borrowings

Financial Statement includes CFS

Consolidated Financial Statement (CFS)

Now

Clause 32 of the Listing Agreement mandates Listed Companies to prepare CFS

Neither AS 21 nor Companies Act 1956 requires other company to prepare CFS

Companies Act 2013

Mandatory for all Companies to prepare CFS in respect of the following entities:

Subsidiary Company

Associate

Joint Venture Company

CFS will have to be done in addition to SFS

CFS should be prepared in same form and manner as Standalone Financial Statement (SFS) of holding company.

Impact

All companies including private companies need to prepare CFS. They need to gear up their financial reporting process for the same.

CFS should comply with notified AS

Reopen and revision of accounts mandatory to CFS also

Financial Statement Authentication [Sec 134]

Financial Statement

Part I	Part II	PART III
Chair person when authorised by Board OR Two Directors, out of which one shall be MD and CEO, when he is a director	CFO	Company Secretary

Associate Company [Sec 2(6)]

SAS PARTNERS

Company A

Company B

Significant Influence

Control of ≥ 20% Total Share Capital

OR

Control of Business Decisions under Agreement

Implications

- Associate Company is not a subsidiary but includes Joint Venture Company
- Consolidated Financial Statements
- Considered as Related Party
- Auditor’s Disqualification

Subsidiary company [Sec 2(87)]

SAS PARTNERS

Holding

Control the Composition of Board of Directors

Controls > 50% Total Share Capital either at
1. Its own
2. Together with 1 or more of its subsidiary

Total Share Capital includes both equity and Preference Share Capital

Restriction on number of layers of subsidiaries

Holding Company

51 %

51 %

20 %

Subsidiary

Subsidiary

20 %

20 %

Subsidiary

Reopening of Books of Accounts [Sec 130]

SAS PARTNERS

Applicants

- SEBI
- CG
- IT
- Other Statutory Regulatory Body
- Any person concerned

Tribunal/Court of competent jurisdiction

Grounds for Reopening

1. Account prepared in fraudulent manner
2. Doubtful on reliability

Period
??

Books of Accounts as defined under Section 2(13)

Revision of Financial Statement [Sec 131]

Applicant

Company

Tribunal

Grounds for Reopening

Non compliance of provisions under

1. Sec 129
2. Sec 134

Period For Revision For 3 Preceding Years but once in a year

Financial Statements Only

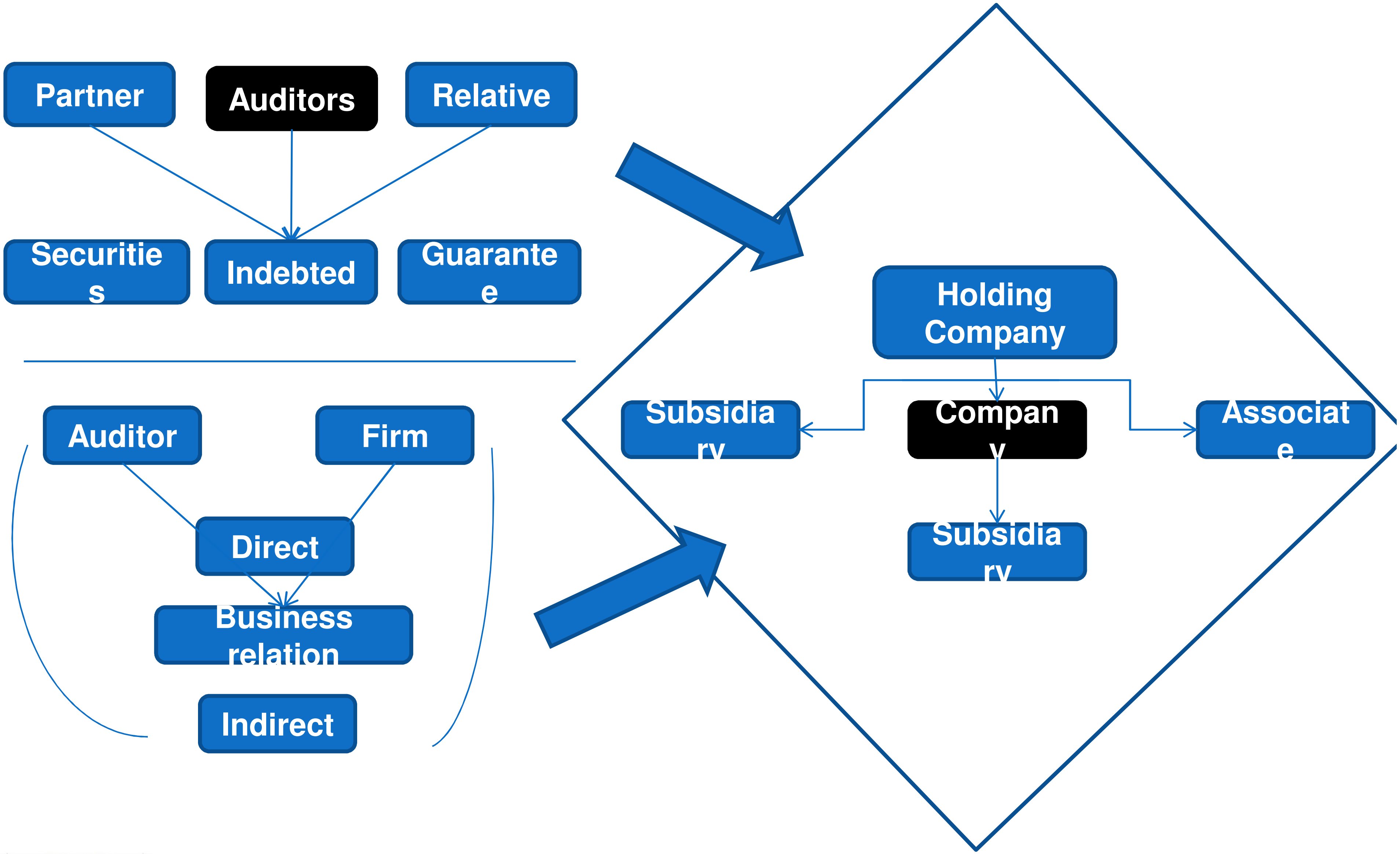
Appointment of Auditor [Sec 139]

- ✓ LLP eligible to become Auditor
- ✓ Appointment for a term of 5 years and ratification in every AGM
- ✓ Requirement for rotation of Auditor introduced
- ✓ Applicable to all companies except small companies and OPC
- ✓ Individual Auditors - one term limited to 5 years
- ✓ Firm Auditor - two terms limited to 10 years
- ✓ Cooling Period of 5 years before the reappointment of the same firm.
- ✓ If no auditor re-appointed in AGM, existing auditor shall continue
- ✓ Transition period of three years for complying with the requirement

Discussion

- ➢ Period served by auditor earlier to this act counted in the number of years
- ➢ Whether rotation shall bring independence?
- ➢ Whether rotation is desirable when no public interest is involved?

Disqualification of Auditors [Sec 141]



Disqualification/Removal of Auditors

Disqualification of Auditors

- Auditor's relative being Director OR KMP
- An Employee/ officer of the Company
- Convicted for 10 years
- Restriction for Non-audit Services
- Auditor in more than 20 companies

Removal of Auditors

- Special Resolution and CG Approval
- Non- appointment of Retiring auditor at AGM- Special Notice

Auditor - Duties

- Upto 20 Companies including Private Companies for each partner
- Comply with Auditing Standards also
- To Attend GM unless exempted by the company
- To Report Fraud to the Board

- Report to CG in case fraud committed by officers or employees
- Adverse Remarks in Auditors Report has to be commented
- Adverse Remarks in Auditors Report has to be read in AGM
- Report on internal financial reporting system

National Financial Reporting Authority [Sec 132]

- Renamed National Advisory Committee on Accounting Standards
- Formulation and laying down of accounting and **auditing** policies and standards
- Monitor and enforce the compliance with accounting standards and auditing standards
- Oversee the quality of service of the professions
- *Suo motu* or on reference made by Central Government- professional or other misconduct by CA's
- Quasi-judicial body
- 15 member team with part-time & full-time members
- Appeal available to Appellate Tribunal

Depreciation

Now

Schedule XIV of the Companies Act 1956

Specifies minimum rates of depreciation to be provided on assets.

Two methods WDV and SLM

Different rates for multiple shifts

Companies Act 2013

Schedule II of the Companies Act 2013

Specifies systematic allocation of depreciable amount over its useful life

Useful life of assets are mentioned in the Schedule

No other methods

Impact

Companies will be divided into three classes to decide the application of depreciation rates

1. Classes of companies prescribed and who comply with AS
2. Classes prescribed by a regulatory authority
3. Other Companies

Corporate Social Responsibility [Sec 135}

Net worth ≥ 500 crores

Turnover ≥ 1000 crores

Net Profit ≥ 5 crores

CSR Committee

Composition

Consists of 3 or more director out of which One director independent director

Functions

1. Formulate and recommend CSR Policy
2. Recommend amount of expenditure to be incurred on activities
3. Monitor CSR Policy

Contribution

Company need to spend minimum 2% of its average net profits made during the 3 immediately financial years

Dividend [Sec 123 & 124]

Dividend Payment

Out of Profit of the Company for THAT year after depreciation

Accumulated Profits for any Previous Financial Year

Rate for Transfer to Reserves as decided by Board

Interim Dividend

Out of Profit of the Company for THAT year

Surplus Profits in the Profit & Loss A/c

Incase the company incurred loss during the quarter preceding the date of declaration of interim dividend – up to a rate of average dividend declared during 3 preceding years

Dividend [Sec 123 & 124]

Unpaid Dividend Payment

↓

Within 90 days of making Transfer

↓

Unclaimed dividend and shares for 7 years transferred to IEPF

Unclaimed Shares or Dividend entitiled to get refund

Related Party [Sec 2(76)] - Notified

- Director OR his Relative
- KMP OR his Relative
- Firm where director, manager or relative is a partner
- Private Company in which a director or manager is a member or director
- Public Company in which a director or hold along with its relatives more than 2% of its paid-up capital

- Body Corporate whose board, MD or manager act as per direction of director or manager except in professional capacity
- Body Corporate whose board, MD or manager act as per direction of director or manager except in professional capacity
- Holding, Subsidiary or associate company OR a subsidiary of Holding Company

Related Party Transaction [Sec 188]

Inclusions

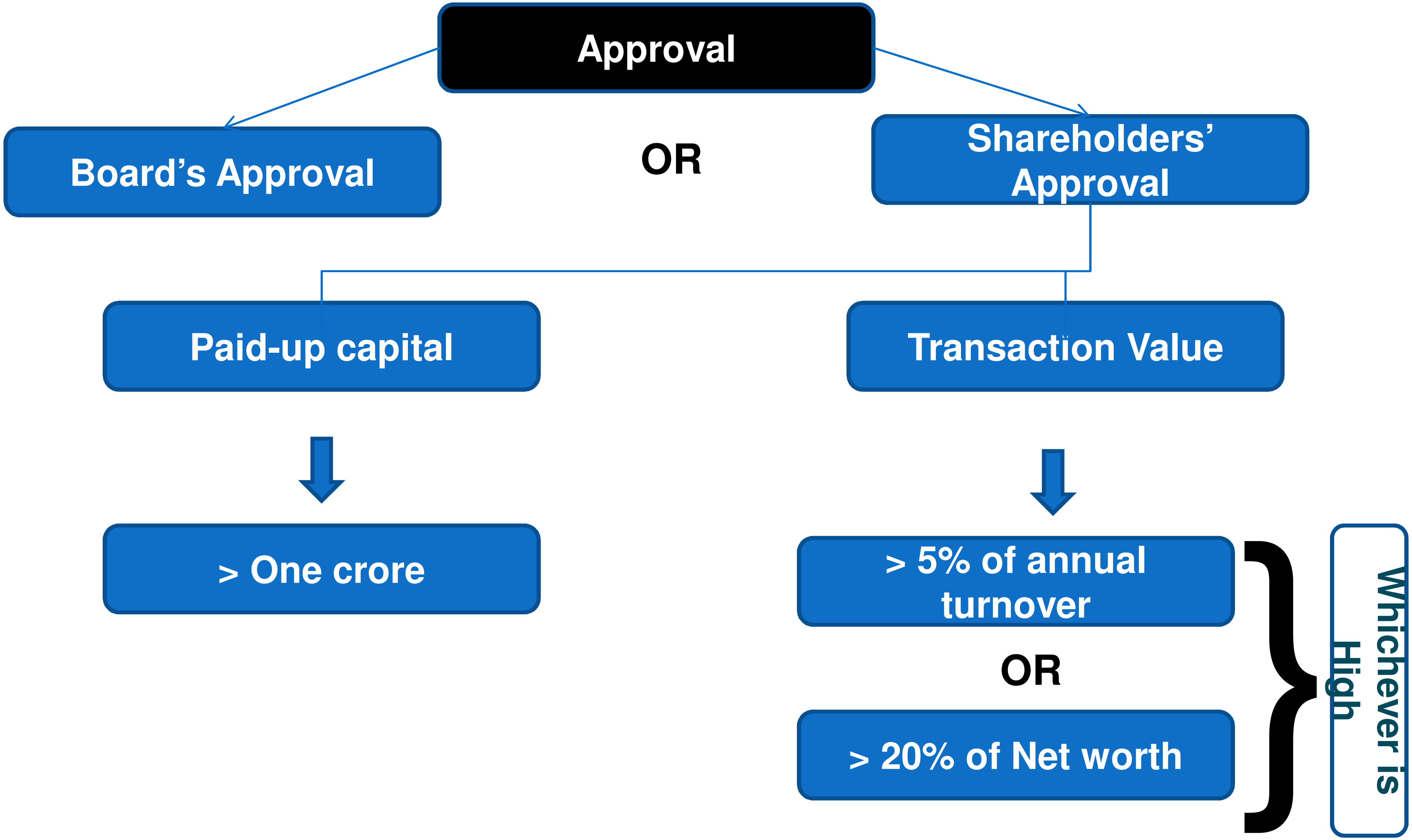
- Selling or otherwise disposing of, or buying, property of any kind
- Leasing of property of any kind
- Appointment of any agents for purchase or sale of goods, materials, services or property
- Appointment of any related party to any office or place of profit in the company or its subsidiary company or associate company
- Contract for underwriting the subscription of securities or derivatives thereof

Exclusions

- Ordinary Course of Business Transactions
- Arms length transactions

Combined Provisions for Sec 294, 294A, 297 and 314 of Companies Act 1956

Related Party Transactions [Sec 188]



Related Party Transactions [Sec 188]

Approvals

- Approval at the Board Meeting
- Approval by Special Resolution if

  Paid-up capital is above the prescribed limits

  OR

  Transaction value exceeds prescribed value

- Related party cannot vote on resolution
- No Government Approval required

Limits as per Drafts

- Paid-up capital of Rs. 1 crore or more OR
- Transaction value including the transactions during thr year exceeds 5% of the annual turnover or 20% of the net worth as per the latest audited financial statement which ever is high

Internal Audit [Sec 138]

Internal Audit

- Every Listed Company
- Paid up Capital > 10 crores
- Outstanding Loan & Borrowings > 25 crores
- Accepted Deposits > 25 crore

Public Company

Internal Auditor Being:

Chartered Accountant

OR

Cost Accountant

OR

any other professional decided by the Board

COMPANIES ACT 2013
Directors

DIRECTORS

DEFINITION

DIRECTOR

*Director appointed to the Board of a Company *(Section 2(34))*

BOARD OF DIRECTORS / BOARD

*Collective body of Directors of the Company *(Section 2(10))*

Circular No. 11/1990(3/5/89-CL-V) dated 29th May, 1990
&
Circular No. 2/1982(1/1/82-CL-V;23/44/79-CL-II) dated 20th January, 1993

MANAGING DIRECTOR (SECTION 2(54))

*Managing Director

- Articles
- Agreements
- Board of Directors
- General Meeting

+

Entrusted with substantial powers of Management

+

Occupying position by whatever name called

Explanation:

The following do not form part of substantial powers:

1. Affixing Common Seal of the Company; 2. Draw and endorse cheque and negotiable instruments on behalf of the Company; 3. Sign Share Certificate; 4. Direct registration of transfer of shares

MANAGER – SECTION 2(53)

Manager

Individual

↓

Subject to

↓

Superintendence → Control → Directions of Board

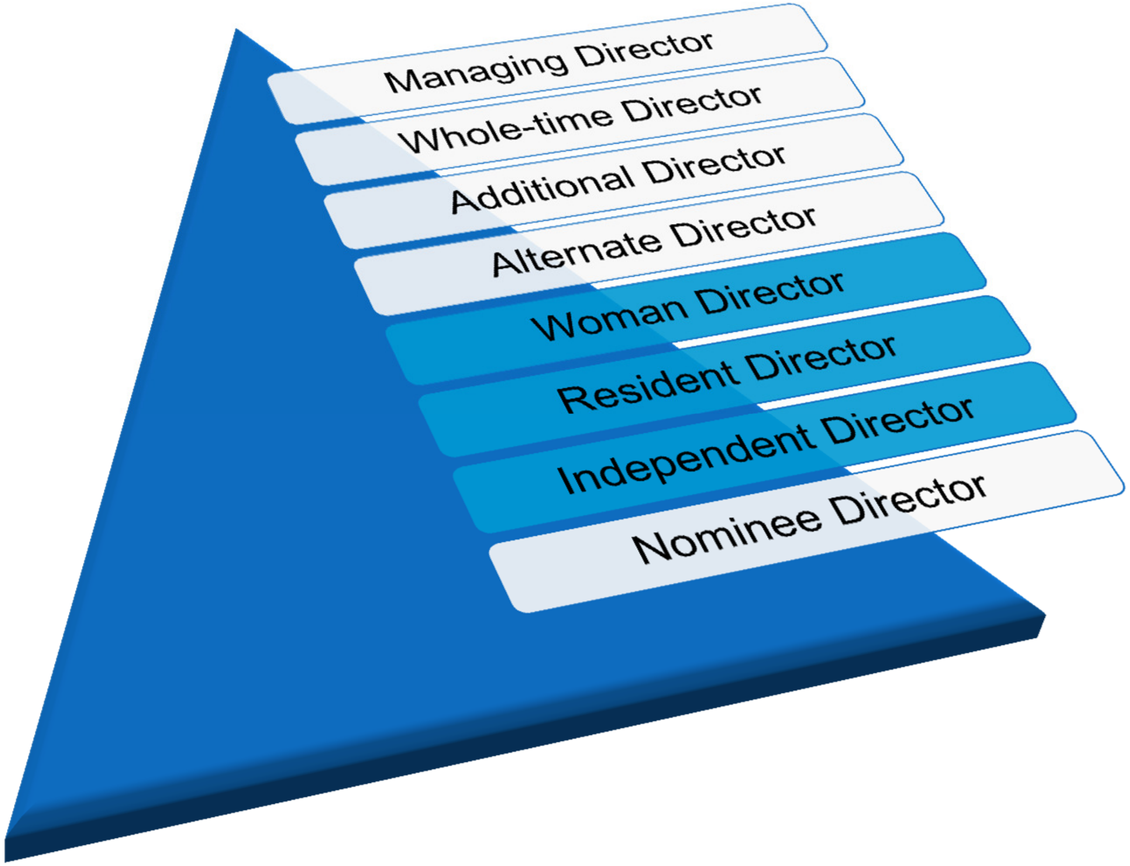
Management of the entire affairs of the Company

&

Includes Director occupying position by whatever name called

No Change

TYPE OF DIRECTOR



KEY MANAGERIAL PERSONNEL

DEFINITION *(Section 2(51))*

CEO OR Managing Director OR Manager

Company Secretary

Whole-time Director

CFO

Such other officer as may be prescribed –
Officer has not been notified in Rules

APPOINTMENT OF KMP

Appointment of KMP
(Section 203)

- Listed Company
- Company having a paid up share capital of Rs. 5 Crore or more – *Rule No. 13.6*

Managing Director

OR

CEO

OR

Manager

OR

WTD, in absence of the above

Company Secretary

Chief Financial Officer

NUMBER OF DIRECTORS – SECTION 149

Board of Directors consisting individuals as directors.

Private Company : 2 Directors

Public Company : 3 Directors

One Person Company : 1 Director

Maximum number :15 (earlier 12)

(No. of Members can go beyond 15 by passing a Special Resolution in General Meeting)

WOMAN DIRECTOR, SMALL SHAREHOLDER DIRECTOR & RESIDENT DIRECTOR

At least 1 woman director for prescribed class or classes of companies. *2nd proviso to Section 149(1)*

- As per the Draft Rules: Listed Companies, and every other public company with paid up capital > Rs 100 Crore or more. (Rule 11.1)

Companies with prescribed number of small shareholders or paid up capital and listed Companies to have 1 director elected by Small Shareholders

Section - 151

- As per Draft Rules: A listed company may suo moto or upon the notice of > 500 or 1/10th of the total number of small shareholders, whichever is lower, elect a small shareholders' director from amongst the small shareholders)

Resident Director

At least 1 director to be a person who has stayed in India for at least 182 days in the previous calendar year

INDEPENDENT DIRECTOR – SECTION 149

Every listed public Company to have at least one-third of the total number of directors as Independent Directors (ID)

Central Government to prescribe the minimum number of Independent Directors in case of any class or classes of public Companies.

(As per Draft Rules: Public Companies having paid up share capital of Rs. 100 crore or more or outstanding loans or borrowings or debentures or deposits, exceeding Rs. 200 cr)

Every Company existing shall, within one year from such commencement or from the date of notification of the rules as may be applicable shall comply with the requirement of Section 149(4)

INDEPENDENT DIRECTOR – SECTION 149

As per the draft rules :

BOARD TO ENSURE - Appropriate balance of skills, experience and knowledge in one or more fields of finance, law, management, sales, marketing, administration, research, corporate governance, technical operations other disciplines related to the company's business **AND DISCLOSE IN BOARD REPORT**

DATA BANK with details of the person eligible and willing to be appointed as independent director to be prepared by any **body, institutions as authorized by CG** (as may be notified by CG). (Rule 11.4)

Responsibility of due diligence for appointment of independent directors to be on company.

APPOINTMENT OF DIRECTOR – SECTION 152

Appointment of Managing Director, Whole Time Director or Manager to be approved by special resolution in a General Meeting

Consent for appointment to be filed by directors of private company to the ROC

When appointment not in accordance with Schedule V, approval of Central Government also required

Independent directors not to be included in the total number of directors while calculating retiring directors i.e. 2/3rd of the total number of directors

APPOINTMENT OF DIRECTOR – SECTION 152

Until the director duly appointed as per provisions in the OPC, individual being member shall be deemed to be its first director

Whole Time Director shall not be appointed for more than 5 years

Provisions to apply to Private Companies as well

In case of default the Company, such individual or director to be punishable with imprisonment upto 6 months or with fine which shall not be less than fifty thousand rupees but which may extend to five hundred rupees for every day after the first during which the default continues.

Amount to be deposited along with notice of nomination of any person to the office of director has been increased from Rs 500 to Rs 100,000 or such higher amount as may be prescribed

- **(As per Draft Rules: Rules prescribe for manner of notice of candidature of a person for directorship)**

ADDITIONAL/ALTERNATE/NOMINEE DIRECTOR ***(SECTION 161) - NOTIFIED***

Person who fails to get appointed as a director in a general meeting cannot be appointed as an Additional Director

Alternate director can only be appointed in case director leaves India for period of not less than 3 months

Person to be appointed as Alternate Director shall be a person other than one holding any alternate directorship for any other Director in the Company

Person to be appointed as Director alternate to Independent Director shall possess all the qualifications that an Independent Director is required to possess.

NEW DISQUALIFICATIONS FOR DIRECTORS

Conviction for offence dealing with Related Party Transaction anytime during previous 5 years 164(g)

Not having obtained Director Identification Number (Section 152(3))

Conviction for any offence and sentenced for an imprisonment extending to 7 years or more

NUMBER OF DIRECTORSHIPS – SECTION 165

Director in maximum 20 companies

Directorship to include alternate directorship

Of these 20 companies, one cannot be a Director in more than 10 public companies (including private companies which are holding or subsidiary companies of public companies)

Members may specify lesser number by passing Special Resolution

Penalty for contravention: Minimum Rs. 5,000, and Maximum Rs. 25,000 for every day during which the default continues

DUTIES OF DIRECTORS– SECTION 166

A director to act in accordance with the articles of the company

A director to 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 interest of the company, its employees, the shareholders, the community and for the protection of environment.

A director to exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment

A director not to get involved in a situation he may have direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company

A director not to achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates

VACATION OF OFFICE OF DIRECTOR

- When Director fails to attend all Board Meetings for consecutive period of 12 months *even when the leave of absence has been granted*
- When Director is disqualified by an order of court or Tribunal under any Act not only the Companies Act.
- When all directors have vacated the office:
  - the promoter shall appoint minimum number of Directors
  - Central Government may appoint Directors till company makes appointment in General Meeting

REMOVAL OF DIRECTOR

- **Notice of Removal can be given only by the following:**
- **<u>In Company Having Share Capital:</u>**
  - **Member(s) having not less than 1/10th of the total voting power or holding shares the aggregate value of which is not less than Rs. 5 lakh**
- **<u>In any other Company:</u>**
  - **Member(s) having not less than 1/10th of the total voting power**
- **In case of default, company and every director or employee who is responsible for such contravention to be punishable with fine which shall not be less than Rs. 50,000 but which may extend to Rs. 5 Lac**

PUNISHMENT FOR CONTRAVENTION

Punishment (if no specific punishment provided in this Chapter)

- Fine > Rs. 50,000
- ***Persons Covered:***
  1. Company
  2. Officer in Default
- Fine may extend to Rs. 5 Lakhs

RESTRICTION ON NON-CASH TRANSACTIONS INVOLVING DIRECTORS APPLICABLE TO:
(NOTIFIED) SECTION 192

- Any Director of a company; or
- Director of the Holding Company; or
- Any person connected with such person
- Director cannot acquire assets for the consideration other than cash from the company & vice versa without the approval in general meeting

PROHIBITION ON FORWARD DEALING IN SECURITIES (NOTIFIED) SECTION 194

- **Director and KMP prohibited w.r.t. to following in a Company, or its holding, subsidiary or associate Company –**
  - **Right to call/make for delivery at specified price and within a specified time, of a specified number of relevant shares /debentures.**
  - **Right to call for delivery or make delivery at a specified price and within a specified time, of specified number of relevant shares/debentures.**

PROHIBITION ON INSIDER TRADING OF SECURITIES (NOTIFIED) SECTION 195

- Director and KMP shall not enter into act of insider trading concerning
  - Subscribing, buying, selling, dealing or agreeing to subscribe, buy, sell or deal in any securities either as principal or agent if such person is reasonably expected to have access to any non- public price sensitive information in respect of securities of company
  - Counseling about, procuring or communicating directly or indirectly any non- public price sensitive information to any person.

SAS PARTNERS

COMPANIES ACT 2013
Meetings

BOARD MEETING – SECTION 173 Vs. 285, 286

First Board Meeting to be held within 30 days of incorporation.

Minimum 4 Meetings and Gap between two consecutive Meetings shall not exceed 120 days.

Participation through Video Conferencing / Audio Visual Means – Capable of recording & Recognizing & Storing the proceedings of such meetings along with date and Time

Every Director shall attend atleast one Meeting in Person.

(Rule 12.1 (1))

Approval of Financial Statements and Boards Report – shall not to be dealt with Video Conferencing / Audio Visual Means. (Rule 12.2)

At least one Board meeting to be held in each half of a calendar year and the gap between two Meeting should not be less than 90 days (Small Company / Dormant Companies / OPC)

Chairperson of the Meeting and CS (if any) – shall take due and reasonable care. (Rule 12.1)

Board Meeting is not required to be held in every quarter

Board Meeting – Section 173 Vs. 285, 286

Notice shall inform the Directors about the facility of Video Conference / Audio Visual Means. (Rule 12.1 (3b))

Not less than 7 days prior notice in writing to every Director at his address registered with the Company.

The Draft Minutes shall be circulated within 7 days of the Meeting either in writing or electronic mode as may be decided by Board. (Rule 12.11 (a))

Director to give their Comments within seven days from the receipt of Draft Minutes else presumed to be approved (Rule 12.11(b))

Atleast one Independent Director if any, to be present at the Board Meeting called at Shorter Notice

In case of ID is absent, Minutes of such meeting shall be finalized only if the same is ratified by atleast one ID if any.

Quorum – Section 174 Vs. 287, 288

1/3rd of the Total Strength or 2, whichever is higher, (Video Conferencing or Audio Visual means is counted for Quorum).

If the No. of Directors is reduced below the Quorum then the continuing Director (s) shall be the Quorum, for the purpose of increase the Quorum fixed by the Act and for summoning the General Meeting,

Earlier it was specified in regulation 75 of Table A of the CA 1956.

Where at any time the Interested Directors exceeds or is equal to 2/3rd of the Total Strength, The Non – Interested Director present at the Meeting, being not less than 2 shall be the Quorum.

Conditions to test the Interested Director is as under Section 184 (2)

The Meeting adjourned for want of Quorum shall not be counted for minimum number of meetings under Section 173.

Resolution by Circulation – Section 175 Vs. 289

Circular Resolutions

Consent of all Directors present in India or by majority of them (Earlier Section 289)

Resolution shall be approved if it is consented by majority of Directors

It should be recorded in the subsequent Meeting.

If more than 1/3rd of Directors requires the resolution to be taken in the Meeting, its shall be decided at a Board Meeting.

Committees of the Board – Section 177 Vs. 292A

Audit Committee (Sec 177)

Nomination & Remuneration Committee (Sec 178)

Stakeholders Relationship Committee (Sec 178)

✓Listed Companies and
✓Public Company
- **Paid up capital of Rs.100 cr; (or)**
- **Outstanding loans or Debentures or Deposits exceeds Rs.200 cr**

Companies having combined Membership of shareholders, debenture holders, deposit holders and other security holders of more than 1000 at any time in a FY

- **Minimum of 3 Directors**
- **Majority of Independent Directors**

- **Three or more Non-Executive Director**
- **Out of the Non-Executive Directors, one half should be Independent Directors**

- **Chairman shall be Non – Executive Director and such other Members as may decided by the Board.**

Committees of the Board – Section 177 Vs. 292A

177 (7) – Auditors of the Company and KMP shall have a right to be heard at the Audit Committee Meetings (shall not have right to Vote).

177 (8) – Board Report (section 134 (3)) – To include the Composition of Audit Committee and if any recommendation not accepted by the Board + the reasons for the same.

Chairperson of each committee formed under Section 178 – Shall either himself or through his authorised member shall attend the General Meetings of the Company.

Non – Compliance with Section 177 & 178 – Company – Min = 1 Lakh extend to 5 Lakh and every officer in default – Imprisonment (may extend to 1 Year) OR fine shall not be less than 25,000 to Maximum of 1 Lakh or Both.

Annual General Meeting – Section 96 Vs. 166

First AGM to be held within 9 months from closure of its first FY.

Subsequent AGM to be held within six Months from the date of Closure of FY.

RoC may extend upto 3 months on Special reasons (Except First AGM)

Check Point : Not more than 15 Months shall elapse between two AGM.

Where ?

Either in Regd. Office or within the City Limits

Time?

9 A.M to 6 P.M

When ?

Any day Except National Holiday.

CG – has the power to Exempt any Companies – Subject to conditions as it may impose.

OPC not required to hold AGM

Sec – 97 Power of **Tribunal** to call AGM.

Section – 98 Power of **Tribunal** to call any meeting of Members

Vigil mechanism – Section 177 (9) read with Rule 12.5

Applicability	• Listed Companies or <u>such other class of Companies</u>. • (Companies which accept deposits from Public and Companies which has borrowed money from Banks and PFI in excess of 50 Crores)
Operation of Vigil Mechanism	• If Audit Committee is available – then Vigil Mechanism operated through Audit Committee. • If there is no Audit Committee – BoD to Nominate a Director to play the role.

New Powers of the Board (to be transacted in BM) – SECTION 179 Vs. 291 & 292

- To issue securities, including debentures, whether in or outside India.
- To grant loans or give guarantee or provide security in respect of loans.
- To approve financial statement and the Board's report.
- To diversify the business of the Company.
- To take over a company or acquire a controlling or substantial stake in another Company.
- Also includes 12 such powers are specified under rule 12.6.

Resolutions passed in pursuance to Section 179 (3) to be registered under Section 117 (3)(g)

Shareholders have the power to impose restrictions and conditions on the powers of Board

Restrictions on the Board (to be transacted only in GM) – SECTION 180 Vs. 293

Companies Act – 2013	Companies Act - 1956
Made applicable to all Companies	Applicable to Public and its Subsidiary Companies
Powers can be exercised by the Board after Special resolution.	Can be exercised by the Board after passing the Ordinary resolution in the General Meeting.

NOTIFIED

Will these contribution will contribute to the real Cause specified ?

Section – 181 Vs. 293(1)(e) – Contribution to Charitable funds:

BoD may contribute upto 5% of the Average net profits of Three PFY in a FY subject to prior permission from Members in the General Meeting.

Section – 182 Vs. 293A – Political Contribution its prohibitions /restrictions

Limits changed of such contribution - shall not exceed 7.5% (5% in the Companies Act – 1956) of the Avg NP of three P FY of the Company.

Section – 183 Vs. 293B –Contribution to National Defense Fund etc.,

NW anything contained in this Act – Any Amount as it thinks fit, may contribute to National Defense Fund or any other fund approved by CG for National Defense.

NOTIFIED

Miscellaneous Provisions:

Section 190 Vs. 302 –

Every Public Company

- **to keep a copy of the Contract with MD / WTD in writing, in case of its absence,**
- **(or) written Memorandum setting the Terms.**
- **in the Registered office of the Company.**

Not applicable to Private Companies.

Applicable to all Companies

Section 192 (Restriction on Non – Cash Transactions involving Directors)

- **Subject to Prior Approval from the Members.**
- **Director of the Company, or its Holding, Subsidiary or Associate Company or person connected with him**
- **shall not acquire any assets for consideration other than Cash and vice versa.**

CONTRACTS BY ONE PERSON COMPANY – SECTION 193

Section 193

- **When OPC enters a contract with the sole Member who is also Director of the Company, then**
- **Contract shall be in Writing**
- **Record the execution of the Contract in the ensuing Board Meeting after entering the Contract.**
- **Exemption : Nothing in this section shall apply to contract entered in the Ordinary Course of its Business.**

Such Contracts to be filed with ROC within 15 days of Board's approval

Annual General Meeting – Section 96 Vs. 166

First AGM to be held within 9 months from closure of its first FY.

Subsequent AGM to be held within six Months from the date of Closure of FY.

RoC may extend upto 3 months on Special reasons (Except First AGM)

Check Point : Not more than 15 Months shall elapse between two AGM.

Where ?

Either in Regd. Office or within the City Limits

Time?

9 A.M to 6 P.M

When ?

Any day Except National Holiday.

CG – has the power to Exempt any Companies – Subject to conditions as it may impose.

OPC not required to hold AGM

Sec – 97 Power of **Tribunal** to call AGM.

Section – 98 Power of **Tribunal** to call any meeting of Members

Extra Ordinary General Meeting – Section 100 Vs. 169 - NOTIFIED

Power to call EGM by Board – Conferred through Regulation 48(1) of Table A – made into Act now.

Notice of the Meeting – Section 101 Vs. 171, 172

Notice can be send through Electronic Mode. (Communication sent by a Company through authorised and secured Computer Programme which is capable of producing confirmation and keeping record of such communication to the Last electronic mail address provided by the Member) – Rule 7.16.1

May be sent through e-mail – Text / Attachment / Electronic Link / URL for accessing the Notice. Rule 7.16.2

Subject of the E-mail – Name of the Company, Notice of the type of the Meeting and date on which Meeting is scheduled. + Instructions / software for opening the doc should be provided.

Company being aware of the failure of delivery (despite repetitive attempts), shall revert sending physical copies within 72 hours of the original attempt.

Explanatory Statement – Section 102 Vs. 173(2) - NOTIFIED

For any Special Business to be transacted in GM, - Explanatory statement should specify the nature of concern or interest, financial or otherwise :

- **Every Director & Manager (if any) + every KMP + Relatives of aforesaid .**

Quorum – Section 103 Vs. 174 - NOTIFIED

Minimum Quorum

Private Company:
Personal Presence – 2 Members

Public Company
Personal presence of
5 [Members ≤1000]
15 [Members 1001 ≤ 5000]
30 [Members 5001≥]

Proxy – Section 105 Vs. 176 – PARTLY NOTIFIED

CG has the powers to prescribe the rules for certain class of companies – where Members cannot appoint another person as Proxy

Rule 7.17 – Section 8 Companies – Prescribed.

No person shall act as a proxy for more than 50 Members and holding in aggregate shall not be more than 10% of total Voting rights.

RESOLUTIONS REQUIRING SPECIAL NOTICE – SECTION 115 Vs. 190

Resolution requiring special notice (either by Act or by Articles) has to be moved by

Members holding not less than 1% of total voting power or
Aggregate sum of holding not exceeding Rs.5 lakh paid-up capital (Higher Limit)

Rule 7.21 Aggregate sum not less than 1 Lakh as on date of Notice. (Lower)

Postal Ballot – Section 110 Vs. 192A

➢The provisions of the Postal Ballot have been extended to be applicable to ALL the companies.

[Exception : OPC and the Companies having upto 50 members are exempted (Rule 7.20)]

➢ Items specified in Rule 7.20 (16) shall be passed through Postal ballot (same as earlier prescribed in the Act, 1956)

➢The company MAY pass any resolution by way of postal ballot, other than ordinary business and any business in respect of which Directors or Auditors have a right to be heard at the Meeting.

REPORT ON AGM – SECTION 121

Applicable to all Listed Companies

Report should contain the confirmation that the meeting was convened, held and conducted as per the provisions of the Act / Rules

Report should be signed and dated by the Chairman of the Meeting or in his absence inability to sign then,

- **by any two Directors (of which one shall be the Managing Director, if any)**

(Rule 7.26)

Report is to be filed with the Registrar within 30 days of such AGM

Few Penalty Provisions :

Section	Description	Penalty	Imprisonment
99	Failure to comply with 96 to 98	CO + OID – May extend upto INR 1 Lakh In case of continuing offence – INR 5K – Everyday till default continues.	None
102	Non – Disclosure / default in sending the Exp. Statement	50,000 (or) 5 times of the Benefit - WEH	None

Few Penalty Provisions :

Section	Description	Penalty	Imprisonment
173 (4)	Failure to give Board Meeting Notice	INR 25,000	None
178 (8)	Non – Compliance of Section 177 and 178	Co – INR 1 Lakh (Min) to 5 Lakh (Max) Officer in Default – 25 K (Min) – 1 Lakh (Max) or	NA May extend to one Year or both
182(4)	Fraudulent Contribution to Political Party	Company – 5 times the Amount Contributed OID – 5 times the amount involved ***AND***	NA Upto Six Months

Few Penalty Provisions :

Section	Description	Penalty	Imprisonment
190(3)	Failure to keep the Contract of Employment of MD / WTD in RO.	Co – INR 25,000 OID – INR 5,000 for each	None None

SAS PARTNERS

COMPANIES ACT 2013
Avenues of Company Secretaries

‘Mere Servant’ as ruled by the Courts in England in 1887

‘An officer’ as held by the House of Lords in 1971

A ‘KMP’ as defined in CA 2013

INDEX

- **Boundaries Evolved…**
- **Opportunities Defined**
- **Challenges Confronting**
- **Opportunity lost or unlimited ???**

BOUNDARIES EVOLVED

" CS / PCS"

- **CS CA 2013 – Sec 2 (24) (CA 1956 – 2(45))**

  only a ICSI member

- **PCS CA 2013 - Sec 2 (25) (CA 1956 – 2(45))**

Who is not in full time employment is

Removed.

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

"Company Secretary in practice" means a company secretary who is deemed to be in practice under sub-section (2) of section 2 of the Company Secretaries Act, 1980 (56 of 1980).

FUNCTIONS OF COMPANY SECRETARY

SAS PARTNERS

Sec 205:

- 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

DUTIES OF COMPANY SECRETARY

SAS PARTNERS

Rule 13.8 defines:

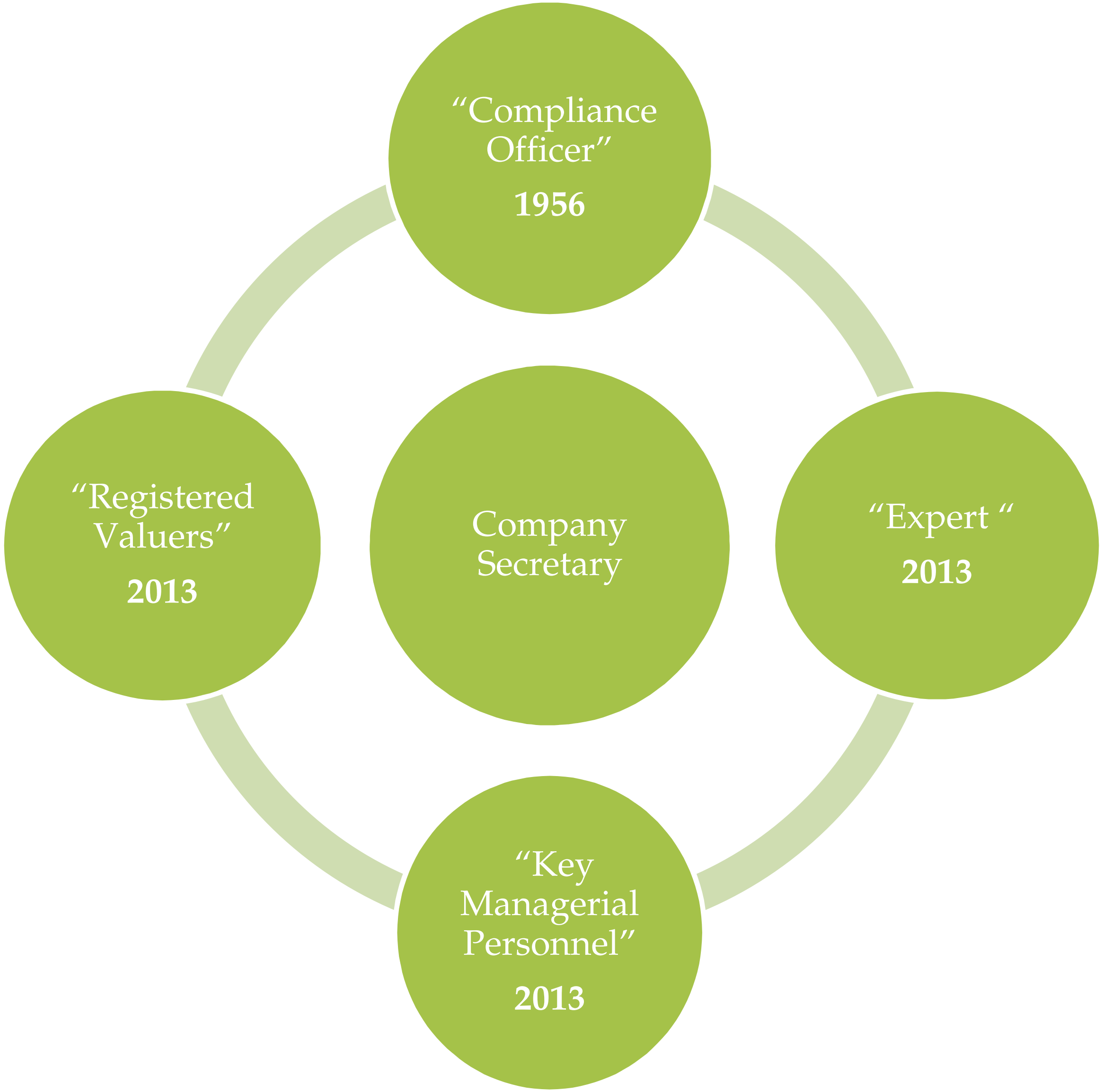
- to provide the directors of the company such guidance as they may require, with regard to their duties, responsibilities and powers;
- to convene and attend Board, committee and general meetings, and maintain the minutes of these meetings;
- To obtain approvals from the Board, general meetings, the Government and such other authorities as required
- To represent before various regulators, Tribunal and other authorities in connection with discharge of various functions under the Act;

DUTIES OF COMPANY SECRETARY

Rule 13.8 defines:

- to assist the Board in the conduct of the affairs of the company;
- to assist and advise the Board in ensuring good corporate governance and in complying with the corporate governance requirements and best practices; and
- to discharge such other duties as may be assigned by the Board.
- Such other duties as prescribed under the Act and Rules.

BOUNDARIES EVOLVED



ENHANCED SCOPE

- Secretarial Audit Compulsory.
- Statutory recognition to ***Secretarial Standards and PCS*** for the first time in the history of Corporate India.
- Enhanced Corporate Governance

“KMP” – A GLIMPSE

A TRANSITION FROM MERE COMPANY SECRETARY TO THAT OF KMP

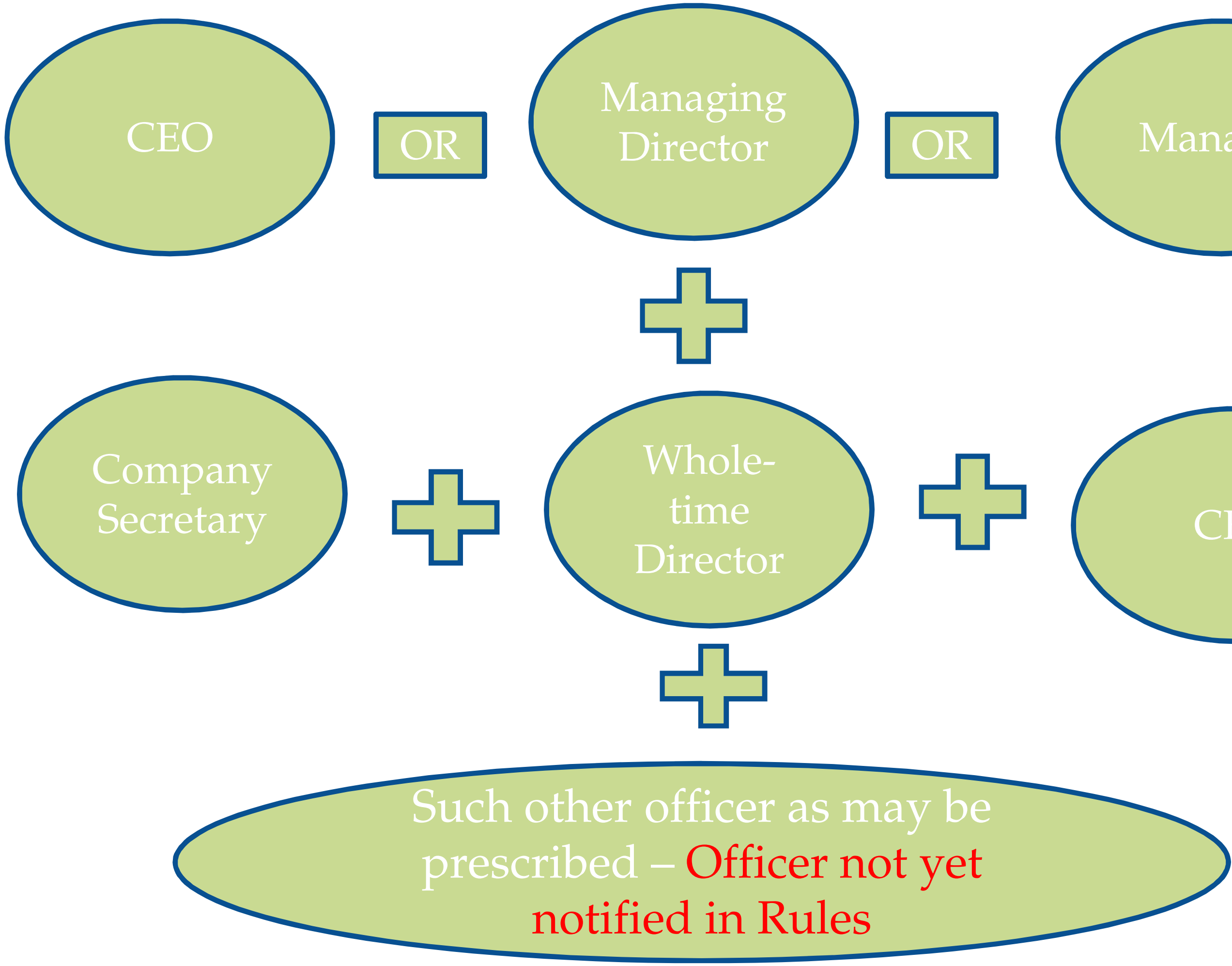
“ KEY MANAGERIAL PERSONNEL”

☞ **Sec 2(51) Defines:**

“Key Managerial Personnel” 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;

DEFINITION OF KEY MANAGERIAL PERSONNEL



APPOINTMENT OF KMP

SAS PARTNERS

- Appointment of KMP *(Section 203)*
  - Listed Company
  - Company having a paid up share capital of Rs. 5 Crore or more – *Rule No. 13.6*
    - MD
      OR
      CEO
      OR
      Manager
      OR
      WTD, in absence of the above
    - Company Secretary
    - Chief Financial Officer

CONDITIONS REGARDING APPOINTMENT OF KMP

SAS PARTNERS

An individual cannot be appointed as a Chairman as well as the Managing Director of the Company at the same time unless authorized by the AOA or if the Company does not carry multiple business.

KMP shall be appointed by means of Board Resolution containing the terms and conditions

KMP shall not hold office in more than one company except in its subsidiary company at the same time

Company may appoint an individual as a Managing Director or Manager if he is a MD or Manager of any other company, not more than one, by passing an unanimous Board Resolution.

Vacancy of office of KMP shall be filled within 6 months from the date of such vacancy

Transition period of 6 months from the commencement of this Act has been given for individuals to choose one company if they are Directors in more than one company

RELEVANCE OF KMP IN THE ACT

- Included in **officer-Sec 2 (59)/officer in default –**
- **Sec 2(60) /related party – Sec 2 (76)** along with relatives
- **Authorized to sign** documents, proceedings/contract on company's behalf – **Sec 21**

- Held responsible for disclosure in **annual return- Sec 92 /**
- The auditors and KMP shall have a **right to attend meeting of Audit Committee** but have no right to vote- **Sec 177 (4)**
- KMP is required to **disclose interest**/concern and changes to company within 30days of appointment or relinquishment-**Sec 170 (2), Rule 11.15**

- In case KMP gains undue advantage or benefit, CG can file an application for **disgorgement** of company assets and KMP shall be **held personally liable** if the same is proved on inspection of company – **Sec 224**
- **Prohibited** from insider trading – **Sec 195**/forward dealing securities – **Sec 194** in securities

OFFICER IN DEFAULT

SAS PARTNERS

Companies Act 2013 – Sec 2(60)

"Officer who is in default", for the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any penalty or punishment by way of imprisonment, fine or otherwise, means any of the following officers of a company, namely:—

i. **whole-time director**;

ii. **key managerial personnel**;

iii. If no KMP, such **director or directors as specified by the Board with his consent. If not all the directors.**

iv. Second line person under Board or KMP who is in charge for accounts and who knowingly allows any default;

v. any person in whose advice /directions the board is accustomed to act other than in a professional capacity

vi. every director who knows the contravention by virtue of the **receipt of Board proceedings** without objecting to it or with his consent.

- 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;**

Companies Act 1956–Sec 2 (31) & 5

- the managing director
- the whole-time director
- the manager;
- the secretary;
- any person in accordance with whose directions or instructions the Board of directors of the company is accustomed to act;
- any person charged by the Board with the responsibility of complying with that provision with his consent

Provided that the person so charged has given his consent in this behalf to the Board;

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:

But!

- Is the CS fully trained to be a Governance Professional – C
- What a CS need to adhere to, in order to fulfill his role as C
- Until ICSI comes up with new guideline/standard tool for the CS towards developing and imparting governance knowledge and skills and behavioral traits for performing as GP, CS can follow the CGVG ‘ Corporate Governance Voluntary Guidelines, 2009
- The expertised /experienced Senior members who had been working in the best governed companies can lend a hand holding to the fresh or less experienced

AS A GOVERNANCE PROFESSIONAL, CS

SAS PARTNERS

☞Advises on the best practices in Governance and risk management

☞ Ensures the compliance frame work and standards of ethical and corporate behavior

☞ Aligns the Board's mission, goals and bylaws

☞ Establishes Board performance benchmarks and develops a well-rounded governing Board

AS A GOVERNANCE PROFESSIONAL, CS

☞Balances the interests of the Board, management and other stake holders

☞ Designs an effective and robust control environment

☞ Creates a modern and professional governance structure and ensures corporate accountability

- Company Secretary

+

- Professional Expertise

=

- Governance Professional

"EXPERT" – A GLIMPSE

" EXPERT"

Sec 2(38) Defines:

- "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.

AMBIT OF " EXPERT"

S A S PARTNERS

Serve as member of SFIO (Sec 211)

Advise on matters to be stated in prospectus (Sec (26) (a) (v)

Represent before NCLT on the matters of Amalgamations/Arrangements (Sec 432)

AMBIT OF " EXPERT"

As Company Liquidator (Sec 291)

As Company Administrator on internal Management issues (Sec 259)

Act as Mediator & Conciliator (Sec 442)

Advise on other applicable laws

"REGISTERED VALUER" – A GLIMPSE

"REGISTERED VALUER"

☞ **Sec 247 : Valuation by Registered Valuers (New Provision)**

- "Registered Valuer" to cover valuation in respect of
  - any property
  - Stock, Shares, Debentures, Securities,
  - Goodwill or any other assets of the Company
  - Including its Networth and Liabilities

SCOPE OF VALUATION UNDER THE ACT

SAS PARTNERS

Sections	Requirement of Registered Valuers
62 (1) (c)	Valuing further issue of shares
192 (2)	Valuing Assets involved in Arrangement of non cash transactions involving Directors
230 (2) (c) (v)	Valuing shares, property and assets of Company under a scheme of Corporate Debt Restructuring
230 (3) & 232 (2) (d)	Valuation including Swap ratio under a scheme of Compromise/Arrangement
232 (3) (h)	Valuation to be made for exit opportunity to the shareholders of transferor Company under a scheme of compromise or arrangement
236 (2)	Valuation of Equity shares of Minority share holders

SCOPE OF VALUATION UNDER THE ACT

SAS PARTNERS

Sections	Requirement of Registered Valuers
260 (2) (c)	Valuation report in respect of Shares and Assets to arrive at the Reserve Price or Lease rent or Share Exchange Ratio for Company Administrator
281 (1) (a)	Valuing Assets for submission of report by Company Liquidator
305 (2) (d)	Report on the Assets of the company for preparation of declaration of solvency under voluntary winding up
319(3)(b)	Valuing the interest of any dissenting member of the transferor company who did not vote in favour of the special resolution, as may be required by the Company Liquidator
325(1)(b)	Valuation of annuities and future and contingent liabilities in winding up of insolvent company

"STIPULATIONS IN THE ACT"

SAS PARTNERS

- Valuation to be done only by Registered Valuer
- **A Company Secretary** in whole-time practice among the others, mentioned in the provision or person holding required qualification with min 5 years of continuous experience eligible to apply for being a Registered Valuer in respect of a financial valuation.
- Make an application in the Form No.17.1 for registration (Individuals & Firms)
- Methods of Valuation suggested: Asset, Income and Market approach

"STIPULATIONS IN THE ACT"

SAS PARTNERS

☞Where the valuer is directly or indirectly interested in the valuation of any assets, he is prohibited from undertaking the same

☞ ***In case of default , he shall be punishable with imprisonment for a term which is < = 1 year and the fine which extends to Rs. 5 Lakhs***

☞ ***The valuer is liable to refund the remuneration received from the Company and pay for damages to the Company or to any other person for loss arising out of incorrect or misleading statements***

"IMPACT OF THE PROVISION"

SAS PARTNERS

- ☞ Increase in Professional opportunities
- ☞ ***Fine and imprisonment ensures to disclose a true, fair and complete view and that valuation procedures are more objective***
- ☞ Increased transparency and fairness
- ☞ Government revenues may improve as loopholes may be plugged

"IMPACT OF THE PROVISION"

SAS PARTNERS

- Increase in Professional opportunities
- ***Fine and imprisonment ensures to disclose a true, fair and complete view and that valuation procedures are more objective***
- Increased transparency and fairness
- Government revenues may improve as loopholes may be plugged

SAS PARTNERS

"SECRETARIAL AUDIT" – A GLIMPSE

SECRETARIAL AUDIT

SAS PARTNERS

☞ Secretarial audit is a part of legal compliance reporting system & a tool for good corporate law compliance management. It is an independent appraisal of the secretarial practices, systems and procedures.

☞ **Need for Secretarial Audit (SA)**

- ✓ Compliance of various applicable laws for good Corporate Governance.
- ✓ Protection of Interest of the Stakeholders.
- ✓ Era of self regulation and shareholders Democracy.
- ✓ Need for Transparency and Arms length transactions

SECRETARIAL AUDIT

SAS PARTNERS

☞ Emergence of SA in India

✓ Corporate Governance Voluntary Guidelines, 2009 introduced the concept of Secretarial Audit with the following objectives:

- To Ensure transparent, ethical and responsible governance of the company;
- To empower the Board with robust compliance mechanisms
- Secretarial Audit by a competent professional.
- Board to give its comments on the Secretarial Audit.

SECRETARIAL AUDIT

SAS PARTNERS

Sec 204:

- Compulsory Secretarial Audit (CSA) (by Listed Company and Public Co. having share capital of 100 crores or more)
- Secretarial Audit report to be in accordance to Form 13.3
- CSA Report to be annexed with the Board report
- Widens the scope of practice of Company Secretary

- Explanation in board's report of every qualification, reservation or adverse remark or disclaimer made in the Secretarial Audit Report

- ***Penalty for Contravention: Every officer of the Company or CS 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***

SCOPE OF SECRETARIAL AUDIT

- Report on the Compliance of applicable provisions of CA 2013 & the prescribed rules
- Secretarial Standards
- Accounting standards
- SEBI Regulations

- FEMA Regulations
- Banking/ Insurance / Telecom / Electricity law (Sectoral Compliance)
- Compliance of Labour laws
- Other applicable laws including local laws

DUTY TO REPORT FRAUD

- **Section 143 (12) & (14)**
- While conducting the audit of the Company, if Secretarial Auditor has reason to believe that an offence involving fraud is being or has been committed against the company by officers or employees of the company, then it is the duty of Secretarial Auditor to report the same to the CG

- ***If PCS doesn't comply with section 143(12), he shall be punishable with fine of (Rs. 1,00,000 to Rs. 25,00,000 (Section 143 (15))***

"SECRETARIAL STANDARDS" – A GLIMPSE

SECRETARIAL STANDARDS

- Secretarial Standards (SS) are the 'set of principles or guidelines' formulated to aid companies in discharging their corporate responsibilities
- **Formulated by the Institute of Company Secretaries of India (ICSI)**
- SS provide a framework to bring uniformity, integrity and standardization in the Secretarial practices followed by a Corporate

AS PER PROVISION

SAS PARTNERS

Sec 205:

- The expression "secretarial standards" means secretarial standards issued by the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980 (56 of 1980) and approved by the Central Government

- One of the **functions** of CS is to ensure that the company complies with the applicable standards

SS AS ISSUED BY ICSI

S. No.	Particulars
1.	Meetings of the board of directors
2.	General meetings
3.	Dividends
4.	Registers & records
5.	Minutes

SS AS ISSUED BY ICSI

S. No.	Particulars
6.	Transmission of shares & debentures
7.	Passing resolution by circulation
8.	Affixing Common Seal
9.	Forfeiture of shares
10.	Board's report

AS STIPULATED IN THE RULE

SAS PARTNERS

- Every Company to observe secretarial standards with respect to General and Board meetings specified by the ICSI) - **Sec 118 (10)**

- ***In case of default, Company liable to pay a penalty of twenty five thousand rupees and every officer of the Company who is in default shall be liable to a penalty of Rs. 5000***

OPPORTUNITIES

OPPORTUNITIES DEFINED

PROSPECTS WIDENED

- Increased opportunities by establishment of National Company Law Board Tribunal. by appearance or Technical Member
- Increased role of CS in Winding up of Companies
- Increased role of CS in Restructuring of Companies
- Stringent punishment for Violation will stimulate the role of CS
- Requirement of enhanced Disclosures & Transparency in board's report
- Annual return to be signed by CS

ROLES IN BRIEF

- CS CAN PITCH IN TO
  - NCLT
    - REPRESENT COMPANY BEFORE TRIBUNAL
  - WINDING UP
    - AS PROVISIONAL LIQUIDATOR
  - REVIVAL /REHABILITATON
    - AS INTERIM /COMPANY ADMINISTRATOR
  - SCHEME OF MERGER
  - ANNUAL RETURN
    - CERTIFICATION TO BE DONE BY CS IN PRACTICE /CS

CHALLENGES

CHALLENGES CONFRONTING

Criminal liability for fraud for misstatement in prospectus – every person who authorizes issue of misleading prospectus - Sec 448

In case of frauds, all the professionals and experts rendering independent services to the Company are to be held liable

Failure to non compliance with Sec 92 results in imprisonment for a term that could extend to six months

Imprisonment is mandatory and no compounding allowed for certain violations

CHALLENGES CONFRONTING

SAS PARTNERS

Definition 'Officer in default' includes KMP which includes CS - Sec 2 (60)

Balancing the interests of different groups in organization which could lead to conflict of interest and in turn job insecurity

Keep abreast with latest changes and developments in the applicable laws to give effective and timely guidance, failure of which result in legal and financial consequences

Loss of reputation and credibility more than the punishment under the act

OPPORTUNITY LOST OR UNLIMITED???

His position has been exalted…..So as his opportunities…..

Thank you