

A PRESENTATION ON
COMPANIES ACT, 2013
(18 of 2013)

BY



- Background of Companies Act, 2013
- Key Changes
- Definitions
- Incorporation of Companies and matters incidental thereto
- Share Allotment and Capital
- Directors, KMP's and Governance
- Declaration and Payment of Dividend
- Accounts of Companies
- Loan and Investment by Companies
- Corporate Social Responsibility
- Regulatory Bodies (*viz.* NCLT, NFRA, SFIO)
- Mergers and Acquisitions

BACKGROUND OF COMPANIES ACT, 2013

Flash Back

Companies Bill (Bill No. 57 of 2008), introduced in 2008

Report of Standing Committee on Finance was introduced in Lok Sabha in 2010

Companies Bill, 2012 as amended was approved by Lok Sabha on 18th December 2012

2008

2009

2010

2011

2012

2013

Companies Bill, 2008 was not considered due to dissolution of Lok Sabha ; and reintroduced as Companies Bill, 2009 (59 of 2009). The same was referred to Standing Committee on Finance

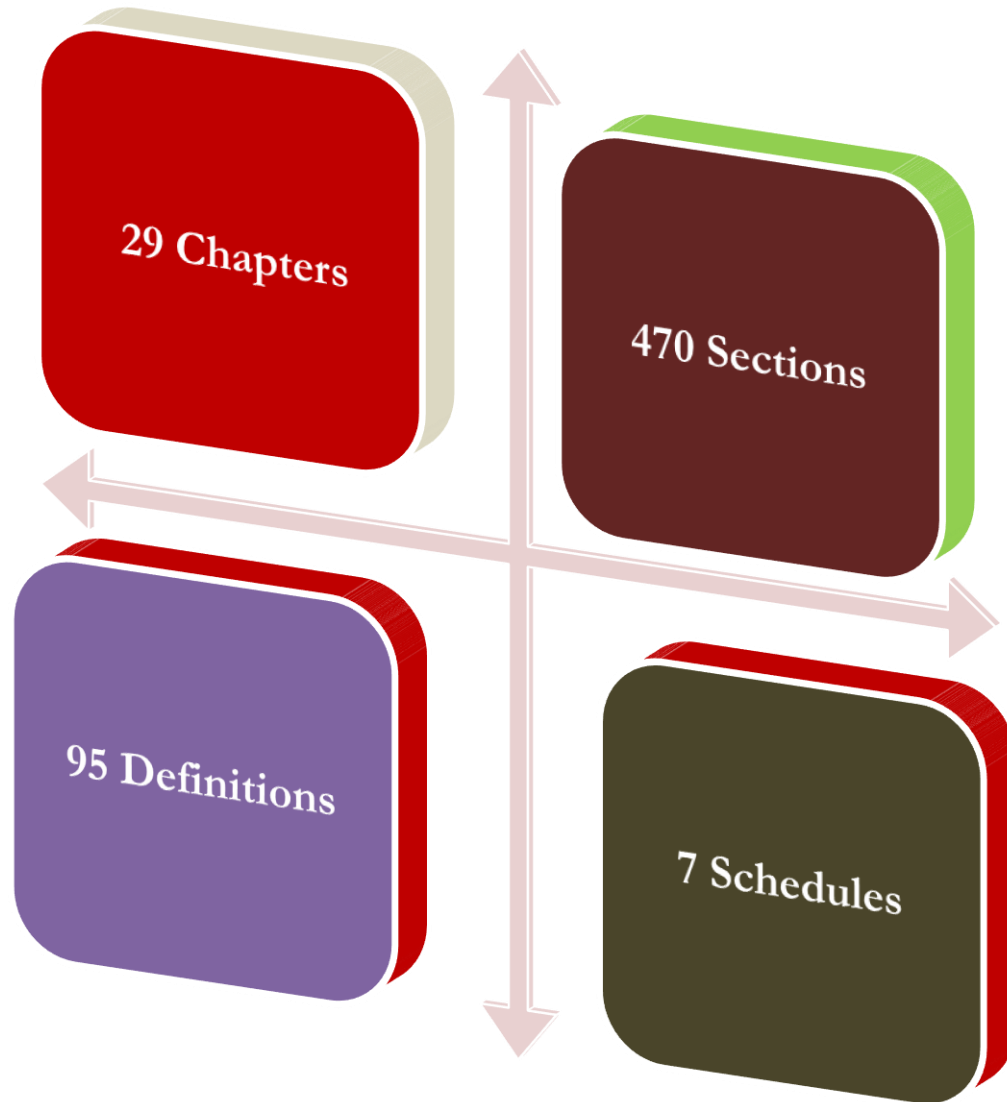
Companies Bill, 2011 (No. 121 of 2011) introduced in Lok Sabha on 14th December 2011

Bill was approved by Rajya Sabha on 8th August 2013, and received President's assent on 29th August 2013

Rationale behind the New Companies Act, 2013

- Immense increase in number of Companies from about 30,000 (approx) in 1956 to nearly 8 lakhs;
- Recognition of good corporate practices & technological improvements;
- Simplification of law by locating related provisions under one clause/section
- Insertion of new provisions to meet the current economic environment

Structure of Companies Act, 2013



Details	Companies Act, 1956	Companies Act, 2013
Parts/ Chapters	13	29
Sections/clauses	658	470
Schedules	15	7
No. of clauses in Section 2 (Definitions)	67	95

KEY CHANGES

Key changes

- Concept of Small Company has been introduced
- Concept of One Person Company has been introduced
- Key Managerial Personnel is defined
- Concept of Independent Director has been introduced
- Consolidation/ division of shares involving changes in the voting percentage requires approval of the Tribunal.

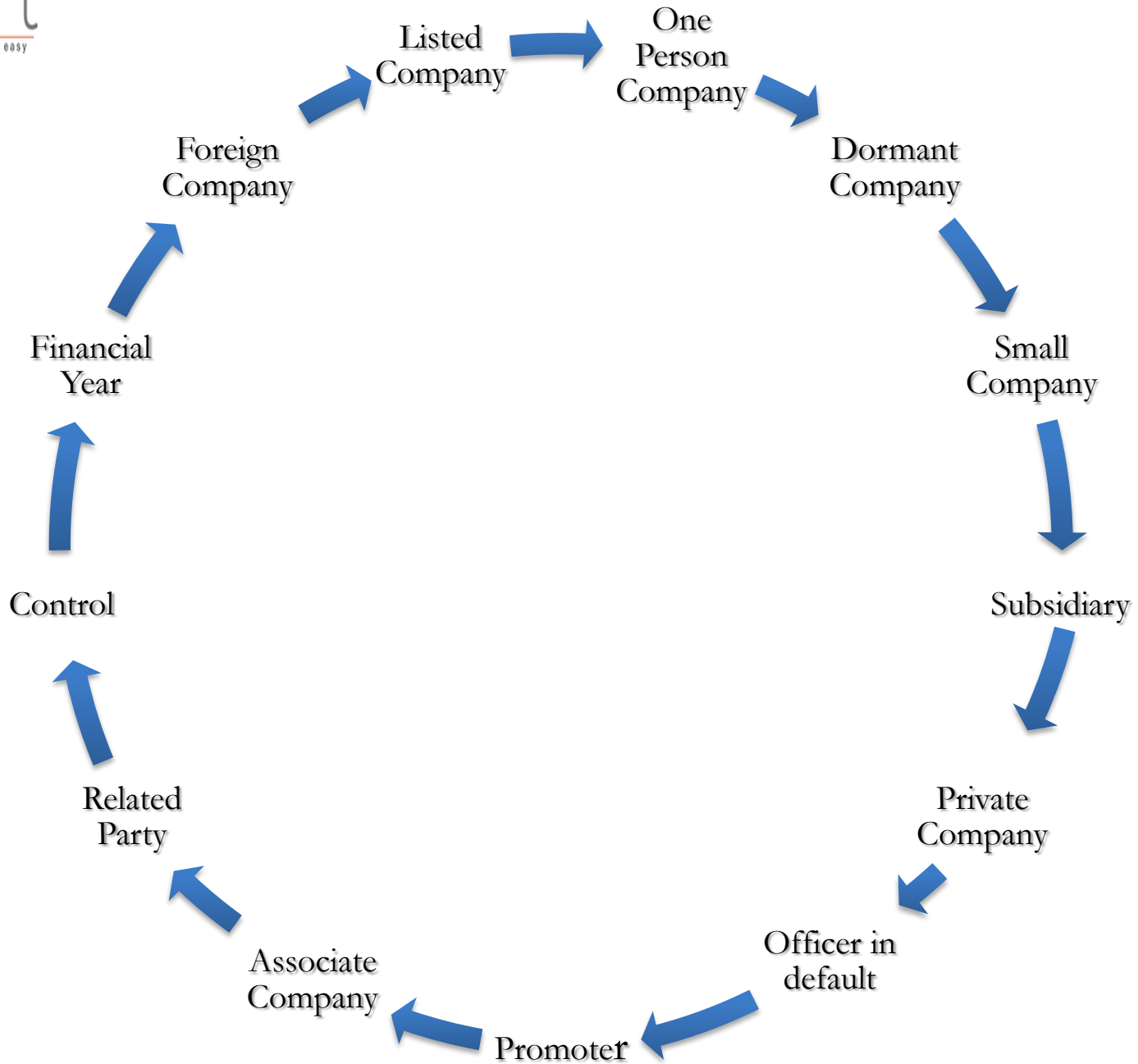
Key changes (contd...)

- Maximum number of members in case of private company is increased from the existing 50 to 200
- Limited Liability Partnership is allowed to be appointed as auditor [Section 139]
- The books of accounts, documents, records, registers or minutes etc may be kept in electronic form also [Section 128 read with Section 2(12)]
- Companies are provided one year period for complying with new provisions relating to composition of Board of Directors [Section 149(2)]

Key changes (contd...)

- At least 7 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)]
- The provisions related to inter-corporate loans and investments have been extended to include loan and investment to any person also [Section 186]
- Directors and Key managerial personnel of a Company are prohibited from forward dealings in securities of the Company [Section 194]

DEFINITIONS



- Introduction of One Person company akin to UK Companies Act

“One Person Company means a company which has only one person as a member”

- Name shall be suffixed with OPC or one person Company

- Introduction of Dormant Status: Formed and registered for future project, holding an asset or intellectual property etc
- Companies not carrying ‘significant accounting transaction’ or an ‘inactive companies’
- The explanation to ‘Inactive company’ and ‘significant accounting transaction’ is contained under the said Section
- ROC may *suo-moto* issue show cause notice for dormant status to the Companies who has failed to file financial statements or annual returns for two financial years consecutively.

Small Company - 2(85)

- Companies other than a public Company and having
 - ❖ INR 50 lakh of paid-up share capital (*or higher limit to be prescribed not exceeding INR 5 Crore; or*
 - ❖ Turnover not exceeding INR 2 Crore (*or higher limit to be prescribed not exceeding INR 20 Crore*)

Note:

This clause shall not apply to-

- ❖ A holding company or a subsidiary company;
- ❖ A company registered under Section 8[Companies having charitable objects etc]; or
- ❖ A company or body corporate governed by any Special Act;

Compliance requirements

Particulars	One Person Company	Small Company	Dormant Company
Cash Flow Requirement [Proviso to Section 2(40)]	NA	NA	NA
Annual Return [Proviso to Section 90]	CS/Director		NA
Board Meetings [Section 173(5)]	One meeting in each half of the calendar year and gap between two meetings not less than 90 days.		
Quorum	NA	2 members personally present	NA
Others	Limited Liability and flexibility in compliance	Relatively less compliance and easy to operate	Can be converted to Active Company later [Section 455(5)]

Subsidiary – 2(87)

- 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 either on its own or together with one or more of its subsidiary companies:

Provided that prescribed Companies shall not have layers of subsidiaries beyond such numbers as may be prescribed.

Impact:

- ❖ Under the present provisions of the Companies Act, 1956 it is more than one half of the **total equity share capital**, however the term used by the Companies Act of 2013 is **'share capital'** which may include all kinds of share capital including equity, preference or any other convertible securities

- A Company having-
- ❖ Minimum paid-up share capital of INR 1 lac; and
- ❖ Restricts the right to transfer its shares; and
- ❖ Limits the number of its members to 200 except in case of OPC

Impact:

- ❖ Ease of capital raising by offering securities to more than 50 members
- ❖ However, Section 42 of the new Act (i.e. Private Placement) restricts the offer to not more than 50 people or such higher number as may be prescribed by Rules in this regard. These contradictory provisions need to be reconciled.

Officer in default – 2(60)

The definition of the term has been extended to include the following class of persons other than already covered under Section 5 of the Companies Act, 1956:

❖ 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, authorizes, actively participates in, knowingly permits, or knowingly fails to take active steps to prevent, any default.

- ❖ Every Director, in respect of a contravention of any of the provisions of this Act, who is aware of any contravention by virtue of 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.

- ❖ Person 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, as a shareholder or a director or otherwise; or
- ❖ In accordance with whose advice or directions the Board is accustomed to act

Provided that nothing shall not apply to a person who is acting merely in a professional capacity

- A company in which that other company has a **significant influence**, but which is not a subsidiary company of the company having such influence and **includes a joint venture company**

For the purpose of this clause “Significant influence” means:

- ❖ Control of at least 20% of total share capital; or
- ❖ business decisions under an agreement;

Related party – 2(76)

- A director or his relative;
- A Key Managerial Personnel ('KMP') or his relative;
- A firm, in which a director, manager or his relative is a partner;
- A private company in which a director or manager is a member or director;
- A public company in which a director or manager is a director or holds along with his relatives, more than two per cent of its paid-up share capital;
- Any body corporate whose Board of Directors, managing director and manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager;

- Any person on whose advice, directions or instructions a director or manager is accustomed to act:

Impact:

- All Related Parties Transactions (“**RPT**”) to be at arm’s length price, similar to ALP under the Income-tax Act, 1961 and the Customs SVB provisions

- Include the right to appoint majority of the directors; or
- to control the management or policy decisions exercisable by a person or persons acting in concert, directly or indirectly, including by virtue of their shareholding; or
- Management rights or shareholders agreements or voting agreements or in any other manner;

Financial year – 2(41)

- In relation to any company or body corporate-
- ❖ Means the period ending on the 31st day of March every year
- ❖ The National Company Law Tribunal (“**NCLT**”) shall have the power to allow a different financial year for companies which are either holding companies or subsidiaries of a company incorporated outside India so as to enable consolidation of accounts of such companies
- ❖ Window of 2 years have been given to align the financials as per new Companies Act, 2013.

- 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

Impact:

- ❖ Currently there is no specific provision for mandatory registration of foreign companies engaged in online business practices, e-commerce activities etc

Listed Company – 2(52)

- Means a company which has **any of its securities** listed on **any recognized stock exchange**

Impact:

- ❖ The new definition of listed company provides that any Company having securities like debentures listed on any stock exchange would be termed as listed Company.

INCORPORATION OF COMPANY AND MATTERS INCIDENTAL THERETO

Comparative Analysis

Particulars	Under Companies Act, 2013	Companies Act, 1956
Type of Companies	<ul style="list-style-type: none"> •Private Company •Public Company •One Person Company 	<ul style="list-style-type: none"> •Private Company •Public Company
Affidavit by Subscribers and Directors of the Company at the time of Incorporation	Affidavit from the Subscribers and the First Directors is required	Earlier no Affidavit was required, however as per Circular No. 11/2013 dated 29 th May 2013, the same is required
Object Clause in Memorandum	No bifurcation [Section 4]	Object clause of Memorandum classified as follows: <ul style="list-style-type: none"> •Main objects and objects incidental or ancillary to the main objects •Other objects [Section 13]

Comparative Analysis – Cont’d...

Particulars	Under Companies Act, 2013	Companies Act, 1956
Registered office at Incorporation	<ul style="list-style-type: none"> •A company may have registered office by the 15th day of its incorporation •State of registered office to be decided at the time of Incorporation •Verification of registered office has to be filed within 30 days of incorporation •An address for correspondence to be provided until registered office is established <p>[Section 12]</p>	<ul style="list-style-type: none"> •Registered office to be decided and existing on and from the date of its incorporation itself
Commencement of Business [Earlier it was not applicable to Private Companies]	<p>Declaration in prescribed form has to be filed with the concerned ROC, providing that the subscribers have paid the value of shares agreed to be taken by them within 180 days from incorporation</p> <p>[Section 11]</p>	<ul style="list-style-type: none"> •Statement in lieu of prospectus is to be filed •Declaration from Directors with respect to value of shares have been paid •ROC issues certificate of commencement of business after receiving the declaration

SHARE ALLOTMENT AND CAPITAL

Comparative Analysis

Particulars	Under Companies Act, 2013	Companies Act, 1956
Issue of shares at discount	A company cannot issue shares at discount other than a 'sweat equity' no provision has been provided for any approval under the Companies Act [Section 53]	A Company may issue shares of a class of shares already issued at discount subject to conditions specified [Section 79 (2)]
Application of premium	May also be utilized for buy-back of its own shares or other securities apart from other purposes mentioned [Section 52 (2) (e)]	No such provision contained under Section 78 with regard to utilization of premium towards purchase of its own securities
Time period for issue of share certificates	Allotment- 2 months Transfer and transmission- 1 month [Section 56(4)]	Allotment- 3 months Transfer and transmission- 2 months [Section 113]

Comparative Analysis – Cont’d...

Particulars	Under Companies Act, 2013	Companies Act, 1956
Further issue of Share Capital	The provision will now be applicable to all types of companies [Section 62]	Provisions of Section 81 provides that the shares shall be offered first to the existing members. However, these provisions are not applicable to Private Companies. [Section 81]
Private Placement	Provision for issuance of securities on private placement basis has been prescribed [Section 42]	Private Placement was not defined
Issue of Bonus Shares	Separate provisions for issue of Bonus Shares to shareholders [Section 63]	No separate provisions in the Act. However, issuance of bonus shares being regulated by SEBI (ICDR) Regulations, 2009

DIRECTORS, KMP's & GOVERNANCE

New concepts

**Key
Managerial
Personnel
(KMP)**

**Indepe
nt Director**

**Woman
Director**

**Resident
Director**

**Non
Executive
Director**

Comparative Analysis

Particulars	Under Companies Act, 2013	Companies Act,1956
Appointment of Women Director	Second proviso to Section 149 (1) ❖ Woman Director in prescribed Companies	No such provision
Number of Directorship for an Individuals	Section 165 ❖ Maximum upto 20 and not more than 10 public companies ❖ Overall cap of 20 now including alternate directorship	Section 275 read with Section 278 ❖ Maximum upto 15 (directorships in private companies, alternate directorships are not counted)
Resident Director	Section 149 (3) ❖ Atleast 1 director to be Resident Director and stay in India for atleast 182 days during the calendar year	No such provisions
Independent Director	The new Act provides for the definition, liability, qualification, terms and other details of Independent Directors [Section 149 (6)]	The Act is silent on Independent Directors. However, the provisions with regard to 'Independent Directors' contained in listing agreements

Comparative Analysis – Cont’d...

Particulars	Under Companies Act, 2013	Companies Act, 1956
Numbers of Directors in a Company	The maximum limit of Directors in Public and Private Company has been limited to 15. However, it may increase by passing Special Resolution in General Meeting [Section 149 (1)(b)]	Act is silent about maximum number of Directors in case of Private Companies. However, Private Companies may fix maximum number of Directors in their AOA. The maximum limit of Directors in Public Company is 12. The Companies may increase beyond such limit subject to prior permission of the Central Government.
Nominee Director	It provides that subject to Articles, Board can appoint a Director nominated by any institution in pursuance of any law or agreement [Section 161(3)]	No specific provision except the one appointed by Central Government

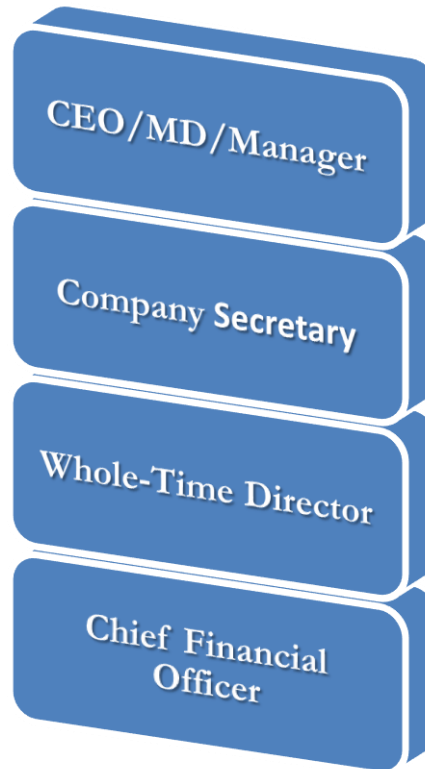
Comparative Analysis – Cont’d...

Particulars	Under Companies Act, 2013	Companies Act,1956
Alternate Director	It provides that Alternate Director can only be appointed in case a Director leaves India for a period of not less than 3 months [Section 161(2)]	An Alternate Director can be appointed in place of a Director who is absent from the State for not less than 3 months in which Board Meeting generally convened [Section 313]
Duties of Directors	The new Act specifically provides the duties of Directors towards Company under Section 166	No other duties prescribed apart from the duty to make disclosures
1 st Board meeting	Specific provision for holding <u>1st board meeting within 30 days</u> from incorporation Section 173	No such requirement of holding a board meeting within 30 days
Minimum number of Board Meeting	4 meetings every year such that maximum gap is 120 days between two meetings [Section 173]	<ul style="list-style-type: none"> • 4 meetings every year • 1 meeting every quarter [Section 285]

Comparative Analysis – Cont’d...

Particulars	Under Companies Act, 2013	Companies Act,1956
Board meeting notice timeline	Minimum 7 days notice for Board meeting [Section 173(3)]	No such provision
Time period for holding AGM	First AGM of the Company shall be held within the period of 9 months from the closure of financial year [Section 96]	First AGM of the Company shall be held within 18 months from the date of Incorporation or 9 months from the closure of financial year whichever is earlier [Section 166 read with 210(3)(a)]
Quorum for General Meeting of Public Company	Unless the articles of the company provides for a larger number, the quorum for public company will now depend upon the number of members of the company: 5 members (if more than 1000 members) 15 members (if more than 1000 members but up to 5000 members) 30 members (if more than 5000 members) [Section 103]	Unless the articles of the company provide for a larger number, five members personally present in the case of a public company shall be the quorum for a meeting of the company

Key Managerial Personnel (KMP)



- ❖ KMP's covered under 'Officer in Default' [Section 2(60)] & 'Related Parties' [Section 2(76)]
- ❖ A whole time KMP shall not hold office in more than one company except in its subsidiary company at the same time

DECLARATION AND PAYMENT OF DIVIDEND

Comparative Analysis

Particulars	Under Companies Act, 2013	Companies Act,1956
Declaration of Interim Dividend	The BOD of a Company may declare Interim Dividend during any financial year out of the surplus in the P & L Account and out of profits of the financial year in which such interim dividend is sought to be declared [Section 123(3)]	Declaration of Interim Dividend was subject to same conditions as of dividend [Section 205(1C)]
Rate of Interim Dividend	In case the Company has incurred loss during the current financial year up to the end of the quarter immediately preceding the date of declaration of interim dividend, such interim dividend shall not be declared at a rate higher than the average dividends declared by the Company during the immediately preceding three financial years	Declaration of Interim Dividend was subject to same conditions as dividend [Section 205(1C)]

Particulars	Under Companies Act, 2013	Companies Act,1956
Transfer to Reserves on Declaration of Dividend	Company can at its discretion transfer such % of profit to the reserve before declaring dividend as it deems necessary and moreover such transfer is also not mandatory [First proviso to Section 123(1)]	Transfer of a fixed % of profits to reserve before declaring dividend is mandatory every year [Section 205(2A)]

ACCOUNTS OF COMPANIES

Comparative Analysis

Particulars	Under Companies Act, 2013	Companies Act,1956
Books of Accounts	<p>Books of accounts may be kept in electronic form [Section 128 read with 2(12) & 2(13)]</p> <p>Directors of the company can inspect the Books of Accounts of the subsidiary, with the authority of the Board of Directors [Section 128(3)]</p>	<p>There is no such specific provision which provides that the books of accounts to be kept in electronic form</p>
Revision of Financial Statement	<p>Directors of the company may prepare revised financial statements or a revised report of any of the 3 preceding financial years pursuant to approval of the tribunal [Section 131(1)]</p>	<p>No provision for revision of financial statement</p>
Extension of Financial year	<p>The Act doesn't provide anything on the extension of the financial year</p>	<p>Financial year may be more or less than a calendar year but cannot exceed 15 months, except where Registrar has granted special permission for extension till 18 months [Section 210(4)]</p>

Particulars	Under Companies Act, 2013	Companies Act,1956
Accounts of Subsidiary Company	Along with financial statements, consolidated financial statements of all subsidiaries shall be laid before the Annual General meeting [Section 129(3)]	No requirement for laying the accounts of the subsidiary company
Format of Balance Sheet & Profit & Loss Account	The financial statements shall be in the form as may be provided for different class or classes of Companies in Schedule III (279)	The financial statements shall be in the form set out in Part I and Part II of Schedule VI

LOAN AND INVESTMENT BY COMPANIES

Comparative Analysis

Particulars	Under Companies Act, 2013	Companies Act, 1956
Applicability	Applicable to Public and Private as well [Section 186]	Not applicable to Private Company [Section 372A(8)]
Coverage	<ul style="list-style-type: none"> • Loan <u>to any person</u> or <u>other body corporate</u> • <u>Guarantee</u> or providing <u>security</u> in connection with a loan to any other <u>body corporate or person</u> • Acquiring by subscription or otherwise, securities of a company by other company 	<ul style="list-style-type: none"> • Loan to any other body corporate • Guarantee or security in connection with a loan made by any other person to, or any other person by, any body corporate • Acquiring by subscription or otherwise, securities of a company by other company
Exemptions	<ul style="list-style-type: none"> • No such exemption 	<ul style="list-style-type: none"> • Exemption available for loans, investments and guarantees given by Holding Company to its WOS

Comparative Analysis – Cont’d...

Particulars	Companies Act, 2013	Companies Act, 1956
Exemptions (contd)	<ul style="list-style-type: none"> The exemption available to <u>infrastructure companies</u> continues for loans, provision of security and guarantee but not for <u>investments</u> 	<ul style="list-style-type: none"> Exemption available to infrastructure companies for loans, provision of security and guarantee, investments
Rate of loan	<ul style="list-style-type: none"> At a rate of interest not lower than the prevailing yield of the 1, 3, 5 or 10 years Government Securities (<u>G-Sec</u>) closest to the tenor of the loan 	<ul style="list-style-type: none"> At the prevailing <u>bank rate</u>
Upper limit/ Capping	<p>Higher of</p> <ul style="list-style-type: none"> 60% (Paid-up share capital+ free reserves + <u>Securities premium account</u>) or 100% (free reserves and <u>securities premium account</u>) 	<p>Higher of</p> <ul style="list-style-type: none"> 60% (Paid-up share capital+ free reserves) or 100% (free reserves)

Particulars	Companies Act, 2013	Companies Act, 1956
Approval for exceeding the limit	<u>No change</u> . Prior approval by Special resolution passed in general meeting	

Impact:

- Applicable on Private Companies as well
- Definition widened as loans given to '**any person**' (earlier only body corporate was covered) included
- Clarity brought on inclusion of securities premium
- Rate of loan in line with yield of G-Sec.

CORPORATE SOCIAL RESPONSIBILITY

Applicability:

Every Company having

- Net worth of INR 500 Crore or more; **or**
- Turnover of INR 1000 Crore or more; **or**
- Net profit of INR 5 Crore or more during ***any financial year***

shall constitute a Corporate Social Responsibility Committee.

CSR Committee:

- Constitution: At least 3 Directors; One director shall be an independent director

Role of CSR Committee: [Section 135(3)]

- Formulate and monitor the CSR policy which shall indicate the activities to be undertaken by the company as specified in Schedule VII;
- Recommend the amount of expenditure to be incurred on such activities

Role and responsibility of Board: [Section 135(4) & (5)]

- Disclose contents of policy in report and also place it on the company's website, if any
- To ensure that the CSR policy is complied;
- The company spends **at least 2% of the average net profits** made by the company made during the three immediately preceding financial years;
- In case of failure, Board has to give reasons in its report

REGULATORY BODIES

Constitution

- Central Government to constitute National Financial Reporting Authority (“**NFRA**”) by notification for matters relating to accounting and auditing standards under the Act.
- NFRA given powers of a civil court for investigation.

Composition

- 1 chairperson (who shall be a person of eminence and having expertise in accountancy auditing, finance or law) & members (Maximum 15)

Role

- Advisory role, monitoring compliances & Investigation of professional misconduct by Chartered Accountant’s;
- Oversee the quality of service of the Auditors;

Penalization under NFRA

Penalty of not less than one lakh rupees, which may extend to five times of the fees received, in case of Individuals; and not less than ten lakh rupees, which may extend to ten times of the fees received, in case of firms



Debar from Professional Practice for six months to ten years

Constitution

- Central Government by notification to constitute NCLT & its appellate body, NCLT (*Proposed to replace CLB, BIFR, AIFR and Company Bench of High Court*)

Role

- Quick disposal of cases; likely within 3 months [Section 422]
- All proceedings under the Companies Act, 1956 including proceedings relating to Arbitration, Compromise & Arrangement shall be transferred to NCLT [Section 434 (1) (c)]
- Special Courts can be set up Central Government for speedy trials [Section 435]

Constitution

- Central Government by notification to establish an office to be called the Serious Fraud Investigation Office to investigate frauds relating to company;

Note: Till the time SFIO is not established, SFIO already set up by CG in terms of directions of Government of India Resolution shall be deemed to be the SFIO for the purpose of this Section.

Role

- Investigation into affairs of the company on receipt of a report of the Registrar or inspector under Section 208;
- Investigation Report of SFIO equivalent to Police Report for framing charges

Role (cont'd)

- Power to arrest in case of certain cognizable offences [Section 212(8)]
- The SFIO shall submit the investigation report to the Central Government

MERGERS AND ACQUISITIONS

Mergers and Acquisitions

Particulars	Under Companies Act, 2013	Companies Act, 1956
Merger of Indian Co into Foreign Co	<ul style="list-style-type: none"> • Permitted • Prior approval of the RBI required before any foreign company merges with an Indian company or vice versa 	<ul style="list-style-type: none"> • Not permitted
Merger or amalgamation between small companies or between holding companies and a WOS or prescribed companies	<ul style="list-style-type: none"> • Proposed new process of merger/ amalgamation of small companies or group companies involves the approval of • shareholders holding at least 90% of the shares of the company • RoC • Official liquidator • Central Government 	<ul style="list-style-type: none"> • No such provision

Mergers and Acquisitions

Particulars	Under Companies Act, 2013	Companies Act, 1956
Auditors certificate	<ul style="list-style-type: none"> Auditor to certify accounting treatment in the scheme is in conformity with the AS prescribed under Section 133 of the new Act 	<ul style="list-style-type: none"> No such provision for Private Companies
Dispensation of the meeting of creditors	<ul style="list-style-type: none"> Creditor or class of <u>creditors, having at least 90% value</u> agree and confirm, by way of an <u>affidavit</u> to the scheme [Section 233] 	<ul style="list-style-type: none"> Possible to seek approval of dispensation based upon consent letters received

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