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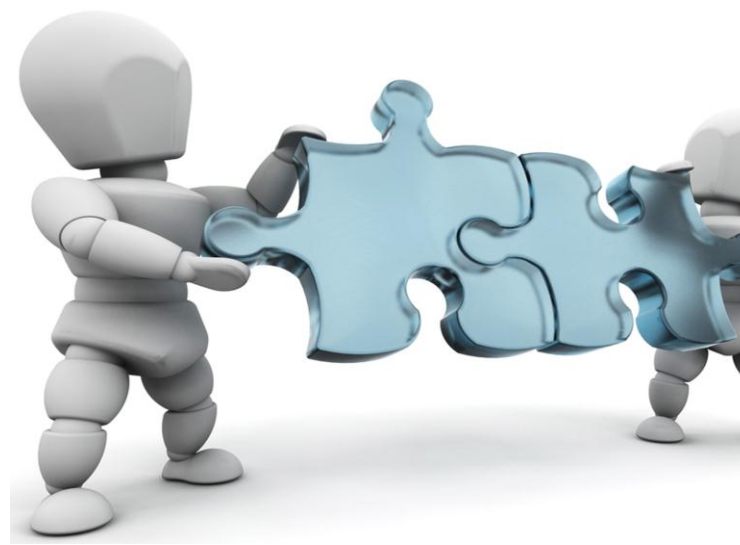
Handbook and a Quick Referencer on Few Important Provisions of Companies Act 2013



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Preface



Applicability of Companies Act 2013

A number of provisions of the Companies Act, 2013 including those relating to maintenance of books of account, preparation, adoption & filing of financial statements, auditors reports and the Board of Directors report (Board's report) have been brought into force with the introduction of the new Companies Act 2013.

The Ministry of Corporate Affairs has notified 183 new sections of the Companies Act 2013 by way of notification dated 26th March 2014 in addition to 100 sections which were already notified by notification dated 12th September 2013. These sections have been notified to come into effect from 1st April 2014. With the notification of these sections, now a total of 283 sections of the new Act stands notified. All of these provisions have been made applicable giving the companies a timeframe of 3 to 12 months to comply with the various sections notified in the new Act.

It seems that lot of provisions have been made / modified keeping in mind the high profile cases of the previous year's, such as the 2G scam and the Sahara case etc. In the pursuit to safeguard the interest of the public shareholders, lenders and general public, the persons entrusted with drafting the law have amended a lot of provisions and also introduced lot of penal as well as civil consequences, making it very cumbersome even for smaller companies which to an extent is quiet unwarranted.

We are of the opinion that every person entrusted with the accounts, legal and financial verticals of the company, should go through these amendments and tag the necessary provisions that would be specifically applicable for them. Thereafter brainstorm and chart out the action plan in a manner that will help them to comply with the revised Act, with the least administrative and financial hardship.

We hereby present before you a small compilation on the important provisions and amendments of the Companies Act 2013. This would give you a basic understanding of all the important provisions that require an urgent attention in order to finalize the way forward. We hope that you would find our booklet informative. In case of any clarification required please do not hesitate to contact us.



Organizational Structure (1/3)

There are new kinds of structuring options available now while incorporating a Company. Introduction of structures like the Small Company, One Person Company, Dormant Company etc. have been made in this Companies Act. At times one would need a Company status just for seeking public monies either by way of capital or debt. This kind of new structures would be helpful for people looking to drive the business on their own. Below is the gist of new options that is now on hand.

Small Company

"Small company" means a company, other than a public company.

Sr. no	Particulars	Amount
1	Paid up share capital does not exceed	INR 50 Lakhs
2	Turnover does not exceed	INR 200 Lakhs

Note: Small Company cannot be a holding or subsidiary company

Some of the relaxations provided to a small company are as indicated below:

- Cash flow statement is not required which is otherwise compulsory for most type of Companies
- Annual Return can be signed by one director if there is no Company Secretary (CS).
- Board meeting is required to be held at least once in six months with a gap of not less than of 90 days between the meetings.
- Company doesn't have to be registered specifically to become a small Company. One automatically can avail the benefits of a small company.

Organizational Structure (2/3)



One Person Company (OPC)

A new concept of 'One Person Company' (OPC) has been introduced in Companies Act 2013. Till recently, if you wanted to set up a private company, one would require at least two persons/partners/relatives because the law mandated a minimum of two shareholders. Now a company can be formed even with only one member and it shall be called OPC

OPC will have only one member. The memorandum of such OPC is required to indicate the name of the person who shall become member in the event of death or incapacity of the sole member. OPC has to specifically mention the word "one person company" in brackets below the name of the company wherever it is printed, affixed or engraved.

Major Changes in OPC as compared to Private Limited Company

- OPC can have even 1 director against minimum 2 for a Private Ltd company
- Where an OPC has only 1 director, the date on which the resolution is signed and dated by such director is considered as the date of the board meeting
- Provisions of board meeting, quorum and interested director shall not apply to OPC
- OPC need not hold an AGM
- Provisions relating to notice, explanatory statement, EGM, quorum, voting, chairman, poll, proxies, postal ballot, does not apply to OPC.
- Financial Statements to be signed by only one director needs to be filed with ROC within 180 days from the end of Financial Year
- OPC can also contract with the sole member who is a director

Dormant Company

Dormant Company is a very important concept under the New Companies Act of 2013. There are number of Companies in India that are either incorporated for future projects or incorporated to hold assets and are yet to carry out the operations or are in operational for a substantial period. Hence, where a company is formed and registered under 2013 Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company may make an application to ROC to obtain status as a "dormant company"



Organizational Structure (3/3)

In many cases, the dormant status did not mean that these Companies are defunct. Due to the nature of business of these types of Companies, they are not in operation for the time being. Earlier, there was no relaxation under the law to treat them at a different footing than the active Companies of the same class. They were required to file forms as usual, hold board meetings at prescribed intervals and so on so forth.

- “inactive company” means a company which has not been carrying on any business or operation, or has not made any significant accounting transaction during the last 2 FYs, or has not filed financial statements and annual returns during the last 2 FYs;
- “significant accounting transaction” means any transaction other than
 - a) Payment of fees by a company to ROC;
 - b) Payments made by it to comply with any legal requirement
 - c) Allotment of shares to fulfill the requirements of Companies Act 2013
 - d) Payments for maintenance of its office and records
- Maximum Period to continue with status of Dormant Company : Maximum 5 consecutive years
- Dormant status does not come automatically. An application for the same has to be made as stated herein below for obtaining the status of Dormant Company.
Few of the relaxations for the Dormant Companies
 - a) Cash flow statement is not required to be prepared for dormant company
 - b) Board meetings required to be held at least in each half of a calendar year and the gap between the 2 meetings is not less than 90 days. Hence, if planned properly only 2 meetings are required during the year.
 - c) Option to make it active anytime by making necessary applications.

As you are aware earlier there were only two options available with the shareholders either to float a private limited company or a public limited company with shares being widely held or closely held. Keeping the above in mind now a businessman has other options as well.

Directorship, Management & Administration (1/6)



Directorship:

Number of directorship:

Maximum numbers of directorship is restricted to 20 companies. However, the maximum number of public companies (including private companies that are either holding or subsidiary of a public company) in which a person can be appointed as a director cannot exceed 10.

Board Report

A new concept in form of a Board Report for every Listed Company and Public Company having a paid up share capital of INR 25 Crores or more, shall be made which will include performance report of its Board members, Committee Members and Individual directors including independent non-executive directors.

Resident director: Every company should now have compulsorily a Resident Director

Woman Director:

Following companies need to comply with the requirement of having at least one woman director as per section 149 of the Companies Act 2013.

Companies	Listed Companies	Public Companies	Private Limited Companies
Appointment criteria	Mandatory for all listed companies to appoint at least 1 woman director	Mandatory for Public Companies having <ul style="list-style-type: none"> - paid-up share capital of INR 100 crore or more, - a turnover of INR 300 crore or more 	Not Mandatory

Note: In this case the paid up share capital and the turnover as the case may be as on the date of latest audited financial statements shall be taken into account.

Independent Directors

In case of Listed Companies	In case of other public companies
At least one-third of the total number of directors as independent directors	At least two out of the total directors are required to be independent directors
	Public companies include: <ol style="list-style-type: none"> i. Companies having paid up share capital of INR 10 crore or more; or ii. Companies having turnover of INR 100 crore or more; or iii. Companies having outstanding loans, debentures and deposits, exceeding INR 50 crore rupees



Directorship, Management & Administration (2/6)

- a) All the listed and public companies shall comply with above requirement within one year from such commencement i.e. 01st April 2014. Provisions shall not apply to a private limited company.
- b) Provisions shall not apply to a private limited company.
- c) If company ceases to fulfill any conditions for 3 consecutive years only then the requirement of independent directors can be dispensed with.
- d) Independent and non - executive directors can be held liable in respect of acts which had occurred with his knowledge attributable through boards meetings/board processes if he failed to act diligently.
- e) No independent director can hold office for more than two consecutive terms without serving a cooling period for 3 years after completing two consecutive terms. During the cooling period the independent director cannot be associated with the company in any manner direct or indirect. These provisions would stand prospective i.e. persons already acting as independent directors can be appointed for only one more term – after that cooling period will apply.
- f) A person can act as an Independent director in maximum 7 Companies. A person who is a WTD in some company can act as an Independent director only in 3 other Companies

Small shareholders directors

The Companies Act, 1956, has a provision for election of a small-shareholder director but it is not mandatory. In order to protect the interest of shareholders every prescribed company (as mentioned below) shall appoint a director elected by small shareholder's called Small Shareholders director.

Particulars	Description
Applicability	Applicable only to listed companies
Who is a Small Shareholder	A small shareholder means a shareholder holding shares of nominal value of not more than INR 20, 000
Procedure for appointing small shareholders director	On receiving notice from not less than 1000 small shareholders or 1/10 th of total small shareholders whichever is less appoint a director. Alternatively company may also suo moto appoint a small shareholder.
Other points to be noted	<ol style="list-style-type: none"> A) No person shall hold the position of small shareholders' director in more than two companies at the same time B) Tenure in the Company will be maximum 3 years and he shall not be liable for rotation. C) Proposed person may not necessarily be a shareholder D) The person shall not be a small shareholder in any company operating in the same sector

Directorship, Management & Administration (3/6)



Committees under the new Companies Act 2013.

The new companies Act provides for mandatory setting up of the following committees of the BOD for certain companies:

- Audit committee that shall also oversee the vigil committee .
- Stakeholder relationship committee
- Nomination and Remuneration committee

Vigilance Committee: Establish a Vigil mechanism for their directors and employees to report genuine concern or grievances which provides for adequate safeguards against victimization of employees and directors. Vigil mechanism is applicable to the following class of companies

Companies	Listed Companies	Companies
Appointment criteria	Mandatory for all listed companies	Mandatory for Companies <ul style="list-style-type: none"> - Accepting public deposits - Borrowings in excess of INR 50 crores

Note: The vigilance committee is a part of the audit committee where such committee is in existence. In case of other companies, a director should be nominated to overlook the vigilance functions. These provisions are applicable to a private limited company as well.

The below summarizes the key requirements of the various committees:

Particulars	Audit Committee	Nomination and Remuneration committee (NRC)	Stakeholders Relationship Committee	Corporate Social responsibility committee
Applicability	1. All Listed companies and 2. All public companies <ul style="list-style-type: none"> a. Having paid up capital of more than INR 10 crores; b. Having turnover of more than INR 100 crores; Having in aggregate, outstanding loans or borrowings or deposits exceeding INR 50 crores or more.		Companies whose total Number of shareholders, Deposit holders, debenture Holders and other security Holders exceed 1,000 at any time during a FY	All companies having <ul style="list-style-type: none"> • Net worth in excess of INR 500 crores or; • turnover in excess of INR 1000 crores or; • Net profit in excess of INR 5 crores. mandated to spend, in every FY, minimum 2% of the average net profits



Directorship, Management & Administration (4/6)

Particulars	Audit Committee	Nomination and Remuneration committee (NRC)	Stakeholders Relationship Committee	Corporate Social responsibility committee
Major Roles and Responsibilities	<ul style="list-style-type: none"> To recommend appointment and remuneration of auditors To review and monitor the auditor's independence and performance and effectiveness of audit process To examine financial statements and the auditors' report To approve or modify any related party transactions To scrutinize inter-corporate loans and investments 	<ul style="list-style-type: none"> To identify persons who are qualified to be directors of the company and who can be appointed in senior management To recommend to BOD a policy relating to remuneration of directors, KMP and other employees To evaluate performance of every director of BOD 	To consider and resolve grievances of the security holders of the company	<ul style="list-style-type: none"> The committee to monitor CSR policy from time to time. The committee to formulate and recommend to the board, a CSR policy, which will indicate the activities to be undertaken by the company. The committee will also need to recommend the amount of expenditure to be incurred and monitor the policy from time-to-time
Date from which effective	Existing companies having audit committee's already in place should reconstitute their board with the new requirements within one year of such commencement i.e. 1st April 2014	To be constituted from Financial Year 2014-15	To be constituted from Financial Year 2014-15	To be constituted from Financial Year 2014-15

Management and administration

Some significant features relating to BOD and general meetings of members are summarized as under

Note: Elaborate rules have been specified to conduct board meetings via video conferencing which everyone should go through as the same will assume paramount importance in times to come

Directorship, Management & Administration (5/6)



Important changes relating to Board Meetings

Sr. No.	Particulars	Provision contained in Existing Companies Act, 1956	Provision contained in Companies Act 2013
1	First Board Meeting	No specific time stipulated for holding first board meeting.	Every company shall hold the first meeting of the Board of Directors within 30 days of incorporation
2	Time frame for sending Notice	No specific time frame for sending notice	Minimum 7 days' notice is required
3	Time Gap between two meetings	At least one meeting to be held in every quarter.	Not more than 120 days shall be between two consecutive meetings of the Board

Companies Act 2013 has simplified the process of holding general meeting and has recognized voting by electronic means.

Electronic Voting:

Now a shareholder need not physically attend the General meetings of the Company. The Company shall create a secured system which gives the shareholders a facility to cast his vote in a secured manner. The company shall generate a user id and a password for every shareholder who shall be given an option to cast his vote on the platform created by the Company for casting the votes.

With the introduction of e voting, companies who not having large attendance during their general meetings may have to consider the fact that lot of people might vote for a particular resolution on an online mode.

Annual General Meeting

The provisions relating to holding of AGM in Companies Act 2013 are similar to 1956 Act except for the below:

- First AGM should be held within a period of 9 months from the date of closing of the first financial year of the company
- Annual General Meeting can be held on a Sunday but only from 9 AM to 6 PM.
- Notice may now be sent in an electric form as well. Sending a physical notice is not a compulsion
- Notice now must be sent at least prior to 21 business days instead of 21 days as mentioned in the Companies Act. AGM can now be called on a shorter notice period with consent of 95% members instead of erstwhile requirement of obtaining 100% consent of the members
- Listed Companies to file with ROC minutes of the meeting within 30 days of the meeting held and conducted



Directorship, Management & Administration (6/6)

Extra Ordinary General Meeting

Board of Directors of the company or on requisition from members holding 1/10th amount of share capital may call EGM whenever they deem fit. The provisions relating to holding of EGM in Companies Act 2013 are exactly similar to Companies Act 1956

Minimum members for conducting AGM or EGM

Presence of only members physically present will be counted for the purpose of determining quorum. Hence voting can be done electronically, but for the purpose of computing the quorum members only physically present will be considered.

Type of Company	Sub classification	Minimum number of members personally present
Private Limited Company	Including small companies except OPC	2
Public Companies	1) Upto 1000 members	5
	2) Between 1000 to 5000 members	15
	3) In excess of 5000 members	35

Reporting by listed company with ROC

Listed companies to file with ROC a report in respect of change in any number of shares held by promoters or top 10 shareholders within 15 days of such change

Listed companies to file a report with ROC within 30 days of the conclusion of the AGM including a confirmation that AGM meeting was convened held and conducted.

Annual Return

The Annual Return shall contain details as on the end of the Financial Year instead of as on the date of AGM as is required under the 1956 Act.

The disclosures in the Annual Return are enhanced. Information relating to remuneration of directors and Key Management Personnel, details of meetings of members, BOD and its various committees, matters relating to certification of compliances, disclosures, shares held by or on behalf of FII etc. are also to be provided.

Acceptance of Deposits (1/2)



A significant impact of the Companies Act 2013 is that only those public companies which meet the prescribed net worth or turnover criteria (As per below) may accept deposits from persons even other than its members – (Herein after referred to as Eligible Companies)

Eligibility Criteria	Impact
Public Company having net worth in excess of INR 100 crores	Can Accept deposits from members as well as public – Known as Eligible Companies
Public Company having turnover in excess of INR 500 crores	

All companies other than above can accept deposits only from its members and not from general public

NBFC's can raise deposits from non- members as well

General conditions mentioned in the rules for accepting deposits.

- 1) Resolution in General meeting regarding acceptance of deposits
- 2) Issue circular giving specific details after filing the same with Register
- 3) Deposit at least 15% of the amount of deposits maturing during current financial year as a repayment reserve account
- 4) There should have never been a default in repayment of deposits or interest earlier
- 5) To obtain credit rating for the Company

Limits of acceptance of deposits

Acceptance/renewal of deposits by company (other than eligible company)	Acceptance/renewal of deposits by eligible company
From the members shall not exceed 25% of paid up share capital and free reserves	From the members shall not exceed 10% of the paid up share capital and free reserves
	From the public shall not exceed 25% of the paid up share capital and free reserves



Acceptance of Deposits (2/2)

Repayment of deposits accepted before 1st April 2014

Any deposit accepted before 01/04/2014 or any interest due thereon if remains unpaid on or after 1st April 2014 then

- a. The company has to file with registrar within 3 months a statement of all deposits and sums remaining unpaid with interest
- b. Repay the deposits along with interest before 31/03/2015 or from the date on which such payments are due, whichever is earlier
- c. Make an application to the tribunal for allowing further time to the company to repay the deposit.

Hence, all the existing deposit holders will have to be repaid their deposits and if the Company wishes to bring those funds back in the Company then the procedure laid down above for acceptance of deposits as per the new Companies Act will have to be followed

Protection to the depositors

- An amount equivalent to 15% of deposits maturing during the FY as well as the following FY will need to be kept in a separate bank account.
- Additionally, the new act also states that the deposit insurance as prescribed is also required to be provided

Loan to Directors



Loans to Directors or Entities in which Directors or their relatives are substantially interested

- 1) No Company whether public or private can advance any loan or provide any security or guarantee in connection with the loan to a director or any other person related to the director or to any entity in which the director or his/her relative is substantially interested.
- 2) The provisions are applicable from 1/4/2014 which means that granting of loans as per above is prohibited from the 1st of April 2014. Loans advanced prior to this date to directors or entities in which such directors are substantially interested will not be affected by the introduction of these new provisions.
- 3) It is interesting to note that the definition of loan also intends to cover the amounts represented by way of book debts. Hence it means that any amounts outstanding from a director or an entity in which director is interested on account of transactions like sales purchases etc. are also now prohibited. Further loans to professional or independent directors are also prohibited.
- 4) Contravention of the provision as per above would lead to penal consequences on the Company amounting to a minimum of INR 5 lakhs to INR 25 Lakhs. The director to whom such loans are advanced can also be subjected to imprisonment upto 6 months over and above the monetary penal consequences.
- 5) The provisions of this section would not apply to Companies having Banking and NBFC licenses i.e. companies which in the ordinary course of business advance loans, guarantees etc., provided they charge a minimum of bank rate from such loans advanced to directors.
- 6) A company can give a loan to its MD or WTD as a part of conditions of service granted by the Company to all its employees or pursuant to a scheme approved by members of special resolution.

Loans and Investments by Companies

- 1) A company generally is prohibited from making investments in any Company through more than two layers of investment Companies. This means that a Company can have maximum two layer downstream investments, not beyond.
- 2) A debenture is made to define which includes debenture stock, bonds or any other instrument of a company evidencing a debt whether constituting a charge on the assets of the Company or not. This definition would then cover Inter Corporate deposits received from the company and will have to be treated as debentures



Corporate Social Responsibility

Company shall constitute a corporate social responsibility committee if

- Net worth in excess of INR 500 crores or;
- Turnover in excess of INR 1000 crores or;
- Net profit in excess of INR 5 crores.

The CSR committee will consist of three or more directors, out of which at least one director will be an independent director. If Companies are not mandated to appoint an independent director then the committee can be formed with all interested directors as well. (Please refer pg 7 section of independent directors)

BOD of such companies is mandated to spend, in every FY, minimum 2% of the average net profits i.e. book profits of the company made during the 3 immediately preceding FYs, in pursuance of its the CSR Policy.

Key Points to be noted for CSR

- The committee will also need to recommend the amount of expenditure to be incurred and monitor the policy from time-to-time.
- The board shall disclose the contents of the policy in its report, and place it on the website, if any, of the company.
- The company is required to give preference to local area and areas where it operates for spending the amount earmarked for CSR.
- If the company fails to spend such amount, BOD is required to specify the reasons for not spending the amount in the Director's report.
- The amounts reserved for the CSR can be spent over social projects and trusts having no nexus with the Company or its management / promoters / key managerial persons.
- The amount spent over CSR will be available for tax deduction.
- However the amount reserved and not spent due to any reason will not be tax deductible expenditure

Related Party Transactions (1/2)



The definition of 'related party' with respect to a company has been widely defined and includes:

- Holding Company, Subsidiary Company, Associate Company,
- Directors, Key Management Personnel (including their relatives),
- Firms / companies where directors / relatives are a partner or a director respectively
- A public company in which a director or a manager is a director or holds along with his relatives, more than two per cent of its paid-up share capital; (*NOTE – 1)
- Any person on whose advice, directions or instructions a director or manager is accustomed to act except advice given in a professional capacity.

The transactions of a company with its related parties, which are not in the ordinary course of business and which are not at arm's length would require consent of the Board of Directors of the Company.

Related party transactions have been defined to include:

- Sale, purchase of any goods or materials;
- Selling or buying, property;
- Leasing of property;
- Availing or rendering of any services;
- Appointment of any agent for purchase or sale of goods, materials, services or property;
- Such related party's appointment to any office or place of profit in the company, its subsidiary company or associate company; and
- Underwriting the subscription of any securities or derivatives thereof, of the company.

In the following situations, in addition to approval of Board of Directors, prior approval of members by means of a special resolution is required before entering into any related party transaction:



Related Party Transactions (2/2)

Nature of related party transaction	Threshold limits
Any transactions	Exceeding Rs 10 Crores
Sale, purchase or supply of any goods or materials directly or through appointment of agents	>25% of the annual turnover
Selling or otherwise disposing of, or buying, property of any kind directly or through appointment of agents	>10% of the net worth (If net worth is negative then for all transactions)
Appointment to any office or place of profit in the company, its subsidiary company or associate company	Monthly remuneration exceeding Rs 2.5 Lacs
Remuneration for underwriting the subscription of any securities or derivatives	Remuneration exceeding 1% of the total net worth

Disclosures Norms:

- Disclosure to be made in board's report of every related party transaction or contract along with the justification for entering into such contract or arrangement.
- Disclosure also to be made in explanatory statement and the same to be annexed to the notice of general meeting

Note 1:

Just by the virtue of a person being a common director in two or more public companies all such companies are now brought under the definition of a related party.

Accounts

(1/4)



The Companies Act 2013 has introduced certain significant amendments under the chapter Accounts. It has also introduced several additional requirements such as preparation of consolidated financial statements, additional reporting requirements for the directors in their report such as the development and implementation of the risk management policy etc.

Following are the gist of key changes:

- A) Concept of Financial Year
- B) Consolidation and Holding Subsidiary Relationship
- C) Computation of Depreciation

Financial Year:

The new companies act 2013 has introduced a significant change in definition of 'Financial Year': As per the new act "Financial year", shall mean only period ending on the 31st day of March every year. This requirement of change in financial year is required to be complied within a period of 2 years i.e. 31st March 2016.

- In case of a company incorporated on or after the 1st day of January of a year, the first financial year of such company shall end on the 31st day of March itself.
- In case of a holding company or a subsidiary of a company incorporated outside India and is required to follow a different FY for consolidation of its accounts, the (National Company law Tribunal) NCLT may allow any period as its FY, whether or not that period exceeds 12 months.

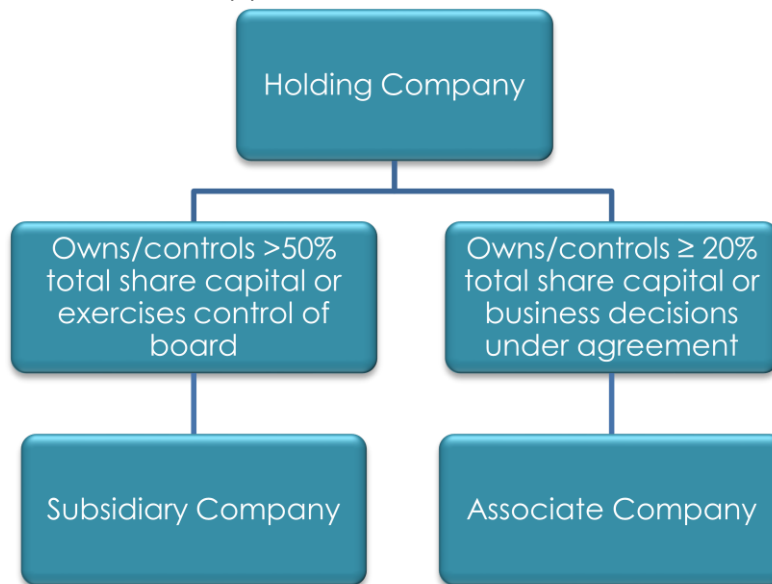
Consolidation of Financial Statements

- Currently, only clause 32 of the listing agreement mandates listed companies to publish consolidated financial statements. Neither the existing Companies Act nor AS 21 requires other companies to prepare consolidated financial statement. Under the Companies Act 2013, companies with one or more subsidiaries will, in addition to Stand- alone also prepare consolidated financial statements.
- The mandatory consolidation applies to all companies (having subsidiaries) whether such company is: Listed or unlisted, Private or public.
- For the purpose of consolidation of financial statements the word 'subsidiary' includes 'Associate Company and Joint Venture. Further, at present, preparation of consolidated financial statements is not mandatory for a listed company that has only an associate or a joint venture but not a subsidiary. Since the definition of a subsidiary under the 2013 Act includes an associate or joint venture, all companies including listed companies would need to prepare consolidated financial statements even if they have only an associate or a joint venture and not a subsidiary.



Accounts (2/4)

Hence to give you a diagrammatic explanation please refer the flowchart below. Under both circumstances consolidation would be applicable



Note: As per the latest rules notified on 31/03/2014 definition of total share capital in the context of meaning of subsidiary and associate now includes only equity and convertible preference share capital

Holding-Subsidiary Relationship

Under Companies Act 1956	Under Companies Act 2013
<p>Subsidiary company - A company shall be deemed to be subsidiary of other company, if other company exercise or controls the composition of Board of directors or controls more than 50% of total equity share capital or total voting capital.</p>	<p>Under the new act a company shall be deemed to be subsidiary when:</p> <ul style="list-style-type: none"> - the holding company controls the composition of the Board of Directors - the holding company exercise or control more than half of the total share capital either at its own or together with one or more of its subsidiary companies

Accounts

(3/4)



Depreciation

Schedule II to the 2013 Act requires systematic allocation of the depreciable amount of an asset over its useful life unlike Schedule XIV of the previous Act (which specifies minimum rates of depreciation to be provided by a company). Hence this schedule prescribes the number of years that the asset has to be depreciated within unlike applying the rate of depreciation in the Companies Act 1956

$$\text{Depreciable amount of an asset} = \text{Cost of an asset/other amount substituted for cost} \\ (-) \\ \text{Residual value}$$

(Residual value should not be more than 5 % of the original cost of the asset)

Schedule II will be applicable as follows:

- For a prescribed class of companies (whose financial statements are required to comply with accounting standards prescribed under the Companies Act 2013), the useful lives should normally be in accordance with the Schedule. However, if a prescribed company uses a different useful life, it should disclose a justification for doing so – The class of companies have not yet been prescribed
- For other companies, the useful life and the residual value applied should not be higher than that prescribed in Part C of Schedule II.

Component approach

Companies are now required to adopt what is known as the 'component approach' to compute depreciation on fixed assets.

Schedule II of the 2013 Act also states that the specified useful lives are for the whole of the asset. When the cost of a part (component) of the asset is significant to total cost of the asset and useful life of that part is different from the useful life of the remaining asset, useful life of that significant part should be determined separately.

A company will have to estimate the useful life of such a component (since it may not be provided in Schedule II) and depreciate the cost of that specific component over this estimated useful life.



Accounts (4/4)

Transitional Provisions:

On transition, the carrying amount of an asset is depreciated as follows:

- (a) Over the remaining useful life of the asset as per Schedule II of the 2013 Act; or;
- (b) Recognized in opening retained earnings when the remaining useful life of the asset is nil.

Schedule XIV Vs Schedule II:

Companies Act,1956 – Sch.XIV	Companies Act,2013- Sch.II
It deals with only depreciation of tangible assets.	It deals with tangible assets and amortization of intangible assets also.
It contained rates of depreciation of tangible assets.	It contains only useful lives of tangible assets and does not prescribe depreciation rates.
100% Depreciation shall be charged on assets whose actual cost does not exceed INR 5,000/-	Omits the provision for 100% Depreciation on immaterial items i.e., assets whose actual cost does not exceed INR 5,000/-
Extra shift depreciation for double shift and triple shift was to be made separately in proportion with No. of days for which concern worked second shift or triple shift	Extra shift depreciation working simplified For Double shift: 50% more depreciation for that period for which asset used. For Triple shift: 100% more depreciation for that period for which asset used.

Audit (1/3)



Key Changes:

- Under the current provision of the companies Act 1956, auditor is appointed in the AGM and holds office till the conclusion of next AGM. Under the Companies Act 2013 the company shall appoint the auditor in the first AGM and shall hold the office till the conclusion of sixth AGM.
- Though the auditor is appointed for five years, the matter relating to such appointment shall be placed before the members for ratification at each AGM.
- Change of auditors before the five year term would require special resolution after obtaining the previous approval of the Central Government. Further the auditor concerned would have to be given a reasonable opportunity of being heard.
- Now rotation of auditors has been mandated by the Act which prescribes that an auditor needs to be compulsorily rotated after 2 terms of 5 years each in case of an auditor being a partnership firm and one terms of 5 years in case of the auditor being a sole proprietor.
- It is interesting to note that this rotation has been made applicable with retrospective effect and a moratorium of 3 years has been granted to all the companies to comply with these new provisions
- The cooling period will be in force for a period of 5 years for which the existing auditor cannot be reappointed

Companies falling under rotation are tabulated as under and to be considered as specified class of Companies

Class of Companies	Criteria
Listed Companies	Mandatory For All
Public Companies	Share Capital in excess of INR 10 crores or public borrowings in excess of INR 50 crores
Private Companies	Share Capital in excess of INR 20 crores or public borrowings in excess of INR 50 crores

Audit (3/3)



Internal Audit

Appointment of Chartered Accountants for Internal audit in case of Public companies	
Criteria	Amount
Paid up share capital;	≥ INR 50 Crore
Turnover;	≥ INR 200 Crore
Outstanding loans or borrowings from banks or public financial institutions	≥ INR 100 Crore
Outstanding deposits	≥ INR 25 Crore
Listed	All

Appointment of Chartered Accountants for Internal audit in case of Private companies	
Criteria	Amount
Turnover; or	≥ INR 200 Crore
Outstanding loans or borrowings from banks or public financial institutions	≥ INR 100 Crore

Secretarial Audit

Conducting of Secretarial Audit in case of Public Companies	
Criteria	Amount
Turnover; or	≥ INR 250 Crore
Paid Up Share Capital	≥ INR 50 Crore
Listed	All

The new Companies Act 2013 contains specific provisions that prohibit the Statutory Auditor of a company to render non-audit services **to the company** or its **holding company** or its **subsidiaries**. The word subsidiary as per the new Companies Act 2013 has been assigned a very wide definition. (Covered in pg 20 of this booklet)

Prohibited non-audit services include

- accounting and book keeping services/ rendering of outsourced financial services;
- internal audit;
- design and implementation of any financial information system;
- Actuarial services/investment advisory services/investment banking services/management services

Further, the rules are yet to prescribe “other services” which cannot be rendered by the Statutory Auditor of the Company



Share Capital

(1/2)

Issuing Shares with differential voting rights

Any Company is prohibited to issue shares with differential voting rights or differential dividend unless it complies with following conditions

- 1) Authorized by AOA and passed by a ordinary resolution in a general meeting
- 2) Such shares should not exceed 26% of the total capital
- 3) Track record of the company to have paid dividend for atleast 3 consecutive years
- 4) The company has not defaulted in any payments either to shareholders or financial institutions

The company cannot convert any of its existing share capital into equity carrying differential rights. The shareholders holding shares with differential rights shall still be eligible for bonus and rights issue.

Issuing shares under sweat equity:

A company may issue sweat equity shares (Even at a discount) after one year of commencement to its directors or employees for providing knowhow, intellectual rights or any other kind of value additions provided following conditions are satisfied.

- 1) A special resolution being passed in a general meeting
- 2) In one financial year a maximum 15% of the existing paid up capital or shares of the value of INR 5 crores whichever is higher
- 3) Overall limit of sweat equity shares that can be issued by a company is 25%
- 4) Sweat equity shares to be locked in for a period of 3 years.
- 5) The valuation of shares issued under sweat equity to be carried out by a valuer. *Even the valuation of the intangible asset against which such sweat equity is issued shall be carried out by a valuer giving justification to the board regarding the value of such sweat equity issued*

Shares issued as sweat equity shall be added for considering the limits of managerial remuneration under section 197/198

Issue of shares on preferential basis.-

'Preferential Offer' means an issue of shares or other securities, by a company to any select person or group of persons on a preferential basis and does not include shares or other securities offered through a public issue, rights issue, employee stock option scheme, employee stock purchase scheme or an issue of sweat equity shares or bonus shares or depository receipts issued in a country outside India or foreign securities.

Share Capital

(2/2)



Where the preferential offer of shares or other securities is made by a company whose share or other securities are not listed, the preferential offer shall be made in accordance with the provisions of the Act and rules made hereunder and subject to compliance with the following requirements, namely:-

- 1) authorized by its articles of association and also authorized by a special resolution of the members at the General meeting
- 2) The securities allotted by way of preferential offer shall be made fully paid up at the time of their allotment.
- 3) The allotment of securities shall be completed within a period of twelve months from the date of passing of the special resolution.
- 4) The price of the shares or other securities to be issued on a preferential basis, either for cash or for consideration other than cash, shall be determined on the basis of valuation report of a valuer;
- 5) Where convertible securities are offered with an option to apply for and get equity shares allotted, the price of the resultant shares shall be determined beforehand on the basis of a valuation report of a registered valuer
- 6) Where shares or other securities are to be allotted for consideration other than cash, the valuation of such consideration shall be done by a valuer who shall submit a valuation report to the company giving justification for the valuation

Employee's Stock option

Any company can issue ESOP to its employees subject to fulfillment of the following conditions

- 1) Passing of special resolution at the General meeting
- 2) Grant of maximum option amounting to 1% of the share capital to identified employees in one single year.
- 3) There is a time gap of minimum one year between the granting of option and their vesting as per the ESOP policy
- 4) Such shares are not subject to bonus, dividends etc. till shares are issued or option is exercised.
- 5) Such shares are non-transferrable.

There is a freedom to decide the exercise price of the options and the lock in period for such shares. For granting of ESOP following employees are not covered.

- A) Independent directors
- B) An employee who is promoter or relative of the promoter
- C) A director or his relative already holding more than 10 % equity shares in the Company



Other important Changes (1/2)

Particulars	Companies Act 1956	Companies Act 2013
Change in registered office of the company	Time limit for intimation to registrar was 30 days	Time limit has been cut to 15 days
Commencement of business	Previously was applicable only to Public company.	Now applicable to both private and public companies. ROC has powers to remove the name of the company from the registrar if declaration not filed within 180 days from incorporation
Change of Name in last 2 years	No provision existed	Company to paint, affix outside every office/place of business, letter heads, invoices, Cards etc along with the new name, the former name/names changed in last 2 years
Printing of CIN etc.	No such compulsion	Every company is required to print CIN on Co.'s Business Letters, Bill Heads, Letter Papers and in all Co.'s Notices and Co.'s other Official Publications In case of OPC, the words 'One Person Company' shall be mentioned in the brackets below the name of the company.
Alteration in AOA	Any alteration in AOA to be filed with registrar within 30 days	Not any alteration to be filed within 15 days
Object Clause MOA	Earlier the clause was divided into: <ul style="list-style-type: none"> - Main objects - Incidental objects - Other objects 	Object clause divided into <ul style="list-style-type: none"> - Object to be pursued by company on incorporation - Incidental objects
Issue of shares at discount	Issue of shares at discount was permissible subject to conditions and approval of Central Government	Prohibits issue of shares at discount as void and not permissible except for sweat equity shares

Other important Changes (2/2)



Particulars	Companies Act 1956	Companies Act 2013
Multilayer investment subsidiaries	No such provision existed	A company can make investment through not more than 2 layers of investment companies.
Secretarial Audit and compliance	Secretarial audit by companies having paid up share capital of INR 10 lakhs to INR 5 crores	Secretarial Audit made applicable to all listed companies and public companies having paid up capital INR 50 Crores or more OR Turnover of INR 250 Crores or more. A copy of secretarial audit report also to be annexed to the Board's report.
Cross border mergers	No such provision existed	Cross border mergers with a foreign company permitted with prior approval of RBI
Fast Track merger	No such provision existed	Simple procedure has been introduced for merger of: <ul style="list-style-type: none"> • Holding Company and wholly owned subsidiary • Two small companies
Report on general meeting	No requirement for filing of any report to ROC	Listed companies are required to file a report on each AGM within 30 days to ROC
Reopening of accounts	No provision for the re-opening of accounts existed.	Accounts can be re-opened in case of an application by Central Govt, Income Tax, SEBI or any other statute
Revision of financial statements	No such provisions for revision of financial statements existed	Directors in case of any noncompliance, may prepare revised financial statements / report in respect of any 3 preceding FY after getting approval from the tribunal



Quick Referencer (1/3)

10 Immediate Actions to be taken by the Company:

1. Inform the accounts and legal teams, to study and brainstorm over the new provisions that would be applicable and the way forward to comply with them
2. Print new letter heads containing Corporate Identification Numbers (CIN)
3. If a private limited company exceeds certain limits in terms of share capital, borrowings or turnover, then many new provisions would be made applicable to them. Hence a detailed study of such new provisions to be done study the impact that these provisions would have on their companies
4. Inform the independent directors regarding the new provisions that will be applicable in their case i.e. rotation, cooling period, performance report etc.
5. Restructure the board if required
6. Restructure various committees as required by the new Companies Act 2013 i.e. Whistle blower, CSR etc.
7. If the companies have raised deposits then a concrete plan as to how to adhere to the revised provisions regarding acceptance of deposits
8. Educating the accounts team with the new developments in case of finalization of accounts such as preparation of cash flow statement, consolidation, identification of related parties etc.
9. Plan regarding the new provisions that will be applicable in case of Companies Audit i.e. rotation of auditors, internal audits, secretarial audit etc.
10. Not to advance any loans to a related party. To an extent possible completely eliminate the related party inter-company transactions

Quick Referencer

(2/3)



A Glance on few provisions of The Companies Act 2013 for Public Limited Companies

- Limit on maximum number of members for Pvt Ltd Co increased from 50 to 200.
- Appointment of Internal Auditor made compulsory for specified class of Companies
- Declaration to be filed by Subscribers stating that the subscription money & paid up capital has been brought in the Company before commencement of business.
- Conversion of the existing company into OPC can be done when the paid up capital is less than INR. 50 Lacs or average annual turnover during the relevant period is less than INR 2 Crores.
- Restriction on giving loans, advances or providing securities, guarantees to Directors and other interested entities.
- Concept of Corporate Social Responsibility (CSR) is applicable to Pvt Ltd companies too. Eligible Companies shall mandatorily form a CSR Committee and spend 2% of its average net profits made during the 3 immediately preceding Financial Years. However such company need not have CSR committee
- The company needs to refund the deposits accepted from shareholders and follow the new procedure as mentioned in the Companies Act 2013
- Mandatory Consolidation of financial statements in case of company having subsidiary(s), associates & joint ventures.
- Rotation for Appointment of Statutory auditor applicable to specified class of Companies. Rotation not applicable to OPC and Small Companies.
- Annual Return to be certified by Practicing Company Secretary in case of Companies having Paid up share capital of INR 10 Crores or more OR Turnover of INR 50 Crores or more.
- In case of other companies, Annual Return to be signed by Director and company secretary, or where there is no company secretary, by a Practicing CS.
- Appointment of Internal Auditor made applicable to companies having turnover of INR 200 Crores or more OR outstanding loans/borrowings exceeding INR 100 Crores or more during the preceding financial year.



Quick Referencer (3/3)

Glance on a few provisions of Companies Act 2013 on Private Limited Companies

- Appointment of Internal Auditor made applicable to specified class of Companies
- Auditors rotation for specified class of companies made mandatory
- A person can act as a Director in a maximum of 20 companies, out of which not more than 10 should be public companies.
- The Board shall be reconstituted for specified class of companies with the following:
 - Woman Director
 - Independent Director
- Constitution of Audit Committee, Nomination & Remuneration Committee and Stakeholders Relationship Committee, vigilance committee.
- Listed companies to file a Return with ROC in respect of change in shareholdings of Promoters and top 10 shareholders within 15 days.
- All Listed Company to file a Report on proceedings of AGM with ROC within 30 days of the AGM.
- Every Listed Company and Public Company having paid up share capital of INR 10 Crores or more shall appoint whole-time Key Managerial Personnel's [KMP's] i.e. Managing Director/Whole time Director/CEO, Company Secretary and CFO.
- Board Report of every Listed Company and Public Company having a paid up share capital of INR 25 Crores or more, shall include performance report of its Board members, Committee Members and Individual directors.
- Secretarial Audit made applicable to all listed companies and public companies having paid up capital INR 50 Crores or more OR Turnover of INR 250 Crores or more
- Provisions regarding public deposits and deposits from members to be adhered to as per the new Companies Act 2013



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