“MANAGEMENT, ADMINISTRATION & CORPORATE GOVERNANCE”

UNDER

THE COMPANIES ACT, 2013
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COMPANIES ACT, 2013
A PARADIGM SHIFT FOR THE CORPORATE

The Companies Act, 1956

The Companies Act, 2013
COMPANIES ACT, 2013

- 470 Sections
- 29 Chapters
- New 33 Definitions
- 7 Schedules

Substantial Part of the Act in form of Rules
(418 places it has prescribed word)
COMPANIES ACT, 2013

- Contemporary
- Easy Understandability
- Preventive
- Investor Protective
- Adaptable
- Self Regulatory
- Business Oriented
PROMINENT INFLUENCERS TO THE NEW COMPANY LAW

The Influencers

IPO Scam
Stock Market Scam
Peerless
Sesa Sterlite
Pradeep Overseas
Sahara
Satyam

16/11/2013
RE-ENACTING THE NEW COMPANIES LAW

Objectives

- Bringing Flexibility & Adoption of Internationally Accepted Practices
- Self Regulation with more disclosures
- Stringent Punishment for violation
- Effective protection for different sections of Society
- Healthy Growth of India Inc.
- Efficient enforcement of law
VARIOUS ENTITIES UNDER THE ACT

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
- Unlimited

Size
- Small Company

Activity
- Dormant Company

Others
- Nidhi Company
- Foreign Company
- Producer Company
- Government Company

Company Types:
- Public company
- Private company
- OPC
- Holding Company
- Subsidiary Company
- Associate Company
- Limited
- Unlimited
- Shares
- Guarantee
- Dormant Company
- Nidhi Company
- Foreign Company
- Producer Company
- Government Company
New Concepts
• Introduction of **One Person Company**
• Stipulation of **Woman Director**
• Provision of **Class Action suits**
• Introduction of **Registered Valuer**
• **Fast Track Merger** for Holding & Subsidiary Companies
• **Cross Border Merger**
• Concept of **Dormant Company**
• **Further Use of electronic mode**: Maintenance of Documents, Records, Registers, Books of Accounts, etc. in e-Form
• Meeting through **Video Conferencing**
• **Summary Procedure** for Winding up of Company
• **Conciliation panel & special courts**
• **Corporate Social Responsibility**
WHAT’S IN & OUT

IN
• Key managerial personnel
• Resident Director
• Auditor Rotation
• Dormant company
• NFRA
• Vigil mechanism
• SFIO
• Definition of Subsidiary
• Secretarial Audit
• Recasting of Account
• Private Placement

OUT
• Sole selling agents
• Commencement certificate
• Statutory meetings
• Convert share into stock
• Qualification shares
• Treasury stocks
DEFINITIONS

**Director**

- Director appointed by board of company Section 2(34)

**“Board of Directors”**

- Or
- “Board”

- Collective body of directors of the company Section 2(10)
ROLES OF DIRECTOR

Managing Director {Section 2(54)}

Key Managerial Personnel {Section 2(51)}

Whole time Director {Section 2(94)}

Officer who is in Default {Section 2(60)}
Managing Director

By

Articles

Agreements

Shareholdings

Entrusted with substantial powers of management

+ 

Occupying position of managing director by whatever name called
Manager

Individual

Subject to

Superintendence

Direction of the BoD

Control

Having Management of whole of affairs of the Company

and

Includes director occupying position of manager by whatever name called
KEY MANAGERIAL PERSONNEL
[SECTION 2(51)].. NOTIFIED

CEO OR Managing Director OR Manager

OR
Whole time Director

OR
Company Secretary + CFO

OR
Such other officer as may be prescribed
OFFICER IN DEFAULT [SECTION 2(60)]. NOTIFIED

KMPs & Whole time Director

If no KMPs

Directors appointed as OD Or All Directors if no one appointed

Any Person Authorized by Board or KMPs Any Person who advises, directs or instructs BoD Every Director who is aware of Contravention

For Issue or transfer of Shares

Share Transfer Agent Registrar to Issue Merchant Banker
The Act now prescribes the duties of the directors towards the company.

Matters to be considered in the Board Meeting provided for in detail.

Act provides for constitution of the Audit committee by every listed company or other prescribed class of company.

Constitution of Nomination and Remuneration Committee by listed and other prescribed class of the companies.

Stakeholders Relationship Committee for companies which consist of more than 1000 shareholders, debenture-holders, deposit-holders and other security holders at any time during a FY.
Companies having specified net worth / turnover/ net profit will come under CSR and has to constitute Corporate Social Responsibility committee thereof

Directors also covered under ‘Officers in Default’

Public and private companies cannot give any loan or provide any security or guarantee in connection with a loan to a Director or any interested person, except by way of passing a special resolution

Voting in electronic mode allowed

AGM- Listed Company AGM to be reported to ROC
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

Subject to Articles, Board can appoint director nominated by any institution in pursuance of any law or agreement has been specified in the law specifically

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
### Woman Director & Small Shareholder Director

<table>
<thead>
<tr>
<th>At least 1 woman director for prescribed class or classes of companies. <strong>2nd proviso to Section 149(1)</strong></th>
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<tr>
<th>Companies with prescribed number of small shareholders or paid up capital and listed Companies to have 1 director elected by Small Shareholders <strong>Section - 151</strong></th>
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<tr>
<th>As per the Draft Rules: Listed Companies, and every other public company with paid up capital &gt; Rs 100 cr; or turnover &gt; Rs 300 cr.</th>
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<tr>
<th>As per Draft Rules: A listed company may suo moto or upon the notice of &gt; 500 or 1/10th of the total number of small shareholders, whichever is lower, elect a small shareholders’ director from amongst the small shareholders</th>
</tr>
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DIRECTORS – OTHER REQUIREMENTS

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 100000 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)

RESIDENT DIRECTOR (Section 149 (2))

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

16/11/2013
NUMBER OF DIRECTORSHIPS
(SECTION 165)

- Director in maximum 20 companies
- Directorship to include alternate directorship
- Of these 20 companies, cannot be a Director in more than 10 public companies (including private companies which are holding or subsidiary companies of public companies)
- No. of members 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
APPOINTMENT & REMOVAL OF DIRECTORS

You're Hired!

You are hired.
### Appointment of Managing Director, Whole Time Director or Manager

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

Appointed to be Voted individually… (Notified).  *Section 162*

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. $\frac{2}{3}$rd of the total number of directors.
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.
NEW DISQUALIFICATIONS FOR DIRECTORS – SECTION 164

Conviction for offence dealing with Related Party Transaction anytime during previous 5 years

Not having obtained Director Identification Number

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

No power to central government to exempt the application of particular disqualification on any person
VACATION OF OFFICE OF DIRECTOR – SECTION 167

• When Director fails to attend all Board Meetings for consecutive period of 12 months. This 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 members
  • Central Government may appoint Directors till company makes appointment in General Meeting
REMOVAL OF DIRECTOR- SECTION 169

• Notice of Removal can be given only by the following:

  • In Company Having Share Capital:
    • 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
  • In any other Company:
    • 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
INDEPENDENT DIRECTOR
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 cr or more, Public Companies having turnover of Rs. 300 cr or more, Public Companies which have, in aggregate, outstanding loans or borrowings or debentures or deposits, exceeding Rs. 200 cr)

Every existing company to have IDs within one year from commencement of the Act or from the date of notification of the Rules (whichever is first)
An Independent Director in relation to a Company:

- Should be a director other than a Managing Director or a Whole-Time Director or a Nominee Director;
- Should be a person of integrity and possess relevant expertise and experience;
- Should or should not have been a promoter of the Company or its holding, subsidiary or associate Company and such person must not be related to promoters or directors in the Company, its holding, subsidiary or associate Company;
Must not have any pecuniary relation with the Company, its holding, subsidiary or associate Company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year.

None of the relatives of such person must have pecuniary relationship or transaction with the Company, its holding, subsidiary or associate Company, or their promoters, or directors, amounting to two per cent or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year.

Must possess any other qualifications as may be prescribed.
INDEPENDENT DIRECTOR

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).

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

- Guidelines of professional conduct
- Role and functions
- Duties
- Manner of appointment
- Re-appointment
- Resignation or removal
- Separate meetings
- Evaluation mechanism
- Remuneration by way of sitting fee
- Commission out of profits
- Independent Director not entitled to any stock option
- Reimbursement of expenses
Section 149 (8) states that the Company and Independent Directors shall abide by the provisions specified in Schedule IV.

Section 149 (12) states Notwithstanding anything contained in this Act,—
(i) an Independent Director;
(ii) a non-executive director not being promoter or key managerial personnel,
shall be held liable, only in respect of such acts of omission or commission by a Company which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he had not acted diligently.
<table>
<thead>
<tr>
<th>S.No.</th>
<th>Name of Independent Director</th>
<th>Number</th>
<th>Name of Companies</th>
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<tr>
<td>1</td>
<td>R A Shah</td>
<td>14</td>
<td>Asian Paints Ltd,</td>
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<td>Atul Ltd,</td>
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<td>BASF India Ltd,</td>
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<td>Bombay Dyeing &amp; Manufacturing Company Ltd,</td>
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<td>Century Enka Ltd</td>
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<td>2</td>
<td>Anil Harish</td>
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<td>Ashok Leyland Ltd,</td>
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<td>Hotel Leela Venture Ltd,</td>
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<td>Ador Welding Ltd</td>
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<td>Advani Hotels &amp; Resorts (India)</td>
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<td>Dilip J Thakkar</td>
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<td>Essar Ports Ltd,</td>
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<td>Premier Ltd,</td>
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<td>Graphite India Ltd,</td>
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<td>Sundram Fasteners Ltd,</td>
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<td>Williamson Magor &amp; Company Ltd,</td>
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<td>TTK Healthcare</td>
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Appointment of Managing Director, Whole Time Director or Manager to be approved by special resolution in a General Meeting

Appointment to be Voted individually… (Notified). Section 162

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
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.
A Director may receive remuneration by way of fee for attending meetings of the board or committee

Independent director shall not be entitled to any stock options

Reimbursement of expenses for participation in the board and other meetings and profit related commission as may be approved by the members

As per the draft rules-
Amount of sitting fees payable to a director for attending meetings of the Board or committees to be a maximum of Rs.1 lakh per meeting of the Board or committee
Board may decide different sitting fee payable to independent and non-independent directors other than whole-time directors
DECISION MAKING BY DIRECTORS

- Board meeting
- Resolution by circulation
- Committee meetings
First Board Meeting to be held within 30 days of incorporation.

Notice of Board meeting shall be given to all directors, whether he is in India or outside India by hand delivery or by post or by electronic means.

At least one independent director to be present at a Board Meeting called at shorter notice to transact urgent business.

In case of absence of independent directors from board meeting, decisions taken at meeting shall be circulated to all the directors and shall be final if ratified by a independent director.

Director can participate in the Board meeting through video conferencing or other audio visual mode as may be prescribed.

Draft Rules provide for the procedure and manner of such process.
The procedure of conduction of Board Meetings through Video Conferencing is specifically provided for, with major responsibilities casted upon the Chairman of the Company and Company Secretary.

An important provision provides that every director who attended the meeting, whether personally or through video conferencing or other audio visual means, shall confirm or give his comments, about the accuracy of recording of the proceedings of that particular meeting in the draft minutes, within seven days after receipt of the draft minutes failing which his approval shall be presumed.

This provision is very important as far as the liability of Directors is concerned.

MATTERS NOT TO BE DEALT IN MEETING THROUGH VIDEO CONFERENCING

- To approve the annual financial statements; and
- To approve the board’s report.
At least 4 Board meetings should be held each year, with a gap of not more than 120 days between two Board meetings.

No requirement of holding the Board Meeting in every quarter.

For One Person Company (OPC), small company and dormant company at least 1 Board meeting must be held in each half of a calendar year with a gap of not less than 90 days between two Board Meetings.

In case of only One Director in OPC, requirement of holding meeting will not apply.

Resolution by circulation shall be approved if consented by majority of Directors instead of the requirement of consent of all Directors present in India or by majority of them (as was provided in the Companies Act 1956).
MATTERS TO BE DISCUSSED IN BOARD MEETINGS ONLY (SECTION 179)

- To issue securities whether in India or outside.
- To grant loans or give guarantee or provide security in respect of loans;
- To approve financial statement and the director’s report;
- To diversify the business of the company;
- To approve amalgamation, merger or reconstruction;
- To take over a company or acquire a controlling or substantial stake in another company.
Other matters prescribed in Draft Rules:

- To make political contributions; to fill a casual vacancy in the Board; to enter into a joint venture or technical or financial collaboration or any collaboration agreement;
- To commence a new business; to shift the location of a plant or factory or the registered office;
- To appoint or remove key managerial personnel (KMP) and senior management personnel one level below the KMP;
- To appoint internal auditors;
- To adopt common seal;
To take note of the disclosure of director’s interest and shareholding;

To sell investments held by the company (other than trade investments), constituting five percent or more of the paid – up share capital and free reserves of the investee company;

To accept public deposits and related matters and;

To approve quarterly, half yearly and annual financial statements.
# MEETINGS AND RELATED MATTER

- **General Meetings**
- **Quorum**
- **Proxies**
- **Statement to be annexed with notice**
- **Postal ballot**
- **Resolution requiring special notice & closure of register of members**
GENERAL MEETINGS

OPC not required to hold AGM

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

AGM to be held on between business hours i.e. 9 AM to 6 PM

Notice of GM may be sent through electronic mode

To be sent to all Directors

21 clear days notice to be given

In case of AGM Shorter notice can be given by consent of 95% of members who are entitled to vote (like for EGM)

Secretarial Standards mandated

Report of AGM, prepared in prescribed manner, to be filed with RoC
Every Listed Public Company to prepare a Report on each AGM.

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

The company to file the Report with the Registrar within 30 days of the conclusion of the AGM.

Proceedings at the AGM of a listed co. thus becomes a public document.
QUORUM FOR MEETINGS

**Public Company**

- 5 members personally present
- 15 members personally present
- 30 members personally present

- ≤ 1000 members
- > 1000 members but ≤ 5000 members
- > 5000 members

**Private Company**

- 2 members personally present
PROXIES… (SECTION 105)

Single person not to be proxy for more than 50 members

Proxy cannot vote by show of hands

Member of Private Limited company cannot appoint more than 1 proxy to attend on same occasion
Explanatory Statement in case of special business to specify

Nature of interest/concern
- Financial Interest
  - Director and Manager
- Other Interest
  - KMP
  - Relatives

Liability in case of non-disclosure or insufficient disclosure in Explanatory Statement

Non-disclosure/insufficient disclosure
- Benefit
  - Promoter
- Profit
  - Director and Manager
  - KMP

Explanatory statement to specify shareholding % of Promoters/directors/manager/KMP whose shareholding is not less than 2% of paid up capital

Liable to compensate to Company to the extent of such profit/benefit
Postal ballot applicable to all companies

Postal Ballot resolutions to be prescribed by CG. (Other than any businesses in which directors/auditors have the right to be heard at the meeting and ordinary business)

To maintain minutes
RESOLUTIONS REQUIRING SPECIAL NOTICE & CLOSURE OF REGISTER OF MEMBER

RESOLUTIONS REQUIRING SPECIAL NOTICE – SEC 115

Not less than 1% of voting power or Member holding min Rs. 5,00,000 paid up share capital can move Special Notice

CLOSURE OF REGISTER OF MEMBER – SECTION 88

Listed Company / Company which intends to get listed to give notice of atleast 7 days (or such lesser days as specified by SEBI) before closure of Register of security holders

- IS CLOSURE OF REGISTER OF MEMBERS STILL REQUIRED IN TODAY’S CONTEXT?
1. For listed and other prescribed class of Companies
   - As per Draft Rules: Nomination and Remuneration Committee of the Board for every listed company, and every other public company having paid up capital of >Rs. 100 cr; or which have outstanding loans or borrowings or debentures or deposits > Rs 200 cr

2. Shall consist of 3 or more non-executive directors out of which not less than one half shall be IDs

3. The Committee to formulate the criteria for:
   - Determining qualifications, positive attributes and independence of directors;
   - Recommending to the board a policy relating to remuneration for directors, KMP and other employee.
SHAREHOLDERS GRIEVENCE COMMITTEE – SECTION 178

Committee shall consider and resolve the grievances of security holders of the company.

For companies > 1000 shareholders, debenture-holders, deposit-holders and other security holders at any time during a FY.

Chairperson: non-executive director and other members as may be decided by the Board.
Every listed company and such other class of company shall constitute an Audit committee. (As per Draft Rules: Audit Committee of the Board for every listed company, and every other public company having paid up capital of Rs. 100 cr or more; or which have, in aggregate, outstanding loans or borrowings or debentures or deposits exceeding Rs. 200 cr)

Committee shall consist of minimum three director with the independent director forming majority

Auditors and KMP have right to be heard in the meeting of committee

Board’s report to disclose
1. Composition of the audit committee and
2. Any recommendation which has not been accepted by the board.
Every listed company or such class of companies shall establish a vigil mechanism.

As per Draft Rules: Companies which accept deposits from public and Companies which have borrowed money from banks and public financial institutions > Rs 50 Cr

Mechanism facilitates directors and employees to report genuine concerns.

Adequate safeguards against victimisation of persons who use such mechanism.

Provision for direct access to the chairperson of the audit committee.

Whistle Blower (a non mandatory item as per Cl 49) is now made mandatory, in the name of Vigil Mechanism.
Every Company having net worth of rupees 500 crore or more, or turnover of rupees 1000 crore or more or a net profit of rupees 500 or more during any financial year to constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director.

- The Board’s report to disclose the composition of the Corporate Social Responsibility Committee.

Committee shall formulate and recommend to the Board, a CSR Policy indicating the activity or activities to be undertaken by the Company as specified in Schedule VII of the Law.

- Recommend the amount of expenditure to be incurred on the activities above and
- Monitor the Corporate Social Responsibility Policy of the Company from time to time.
Based on recommendations from CSR Committee, Board of such Company to approve the CSR Policy for the Company and disclose contents of such Policy in its report and on the Company’s website.

Board shall ensure that at least two per cent of average net profits of the Company made during three immediately preceding financial years is spent in every financial year on such policy.

Every year in the Board’s Report, details about the policy developed and implemented by the Company on CSR initiatives taken during the year to be included.

For spending the amount earmarked for CSR activities the Company shall give preference to the local area and areas around it where it operates.

If a Company fails to provide or spend such amount, the Board to specify reasons for not spending the amount in its report.

Companies require to comply with CSR shall give additional Information by way of notes to the Statement of Profit and Loss regarding aggregate expenditure incurred on corporate social responsibility activities.
DUTIES OF DIRECTORS
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
Evaluation of internal financial controls and risk management systems

The Board’s report to contain a statement indicating development and implementation of risk management policy. *Section 134 (3)(n)*

Board Report to contain statement indicating the manner in which formal annual evaluation has been made by the Board of its own performance and that of its committees and individual directors. *Section 134 (3)(p)*

(As per Draft Rules: This is applicable for every listed company and public company having paid up share capital of Rs. 25cr or more, calculated as at the end of the preceding FY)
Section 138(1)
Prescribed class of companies shall conduct the internal audit of the functions and activities of the company.

As per Draft Rules: Every listed company, every public company with paid up share capital > Rs 10 cr, and having any outstanding loans or borrowings from banks or public financial institutions > Rs. 25 cr or which has accepted deposits of > Rs. 25 cr at any point of time during the last financial year

IDs to satisfy themselves about integrity of financial information and robust risk management system
For protection of shareholders concept of “Class Action suit” inserted

Exit opportunity by the promoters to the dissenting shareholders in case of variation in the terms of the contracts or in objects of prospectus

Provision for Internal audit of certain companies

Provision for rotation of auditors in listed and in certain other class of companies

Onus on the Independent Director for the fulfillment of conditions specified in the Act for the appointment casted on the board to specify in the explanatory statement for such appointment
Onus to ensure compliance with all applicable laws has been casted on the board of directors of a company.

Along with the members and auditors, even directors are required to be sent notices of the meeting.

Set up of Investor Education and Protection Fund (IEPF) for transfer amount lying in unpaid dividend accounts of the company to such fund.

To minimize risks, certain restrictions has been implied on the board of company which were earlier not mentioned in the Companies Act, 1956.

Establishment of Serious Fraud Investigation Office (SFIO).
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.
Public and private companies cannot give any loan or provide any security or guarantee in connection with a loan to a Director or any interested person, except to MD & WTD under prescribed circumstances.

No exemption for giving loan, guarantee or providing security by holding company to its subsidiary.

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.
i. Director or his relative;

ii. A key managerial personnel or his relative

iii. A firm, in which a director, manager or his relative is a partner;

iv. A private company in which a director or manager is member or director ;

v. A public company in which a director or manager is a director or holds along with his relatives more than 2%. Of its paid up capital

vi. Any body corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager;
vii. Any person on whose advice, directions or instructions a director or manager is accustomed to act:

Provided that nothing in sub-clauses (vi) and (vii) shall apply to the advice, directions or instructions given in a professional capacity.

viii. Any company which is-

A holding, subsidiary or an associate company of such company; or

A subsidiary of a holding company to which it is also a subsidiary;

ix. Such other persons as may be prescribed.
RELATED PARTY TRANSACTION
SECTION 188

Board approval required for following RPTs

- Leasing of property
- Disposing of, or buying, property
- Appointment of any agents
- Appointment of any related party to any office or place of profit
- Restriction on non cash transaction
- Contract for underwriting the subscription of securities or derivatives

Companies with the prescribed Capital require approval by Special resolution for entering into defined related party transactions
Criminal liability for fraud for mis-statement in prospectus - Liability of every person who authorizes issue of misleading prospectus.

Promoter, director, expert or any other person who has either assented to be director of the company or who has authorized the issuance of prospectus, to be held liable for fraud.

Definition “Officer in Default” includes Key Managerial Personnel

In case of frauds, all the professionals and experts rendering independent services to the Company are to be held liable.
CLASS ACTION SUITS
(SECTION 245)

- Suit may be filed by members or depositors or any class of them;
- If management or conduct of the affairs of the company are being conducted in a manner prejudicial to the interest of the company, its members or depositors;
- Suit may be filed by more than
  - 100 in number or
  - more than a percentage of the total number of depositors, whichever is less,
  - or any depositor or depositors to whom the company owes such percentage of total deposits of the company.
- Damages or compensation or any other suitable action from or against—
  - The company or its directors for any fraudulent, unlawful or wrongful act or omission.
  - Any expert or advisor or consultant or any other person for any incorrect or misleading statement or for any fraudulent, unlawful or wrongful act or conduct.
Every listed company to prepare a report on AGM, such report to contain confirmation that the meeting was convened, held and conducted as per the provisions of the Act / Rules

Requirement for Enhanced Disclosures in prospectus has been incorporated in the Act of 2013

Contracts with managing and whole time directors required to be kept at registered office, which shall be open for inspection by members of the company

Disclosure of interest of all directors
ANNUAL RETURN - Contents (SECTION 92)

- Registered office, principal business activities
- Securities and shareholding pattern
- Indebtedness
- Members and debenture holders
- Promoters, directors, key managerial personnel
- Meetings of members
- Meeting of board and committees
- Remuneration of directors and KMP
- Penalty or punishment & details of compounding
- Shares held by or on behalf of the FII’s
- Other matters as may be prescribed.
BOARD’S REPORT: OTHER MATTERS PRESCRIBED

- Change in the nature of business,
- Financial summary/highlights
- Details of directors or KMP
- Details relating to Deposits
- Companies ceased to be Subsidiaries, JVs or associate companies;
- Details of significant and material orders passed by the Regulators or courts
DISCLOSURES IN PROSPECTUS
(Section 26)

Name and address of CFO

Management perception of Risk Factors, gestation period, progress in the Project and deadline for completion of the project.

Pending litigation against the promoters by Govt Dept./Statutory Body during the last 5 years.

Detailed Fact Sheet, mentioning all the basic facts and financials about the Company and other related persons/entities.
Every Listed Company to disclose in its Board’s Report:

- The ratio of the remuneration of each director to the median employee’s remuneration; and
- Such other details as may be prescribed.
DRS to also include the following:

- In the case of listed companies, director had laid down internal financial controls which have been complied with.
- The directors had devised systems to ensure compliance with provisions of applicable laws

PROMOTERS’ STAKE CHANGES

Listed companies required to file Return with the Registrar regarding change in the number of shares held by the Promoters and top ten shareholders within 15 days of change.
IMPACT OF CHANGE

- Quality of functioning of the board will increase
- Beginning of new era of corporate Governance
- Enhanced responsibility of top management
- Increase in trust of investors and stakeholders
THANK YOU

Deepali A Mendiratta

Corporate Professionals Group
D-38, South Extension –I, New Delhi-110 049
Ph: +91.11.40622250; Fax: +91.11.40622201; E: deepali@indiacp.com