The Key to Growth is the introduction of higher dimensions of consciousness into our awareness...

Companies Act, 2013
Directors Conclave
Preamble
The Companies Act, 2013

Facts about the Act

- 29 chapters
- 470 Sections
- 33 New definitions
- 7 Schedules
- 366 Sections of Companies Act, 2013 contain provisions prescribing rules

Substantial Part of the Act in the form of rules which are in the process of finalization
Companies Act, 2013- Scheme

Companies Act, 2013 whether lengthy or concise?

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Cos Act 2013</th>
<th>Cos Act 1956</th>
<th>UK Cos Act</th>
<th>Australia Cos Act</th>
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<tbody>
<tr>
<td>Chapters/ Parts</td>
<td>29</td>
<td>18</td>
<td>47</td>
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<td>Sections</td>
<td>470</td>
<td>658</td>
<td>1300</td>
<td>1538</td>
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<td>Schedules</td>
<td>7</td>
<td>15</td>
<td>16</td>
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</table>

16/11/2013
Basic Approaches to Companies Act

- Modern
- Ease of Interpretation
- Preventive
- Flexibility
- Investor Protection
- Self Regulation
- Business Oriented

16/11/2013
Prominent Influencers to the New Company Law

The Influencers

- Stock Market Scams
- Sahara
- Speak Asia
- Vanishing Company
- IPO Scam
- Satyam
Classes of Companies Covered in Companies Act, 2013

Entity Structure Recognized under the law

Access to Capital
- Listed
- Unlisted

Members
- Alternatives
- OPC
- Private Company
- Public Company

Control
- Holding Company
- Subsidiary Company
- Associate Company

Liability
- Limited
- Unlimited

Size
- Small Company
- Dormant Company

Activity
- Others
  - Foreign Company
  - Govt. Company
  - Banking Company
  - Nidhi Company
  - Producer Company
  - Body Corporate

16/11/2013
Novelties

- One Person Company
- Small company
- Code for ID’s
- Securities
- Auditing standards
- Related party
- KMP
- Corporate Social Responsibility
- Control
- Dormant Company
- Fraud
- Special courts & Conciliation panel
- Secretarial Audit
- Listed Company
- Subsidiary and Holding Company
Outline

Board of Directors and its Meeting
New and Mandatory Committees
Powers of Board
Restrictions on powers of Board
Appointment of MD / WTD / Manager / KMP
Enhanced Duties, Responsibilities
Disclosure & Transparency
Fund Raising
Inter Group Financing
Related Party Transactions
Fraud and Penal Provisions
Corporate Restructuring
Miscellaneous

16/11/2013
Board of Directors and its Meeting
Board Composition

- Women Director
- Resident Director
- Independent Director
- Small Shareholder Director
Number of directors

- Private Company: 2
- Public Company: 3

Maximum Number: 15 (earlier 12)

Directorship of directors

Director in maximum **20 companies including Alternate Directorship**

- Public Companies or Subsidiaries of Public Companies: Maximum 10

No. of Directorships can be reduced by passing special resolution by members
Meeting of Board

- Notice to be sent to all the directors, through electronic means or others
- Board of Directors may participate through video conferencing
- Presence of at least 1 ID required in the meeting called at shorter notice.
- Else decision to be circulated to all the directors and to be valid only after ratification by at least one ID
Meeting through Video Conferencing

- Participation in meeting through video conferencing allowed
- Confirmation of accuracy of draft minutes by every director who attended the meeting within 7 days of receipt of draft minutes

Matters not to be dealt in meeting through video conferencing
- To approve the annual financial statements; and
- To approve the board’s report
Insufficient quorum shall now be not allowed as a defense for non compliance with frequency of Board meeting
Circular Resolution

- Notice to be sent to all directors whether in India or outside India
- Approval of majority of all Directors required.
- In case of decent of 1/3rd of the BoDs, then the resolution shall be decided at the meeting and not by circulation
New and Mandatory Committees
Audit Committee

- In Every Listed Company
- Public Company
  - Paid up capital of INR 100 Crores or more or;
  - Deposits / Loans / Debentures exceeding INR 200 Crores or more
- Composition: Min 3 directors with majority of ID
- Provision of establishment of vigil mechanism

1 year transition period for constitution / reconstitution of Audit committee
Nomination and Remuneration Committee

- In Every Listed Company
- Public Company
  - Paid up capital of INR 100 Crores or more or;
  - Deposits / Loans / Debentures exceeding INR 200 Crores or more
- Composition:- Min 3 Non executive directors. ≥ ½ comprising IDs.

Mandate of the Committee:-
- Identification of qualified Directors and senior management personnel
- Performance evaluation of directors
- Recommend to the Board policy for remuneration of Directors, KMPs and other employees

16/11/2013
<table>
<thead>
<tr>
<th>Type</th>
<th>Director</th>
<th>Independent Director</th>
<th>Executive Director</th>
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<tbody>
<tr>
<td>Salary</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Commission</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>ESOP</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Sitting Fee</td>
<td>✓</td>
<td>✓</td>
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</table>
Remuneration to director

- Amount of sitting fees payable to be maximum of Rs.1 lakh per meeting of the Board or committee
- Board may decide different sitting fee
- Independent director shall not be entitled to any stock options
Overall max remuneration & max remuneration in case of absence/inadequate profit

- Listed Company to disclose in Board Report the ratio of remuneration of each director to the median employee’s remuneration
- Premium paid on Director’s & Officer’s insurance not to be part of remuneration
- No CG approval required for making payment of salary to the Non Executive Director’s by way of monthly payment provided that it’s within the limits

<table>
<thead>
<tr>
<th>Net Profit</th>
<th>Approval from</th>
</tr>
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<tbody>
<tr>
<td>&gt; 11%</td>
<td>Central Govt</td>
</tr>
<tr>
<td>Inadequate or no profit</td>
<td>Comply with Schedule V or Central Govt approval</td>
</tr>
</tbody>
</table>

Can also receives Commission / Remuneration

WD / WTD

Who receives Commission

Holding Company

Company

Subsidiary Company
In Every Company having more that 1,000 debenture / deposit / security holders.

Composition:- to be decided by BoD. Chairperson to be an NED.

Mandate of the Committee:-
• Consider and resolve the grievances of Securities holders.
Powers of Board
Following powers shall be exercised by the Board only at their meeting:

- Issue of Securities – Equity, Preference, Debentures
- Give guarantee or provide security in respect of loans
- Approve financial statements and Director’s report
- To make political contribution
- To fill a casual vacancy in the board
- To commence a new business
- To appoint or remove any key managerial personnel
- To appoint internal auditor
Restrictions on powers of Board
Restrictions on powers of Board

- Restriction for sale of undertaking applicable to all classes of companies
- Term “Undertaking” and “Substantial Undertaking” has now been defined
- Borrowing in excess of the paid-up capital & free reserves
- A special resolution is required to be passed instead of Ordinary resolution
Appointment of MD / WTD / Manager / KMP
Appointment of MD/WTD/Manager/KMP

• Now applicable to Private Company also

• Minimum age 21 years (25 years) and maximum 70 years

• Notice of BM/GM – T&C of appointment, remuneration and other matters to be included

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

Key Managerial Personnel

- CEO
- Managing Director
- Whole time Director
- Manager
- CFO
- Company Secretary
Appointment of KMP

- KMP not to hold office in > 1 Company except in Subsidiary Company at the same time
  - KMP can be director with permission of BOD
- KMP vacancy to be filled up by BOD within 6 months at BM
Vacation of office of directors

- 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

16/11/2013
Enhanced Duties, Responsibilities
Duties of Director

To act in accordance with the company’s Articles

To act in good faith in order to promote the objects of the company

Exercise his duties with due and reasonable care, skill and diligence.

Not to have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company.

Director shall not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates.

Shall not assign his office and any assignment so made shall be void.
Disclosure & Transparency
Disclosures

✓ Increased purview of Consolidated Financial Statement
✓ Exhaustive Board's report
✓ Periodic Disclosure of interest by directors
✓ Detailed Annual Return
✓ Return to be filed with Registrar in case promoters‘ stake changes every 15 days of change
✓ Justification & Disclosures on Related party transactions
✓ Disclosure of Contract of employment with managing or whole-time directors –
✓ Enhanced disclosures in case of Mergers, amalgamations & Corporate Restructuring
Annual Return

Additional information required to be provided in Annual Return

- Principal business activity with particulars of holding, subsidiary and associate company
- Details of meetings of members/class thereof/BOD/ various committee along with attendance details
- Details related to certification of compliance, disclosures, etc
- Details about other securities issued by company
- Details of meetings of members/class thereof/BOD/ various committee along with attendance details
- Details of Foreign Institutional Investors if shares held by them or on their behalf
- Details of Promoters/KMP along with changes since closure of last FY
- Remuneration of Directors and KMP
- Such other matters as may be prescribed
- Details of penalties/punishment on Co/directors/officers/compounding of offence/appeals

Info up to FY closure only

16/11/2013
Directors’ Report

Directors Report, except incase of OPC, to contain:

- Extract of Annual Return
- Declaration by Independent Director
- Directors’ Responsibility Statement
- Comments/explanation by BOD on Secretarial Audit Report
- Particulars of loan/guarantee/investment
- Material changes from end of FY to date of Report
- Statement on risk management policy
- Details of CSR policy developed and implemented
- BOD/Committee performance evaluation
- Other such matters
Fund Raising

16/11/2013
Issue of Securities

Companies Act, 2013 seeks to regulates issue of all types of securities and not just shares and debentures.
Private Placement

**Applicability**
- All companies except NBFC’s

**Max Allotment in One FY**
- 200 investors excluding QIB and ESOP

**Conditions related to Allotment**
- Allotment to be made within 60 days, else refund @ 12% interest p.a.
- The number of offers or invitations not to exceed 4 times in a quarter
- Minimum gap between two offers to be not less than 60 days
- Minimum investment size of Rs 50,000 per person
- Cash Receipt prohibited
- No fresh offer to be made unless previous offer is completed
- Share application money to be kept in Separate Account

16/11/2013
Private Placement

In case of Unlisted companies, Issue price to be determined by a Registered Valuer.

Conditions related to Transfer

- Allottee not to transfer the security to more than 20 persons during a quarter.

The landmark judgment in the Sahara Case has set the direction for private placement and the Companies Act, 2013 draws heavily out of the principles enunciated by the Apex Court.

16/11/2013
Exit Opportunity

Variation in terms of Contracts or Objects

I want to change the terms of contracts referred to in prospectus or objects of the Issue?

It's easy pass an ordinary resolution in a general meeting.

It's no longer easy.

Revised Process

- Approval of members by Special Resolution
- Notice of GM to be published in newspapers giving justification for variation
- Dissenting shareholders to be given an exit offer by promoters/controlling shareholders
- Amount raised in IPO cannot be used for buying, trading or dealing in equity shares of another listed Company

16/11/2013
Put-Call Options in SHAs

- Contracts having put-call options shall be enforceable.
- Articles of Association may contain provision for entrenchment.
  - In Private company – agreed by all members.
  - In Public company – Special resolution.

Earlier Position:
- Conflicting precedents.
- Special rights valid if incorporated in AOA.

SEBI Interpretation:
- Recently SEBI vide notification LAD-NRO/GN/2013-14/26/6667 relaxed this provision & allowed Put/Call, Tag along / drag along rights.
Public Deposits – Tougher…

Accepting Deposits

- All companies can accept deposits only from members (Directors & their relatives excluded)
- Prior approval of members required for accepting deposits
- Deposit to be invited by issue of circular to members
- Where deposits are unsecured it has to be specifically quoted in every document inviting deposit

Accepting deposit from public no longer easy. Strict requirements to ensure protection of depositor’s interests

Repayment

- All the outstanding deposits on commencement of the Act have to be repaid within 1 year from date of maturity or 1 from commencement if already matured

Conditions

- Only prescribed classes of companies having net worth of INR100 crore or turnover of INR 500 crore are allowed to raise deposits from public
- Credit rating of deposits compulsory
- Compulsory creation of charge on the assets of the company within 30 days of acceptance, if deposits are secured

16/11/2013
Inter Group Financing
Loan to Directors & persons in whom director is interested

- No Company can give loan/ security/guarantee in favour of
  - Directors
  - Relative of directors
  - Any person in whom director is interested

- Now also applicable to private Companies

- There is no facility of seeking approval of Central Government

16/11/2013
Persons in whom director is interested (1 of 3)

A)  
Director  
  ↓  
Relative  
  ↑  
Partner  
  ↕  
Holding Company  
  ↘  
Lending Company

B)  
Director  
  ↓  
Relative  
  ↑  
Partner  
  ↓  
Firm
Persons in whom director is interested (2 of 3)

C) Director
   Director
   Member
   Private Company

D) Body Corporate
   Holding >=25% of voting power at GM
   Director or Directors
E) Acts in accordance with the directions of

BOD/MD/Manager Of Body Corporate

Board /Director of Lending Company
Loan, Investment and Guarantee allowed in:

- Company
- All persons (other than directors and person in whom director is interested)
- Body corporate

Limits:

By Board Resolution:

- 60% of its paid-up capital, free reserves & securities premium account; or
- 100% of its free reserves & security premium whichever is higher

In case of exceeding above limits: By Special Resolution
Applicability:
- Now private company, Holding & subsidiary companies are also included (Exemption is withdrawn)
- No SEBI Registered intermediary shall take Inter-corporate Loan and deposits exceeding specified limits

<table>
<thead>
<tr>
<th>Company</th>
<th>Old law</th>
<th>New Law</th>
</tr>
</thead>
<tbody>
<tr>
<td>Private Company</td>
<td>No restriction / limit</td>
<td>Subject to limit &amp; BR/SR</td>
</tr>
<tr>
<td>Public Company</td>
<td>Subject to limit &amp; BR/SR</td>
<td>Subject to limit &amp; BR/SR</td>
</tr>
</tbody>
</table>
Disclosure in Financial statements:

- Full particulars of loans, investments, guarantees
- their utilization by the recipient
Investments of Company

- All investments including in property, security or any other asset shall be held in own name.

- Company may hold shares in Subsidiary Company in the name of Nominee/Nominees of Company.

- Particulars to be mentioned in the register where securities are held in other name shall be prescribed by way of rules.

- Company cannot impose restriction of time for inspection of register.
Definitions

Related Party

- **Company**
  - **Director or his Relative**
  - **KMP or his Relative**
  - **Holding Company**
  - **Subsidiary & Associate**
  - **Fellow Subsidiaries**

- **Director, manager or his Relative**
  - **Partnership Firm in which partner**
  - **Private Company in which member or director**
  - **Public Company in which member or director**
  - **Body Corporate Advised Directed or instructed**
  - **Person who Advises Directs or instructs**

**Related Parties under various legislations**
Related Party Transactions

- Prior approval of CG for any RPT or appointment to any office or place or profit NOT required
- Transaction related to any kind of property are also covered
- Exemption granted to transactions in ordinary course of business made at arm’s length price
- Member who is a related party shall not vote on the resolution
Related Party Transactions

- Transactions to be Approval by Special Resolution:
  - RPTs for companies having paid up capital of 1 crore rupees; or
  - If Transaction exceeds 5% of annual turnover or 20% of net worth of company which ever is higher; or
  - Transaction relates to appointment to any office or place of profit at a monthly remuneration exceeding 1 lakh rupees; or
  - Remuneration of underwriting of subscription exceeding 10 lakh rupees.
Disclosures of related party transaction

✓ Disclosure in explanatory statement to be annexed to the notice
  § name of the related party;
  § name of the director or key managerial personnel who is related, if any;
  § nature of relationship;
  § nature, material terms, monetary value and particulars of the contract or arrangement;
  § any other information relevant or important for the members to take a decision on the proposed resolution.

✓ Every RPT shall be reported in the Board’s Report along with justification for entering into the same
Restrictions on Non-Cash Transactions

- Director of a company or of its holding/subsidiary/Associate company or any connected person can not acquire assets for consideration other than cash from the company & vice versa.
- Approval at a general meeting is required
- If the Director or connected person is director of holding company then approval of holding company in general meeting is also required
- Valuation of the assets by registered valuer
Fraud

- Act
- Omission
- Concealment of fact
- Abuse of position
  - With intent to
    - Deceive
    - Gain undue advantage from
      - Interests of
        - Company
        - Shareholders
        - Creditors
        - Any other person
    - Injure
  - Whether or not there is
    - Wrongful gain
    - Wrongful loss
“wrongful gain” means the gain by unlawful means of property to which the person gaining is not legally entitled.

“wrongful loss” means the loss by unlawful means of property to which the person losing is legally entitled.

All offenses covered u/s 447 cognizable and non bailable unless exempted.

**Punishment**

- Min 6 mths
- Max 10 Yrs
- Min Amt Involved
- Max 3x Amt Involved

16/11/2013
# Acts punishable as Frauds

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Section</th>
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</thead>
<tbody>
<tr>
<td>Furnishing any false or incorrect particulars of any information or suppression any material information in relation to incorporation</td>
<td>7(5),(6)</td>
</tr>
<tr>
<td>Fraudulent conduct of affairs of a charitable company</td>
<td>8(11)</td>
</tr>
<tr>
<td>Untrue or misleading statement in prospectus</td>
<td>34</td>
</tr>
<tr>
<td>Fraudulently inducing persons to invest money</td>
<td>36</td>
</tr>
<tr>
<td>Personation for acquisition, etc., of securities</td>
<td>38(1)</td>
</tr>
<tr>
<td>Issue of duplicate certificate of shares with an intent to defraud</td>
<td>46(5)</td>
</tr>
<tr>
<td>Transfer of shares by depository or depository participant, with an intention to defraud</td>
<td>56(7)</td>
</tr>
<tr>
<td>Furnishing False statement, mutilation, destruction of documents statement during inspection, inquiry or investigation</td>
<td>229</td>
</tr>
<tr>
<td>Fraudulent application for removal of name</td>
<td>251(1)</td>
</tr>
<tr>
<td>Fraudulent conduct of business of Company being wound up</td>
<td>339(3)</td>
</tr>
<tr>
<td>False statement or omission in any return, report, certificate, financial statement, prospectus, statement or other document required by, or for, the purposes of this Act</td>
<td>448</td>
</tr>
</tbody>
</table>

16/11/2013
Investigation into the affairs of the Company by SFIO

- Receipt of Report from Registrar/Inspector u/s 208
- Special Resolution for investigating the affairs of the company
- Public Interest
- Request from any department of Central Govt or State Govt

Powers

- Search and Seizure
- Power to Arrest

Central Govt

Investigation officer will investigate the affairs of the company

SFIO commands authority over other Investigation Agencies of CG/State Govt
SIFO to provide copy of Investigation Report to other agencies who were carrying out investigation
Class Action Suit

Who Can File
- 100 Members or 10% of the total number of members or depositors (whichever is less)

Where to File
- NCLT

Why to File
- To protect the interest of minority shareholders

Against Whom
- Company or its Auditors, Experts, Advisors or Consultants

16/11/2013
Prohibition on Forward Dealing / Insider Trading

✓ Forward dealing in the shares and debentures of a company, its holding, subsidiary or associate by Directors and KMPs is prohibited
✓ Banned contracts include both forward contracts and option contracts
✓ Securities acquired in violation to be surrendered to company
✓ Restriction on Directors, KMP and any order person for indulging in Insider trading
✓ Communication required in ordinary course of business or under law exempted
Corporate Restructuring
Corporate Restructuring

- Approval of NCLT is now required
- Approval of other agencies required
  - RBI
  - Income Tax Deptt.
  - ROC
  - SEBI
  - RD
  - OL
  - Central Govt.
  - CCI (if any)
Corporate Restructuring

Other Provisions

- Disclosure requirements have been significantly increased
- Post merger accounting as per accounting standards
- Meeting through postal ballot
- Authorized capital merger
- Objection valid if filed by:
  - Person representing Minimum 10% shareholding
  - Person representing 5% of loan
Holding shares in trust for subsidiary or associate companies on merger not allowed. Such shares shall be cancelled.

Automatic listing on merger not necessary. Exit to be given to shareholders who opt out.
New Moves

Cross Border M & A

- Indian Company may now merge into a foreign company and vice versa
- Prior approval of RBI necessary
- Consideration to be paid in cash, or in Depository Receipts, or partly in cash and partly in Depository Receipts

Fast Track Merger

- Summary procedure for merger of two or more small Private companies or Hold Co and WOS.
- Prior notice to ROC and OL inviting objections
- Approval of Shareholders and creditors with 9/10th Majority
- Approved scheme to be filed with CG for confirmation

16/11/2013
Rehabilitation of Sick Companies

- All the Companies, whether Industrial Company or not, are covered now
- Criteria for erosion of 50% Net Worth erosion knocked off
- Power has been entrusted with Secured Creditors, representing 50% or More of the Debt of the Company.
- Net Worth (old law) Vs Repayment of debt (New law), Provisions of new Act are on lines with Chapter XI of US Bankruptcy Law
- Introduction of “Rehabilitation and Insolvency Fund”
A person having such qualifications and experience and registered as a valuer under the provisions of the law.

- Valuer not to be interested
- Valuer to exercise due diligence
- Valuation to be done as per rules
- Valuer liable for damages on default
Now shares on which dividend is unclaimed are also transferable to IEPF

- Issue of Bonus shares from Revaluation reserve not allowed

- No mandate to transfer % of profit to reserves prior to declaration of dividend
What we need to do

We must **Analyze** the whole Structure and Systems of our organization and take necessary Actions to Align them with new Legal Environment...
Thank You

Pavan Kumar Vijay

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