



The Companies Act 2013

A brief introduction

The Companies Act, 2013

History

- **Background**

- ✓ **The Companies Act, 2013 has replaced the erstwhile Companies Act, 1956**
- ✓ **The new act is vastly different from its predecessor.**
- ✓ **The new act has changed the roles and responsibilities of various stakeholders substantially.**

The Companies Act, 2013

History

- **Basic Changes**

- ✓ Unlike the old act, the new Act has transferred most of the operative conditions into Rules.
- ✓ The new Act contains 29 Chapters, 470 Section and 7 Schedules.
- ✓ The old Act had 13 Parts, 658 Sections and 15 Schedules.
- ✓ Penalties have been made very severe and stringent.
 - Imprisonment added for various violations.
 - Imprisonment is not compoundable.

The Companies Act, 2013

History

- **Structure**

- ✓ **The new Act is organised in a more structured manner.**
- ✓ **Important provisions applicable to the day to day affairs are given under Section 1 to Section 205 i.e. Chapter I to Chapter XIII**

The Companies Act, 2013

New Concepts

- **One Person Company**
 - ✓ A company which has only one person as a member.
- **Body Corporate**
 - ✓ Includes company incorporated outside India.
- **Associate Company**
 - ✓ a company in which significant influence is exercised.
 - includes a Joint Venture company
- **Key Management Personnel**
 - ✓ WTD, CEO, CFO, CS

The Companies Act, 2013

New Concepts

- **Small Company**

- Paid up Share Capital between Rs 50 Lakhs & Rs 5 Crore, as prescribed
And
- Turnover between Rs 2 Crore and Rs 20 Crore, as prescribed

- ✓ **Conditions**

- Should not be a public company
- Should not be a holding company or subsidiary company (of what?)
- Should not be a company registered u/s 8 (????)
- Should not be governed by any special Act.

The Companies Act, 2013

Board Meetings

	New Act – Section 178	Old Act – Section 285 / 224 (5)
First Board Meeting	Within 30 days of Incorporation	Not specified
Minimum Number of Board Meetings	Every Year - 4 Board Meeting	Once in Every 3 Calendar Months
Maximum time gap between 2 Board meetings	Maximum time gap of 120 days	No such Requirement
Notice of Board Meeting	Not less than 7 Days. Can be at shorter notice for urgent business , subject to conditions.	No such Requirement
Penalty for no notice	Rs 25,000/- per responsible person	Rs 1000/- lumpsum

The Companies Act, 2013

Board Meetings

- **Shorter Notice – Conditions**
 - ✓ **At least 1 Independent director to be present or to ratify.**
 - ✓ **What if no independent director on the Board.**
 - Not clear.
- **Decision taken at such meetings to be circulated to all directors**
- **Minutes to be circulated with 15 days.**

The Companies Act, 2013

Board Meetings

- **Quorum**

- ✓ **Participation by video conferencing or any audio visual means permitted.**
- ✓ **1/3 of Board strength or 2 which ever is higher**
 - Fractions to be rounded off to the next integer.
- ✓ **Board strength does not include “vacant” positions**
- ✓ **If interested directors exceed 66% of the total strength**
 - At least 2 non interested directors required for quorum

The Companies Act, 2013

Board Meetings

- **Quorum**
 - ✓ Provisions now applicable to Private Companies.
- If meeting is adjourned due to lack of quorum
 - ✓ To be held same day, place, time after ONE week.
- If Quorum cannot be reached
 - ✓ Can increase directors
 - ✓ Can call for General Meeting

The Companies Act, 2013

Board Meetings

- **Restrictions on Powers of the Board**
 - ✓ **More restrictions.**
 - ✓ **Restrictions applicable to PRIVATE companies also.**

The Companies Act, 2013

Board Meetings

- **Restriction On**

- ✓ **borrowings exceeding its paid-up capital and free reserves.**
 - Borrowings from banks in ordinary course of business excluded.
- ✓ **Remitting or extending repayment time for debt to Director**
- ✓ **Alienating whole or substantial undertaking.**
- ✓ **Investing proceeds of merger / amalgamation**
 - Investment in Trust Securities permitted

The Companies Act, 2013

Board Meetings

- **Circular Resolutions**

- ✓ **Can be passed where no specific requirement for Board Meeting.**
- ✓ **Draft Resolution to be sent to registered address of Directors by hand delivery, courier, email or fax.**
- ✓ **Such resolutions to be noted at subsequent Board Meeting.**

The Companies Act, 2013

Board Meetings

- **Circular Resolutions – Prohibited**
 - ✓ **Making calls on shares.**
 - ✓ **Issuing securities.**
 - ✓ **Buying back securities.**
 - ✓ **Borrowing money.**
 - ✓ **Investing Company's funds.**
 - ✓ **Give loans or guarantees or security for loans.**
 - ✓ **Diversify business.**
 - ✓ **Approve Merger / Amalgamation / Aquisition.**
 - ✓ **Other matters, as may be prescribed (in rules) in future.**

The Companies Act, 2013

Directors

- **New Provisions**

- ✓ **At least one resident director.**

- Resident means staying in India for 182+days in PREVIOUS CALENDAR YEAR.

- ✓ **Must attend at least one board meeting in a financial year.**

- Non compliance would lead to vacating of office.

- ✓ **Director to personally file form with ROC on resignation.**

- Company's obligation to file form, continues.

The Companies Act, 2013

Directors

- **Disclosures**

- ✓ **Every director shall disclose his concern or interest through him or through relatives in –**

- Any Company or
- Bodies Corporate or,
- Firms, or
- Other Association of Individuals which shall also include the shareholding.

- ✓ **Public Company in which the Director holds or with relatives, more than 2% paid up share capital**

The Companies Act, 2013

Directors

- **Disclosures**

- ✓ **Where any contract or arrangement is being entered into by the Company with:**

- A body corporate where the Director by himself or with other Director holds 2% or more of the paid up capital of that Company or is a Promoter, Manager, CEO of that body Corporate or
- a firm or other entity in which, such director is a partner, owner or member

The Companies Act, 2013

Directors

- **Disclosures**

- ✓ **To be made at the 1st meeting of the Board**

- in each financial year.
- after appointment as Director
- when such interest is created or changed.

- ✓ **To be approved at the Board meeting**

- ✓ **To be filed with the ROC within 30 days.**

The Companies Act, 2013

Directors

- **Disclosures**

- ✓ **Consequence of non-disclosure**

- Contract or arrangement in which Director is interested shall be voidable at the option of the Company.
- Imprisonment upto 1 year
- Fine between Rs 5,000 to Rs 100,000

The Companies Act, 2013

Directors

- **Loans**

- ✓ **Restrictions on loans to directors extended to private companies.**

- ✓ **Exemption**

- Can be given to MD / WTD as per company POLICY applicable to ALL employees.
- If approved by Members as a SPECIAL Resolution.
- If its part of Company's business activity and rate of interest is not less than bank rate declared by RBI.

The Companies Act, 2013

Directors

- **Loans**

- ✓ **Cannot be given to :**

- Director of Company or Holding Company
- Relative or Partner of such Director
- A firm in which such Director or relative is a partner
- A Private Company where such Director is Director or Member
- A Body Corporate where 25% of the voting power is exercised by the Directors of the lending company.
- A Body Corporate acts on the Directors of the lending company.

The Companies Act, 2013

Directors

- **Loans**

- ✓ **Consequence of contravention**

- Simple imprisonment of upto 6 months **AND/OR**
- Old Act : Rs 50,000.
- New Act : Rs 500,000 to Rs 2,500,000

The Companies Act, 2013

Related Party

- **Definition**

- ✓ **A Director or relative**
- ✓ **A Key Management Personnel (KMP) or relative**
- ✓ **A firm in which Director or KMP of relative is partner.**
- ✓ **A Private Company in which Director or KMP or relative is Director or Member.**
- ✓ **A Public Company in which Director or KMP or relative is Director.**
- ✓ **A Public Company in which Director or KMP along with relatives holds more than 2% of the Paid-up Share Capital.**

The Companies Act, 2013

Related Party

- **Definition**

- ✓ any body corporate whose Board, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager.
- ✓ any person on whose advice, directions or instructions a director or manager is accustomed to act
 - Unless the advice is given in a professional capacity.
- ✓ any company which is holding, subsidiary, associate, or a sister subsidiary.
- ✓ Director (other than Independent Director) or KMP of the Holding Company or his relatives with reference to the company.

The Companies Act, 2013

Related Party Transaction

- **Restrictions**

- ✓ **Certain transaction require Board approval**
- ✓ **Certain transaction require Members approval**

The Companies Act, 2013

Related Party Transaction

- **Board Approval Required for :**
 - ✓ **Sale, Purchase or Supply of any goods/materials**
 - ✓ **Buying, Selling, Leasing, Disposing property of any kind**
 - ✓ **Availing or rendering of Services**
 - ✓ **Appointment of any agent**
 - ✓ **Appointment to any office or place of profit**
 - ✓ **Contracts for under writing the subscription of securities or derivatives**

The Companies Act, 2013

Related Party Transaction

- **Members Approval Required for :**

- ✓ **Sale, Purchase or Supply of any goods/materials exceeding 10% of Annual Turnover or 100 Crore rupees; whichever is lower**
- ✓ **Buying, Selling, Leasing, Disposing property of any kind exceeding 10% of Net Worth or 100 Crore rupees; whichever is lower**
- ✓ **Leasing of Property of any kind-exceeding 10% of Net worth or exceeding 10% of Turnover or 100 Crore rupees; whichever is lower**
- ✓ **Availing or rendering of Services- exceeding 10% of Annual Turnover or 50 Crore rupees; whichever is lower**

The Companies Act, 2013

Related Party Transaction

- **Members Approval Required for :**
 - ✓ **Appointment of any agent- exceeding 10% of Annual Turnover or exceeding 10% of Net worth or 100 Crore rupees; whichever is lower**
 - ✓ **Appointment to any office or place of profit- Remuneration at Rs 2.5 lakhs per month**
 - ✓ **Contracts for under writing the subscription of securities or derivatives- exceeding 1% of Net worth**

The Companies Act, 2013

Lending & Investing

- **Scope extended**

- ✓ **Earlier restriction was on lending to “Companies”**
- ✓ **New Act specified “Person”**
 - Loan to employees will also be covered

- **Restriction on giving**

- ✓ **Loan, Security or Guarantee**
- ✓ **Investing in another Company**
- ✓ **Restriction extended to PRIVATE Company & HOLDING Company.**
 - Loan to WHOLLY OWNED SUBSIDIARY ALLOWED.

The Companies Act, 2013

Lending & Investing

- **Blanket Permission**

- ✓ **By Unanimous Board Resolution**

- Higher Of :
 - 60% Paid up Capital + Free Reserves + Securities Premium Account
 - 100% of Free Reserves + Securities Premium Account

- ✓ **By Special Resolution of Members**

- Exceeding above limits.

- ✓ **By Prior approval of Financial institution**

- If any term loan is subsisting.

The Companies Act, 2013

Lending & Investing

- **Terms & Conditions**

- ✓ **Rate of Interest cannot be less than yield of government security of nearest tenure.**
- ✓ **Must maintain register in prescribed format.**
- ✓ **Relevant particulars to be disclosed in financial statements.**
- ✓ **Investment to be only in 2 layers**
 - Exception for overseas companies.
 - Exception where law mandates creating of subsidiary.

The Companies Act, 2013

Lending & Investing

- **Exceptions**

- ✓ **Banking company**
- ✓ **Insurance company**
- ✓ **Housing finance company**
- ✓ **Company engaged in business of financing companies**
- ✓ **Company providing Infrastructural facility**
- ✓ **Any Acquisition by-**
 - NBFC,
 - Company whose principal business is acquisition of securities,
 - Right issue

The Companies Act, 2013

Lending & Investing

- **Consequence of Contravention**

- ✓ **Company**

- Fine : Rs 25,000 to Rs 500,000

- ✓ **Directors / Person in default**

- Fine : Rs 25,000 to Rs 100,000
- Imprisonment: Up to 2 years.

The Companies Act, 2013

Annual Report

- **Additional Disclosures**

- ✓ **Extract of Annual Return**

- ✓ **Number of Board Meetings**

- ✓ **Explanation on adverse remarks by auditors / secretary**

- ✓ **Related Party Transaction.**

- ✓ **Corporate Social Responsibility**

- In case of small private companies, if profit exceeds Rs 5 Crores.

The Companies Act, 2013

Annual Return

- **Extended**

- ✓ **Information in under old Act**

- 9 to 12 pages

- ✓ **Information in under new Act**

- 30 to 35 pages

- **Effective Date**

- ✓ **Under old Act**

- As at the date of the Annual General Meeting

- ✓ **Under new Act**

- As at the date of the Financial Statements.

The Companies Act, 2013

Annual Return

- **New Details Required**

- ✓ **Principal business activity**
- ✓ **Particulars of holding, subsidiary and associates**
- ✓ **Turnover and Net Worth**
- ✓ **Indebtedness**
- ✓ **Penalties, Punishments, Compounding of Offences**
- ✓ **Certification of Compliance and Disclosures**

The Companies Act, 2013

Filings

- **Agreements / Resolutions**

- ✓ **Certain agreement / resolutions to be filed within 30 days**

- ✓ **Passed by the Board.**

- All Special resolutions passed by members.
- Resolutions to appointment / reappointment / renewal / variation in terms of appointment of Managing Director
- Resolutions or agreements which have been agreed to by any class of members
- Resolutions requiring Company to be wound up voluntarily
- any other resolution or agreement as may be prescribed and placed in the public domain.

The Companies Act, 2013

Filings

- **Agreements / Resolutions**

- ✓ **Items requiring special resolution of members.**

- To sell, lease or otherwise dispose of the whole or substantially the whole of the undertaking of the company
- To invest otherwise in trust securities the amount of compensation received by it as a result of any merger or amalgamation;
- To borrow money, in excess of Paid up Capital & Free Reserves, apart from temporary loans
- To remit or give time for the repayment of any debt due from a director.

The Companies Act, 2013

Filings

- **Powers to be exercised only at Board Meeting**
 - ✓ **To make calls on shareholders in respect of money unpaid on their shares;**
 - ✓ **To authorise buy-back of securities under section 68;**
 - ✓ **To issue securities, including debentures, whether in or outside India;**
 - ✓ **To borrow monies;**
 - ✓ **To invest the funds of the company;**
 - ✓ **To grant loans or give guarantee or provide security in respect of loans;**
 - ✓ **To approve financial statement and the Board's report;**
 - ✓ **To diversify the business of the company;**
 - ✓ **To approve amalgamation, merger or reconstruction;**
 - ✓ **To take over a company or acquire a controlling or substantial stake in another company;**

The Companies Act, 2013

Filings

- Powers to be exercised only at Board Meeting

- ✓ to make political contributions;
- ✓ to appoint or remove key managerial personnel (KMP)
- ~~✓ to take note of appointment(s) or removal(s) of one level below the Key Management Personnel;~~
- ✓ to appoint internal auditors and secretarial auditor;
- ~~✓ to take note of the disclosure of director's interest and shareholding;~~
- ~~✓ to buy, 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 invite or accept or renew public deposits and related matters;~~
- ~~✓ to review or change the terms and conditions of public deposit;~~
- ~~✓ to approve quarterly, half yearly and annual financial statements or financial results as the case may be.~~

Omitted vide Notification No. GSR 206(E) dated 18th March, 2015

The Companies Act, 2013

Registers

Form No	Particulars of Register	In Old Act
MGT-1	Register of Members	Yes
MGT-2	Register of Debenture / Other Security Holders	Yes
MGT-1	Register of Foreign Members, Debenture / Security Holders or Beneficial Holders residing outside India	No
SH-2	Register of Renewed and Duplicate Share Certificate	Yes
SH-3	Register of Sweat Equity Shares	Yes
SH-6	Register of Employees Stock Options	No
SH-10	Register of Shares of Other Equities Bought Back	Yes
NA	Register of Deposits	Yes
CHG-7	Register of Charges	Yes

The Companies Act, 2013

Registers

Form No	Particulars of Register	In Old Act
NA	Attendance Register of Members & Register of Proxy	Yes
NA	Register of Directors, Key Managerial Personnel & their Shareholding	Directors
MBP-2	Register of Loans, Guarantee, Security & Acquisition	Yes
MBP-3	Register of Investments Not in its Own Name	Yes
MBP-4	Register of Contracts or Arrangements in which Directors are interested	Yes
MBP-5	Register and Index of Beneficial Owners	No

The Companies Act, 2013

Accounts

- **New Requirements**

- ✓ Cashflow statement made mandatory for PRIVATE companies.
- ✓ New “Statement of Change in Equity” to be provided.

- **Inspection**

- ✓ Should be open for inspection during business hours by any Director / Person authorised by Board Resolution.

- **Contravention**

- ✓ Fine : Rs 50,000 to Rs 500,000/-
- ✓ Imprisonment up to 1 year
- ✓ Applicable to MD / WTD / Director Finance / CFO / Authorised person

The Companies Act, 2013

Audit

- **Appointment**
 - ✓ For 5 years instead of 1 year
 - ✓ Annually the appointment to be ratified at the AGM.
- **Resignation**
 - ✓ Auditor to give reason for resignation, in writing.
- **Powers / Rights**
 - ✓ Specifically defined in the Act.

The Companies Act, 2013

Audit

- **Rotation**

- ✓ Private companies with Paid-up capital > Rs 20 Crores
- ✓ Unlisted companies with Paid-up capital > Rs 10 Crores
- ✓ Listed companies.
- ✓ Companies with public debt > Rs 50 Crores

- **Period**

- ✓ Rotation every 5 years (individuals) / 10 years (firms)
- ✓ Cannot be reappointed for 5 years.

The Companies Act, 2013

Audit

- **Prohibited Services**

- ✓ **Accounting and Book Keeping services;**
- ✓ **internal audit;**
- ✓ **design and implementation of any financial information system;**
- ✓ **actuarial services;**
- ✓ **investment advisory services;**
- ✓ **investment banking services;**
- ✓ **rendering of outsourced financial services;**
- ✓ **management services; and**
- ✓ **Any other kind of services as may be prescribed**

- **Contravention**

- ✓ **By Company**

- Fine of Rs 25,000 to Rs 500,000 by Company
- Fine of Rs 10,000 to Rs 100,000 by Officer in Default
- Imprisonment for Officer in Default up to 1 year.

- ✓ **By Auditor**

- Fine for inadvertent contravention : Rs 25,000 to Rs 500,000
- Fine for wilful contravention : Rs 100,000 to Rs 2,500,000; and
: Imprisonment up to 1 year

The Companies Act, 2013

Audit

- **Extension of Liability**
 - ✓ **Can be challenged by parties other than shareholders.**
- **Conviction**
 - ✓ **Refund of fees**
 - ✓ **Payment of damages**

The Companies Act, 2013

Capital

- **New Provisions**

- ✓ **Offer Document to be filed with ROC.**
 - Like in the case of listed companies.
- ✓ **List of people being offered to be identified.**
 - List to be filed.
- ✓ **Separate bank account for application money.**
- ✓ **Funds to be utilised only after allotment.**
- ✓ **Pricing to be based on valuation.**

The Companies Act, 2013

Deposits

- **New Restrictions**

- ✓ **Cannot borrow from share holders or relative.**

- Can only borrow from Directors.
- Director should have lent from own funds only.

- ✓ **Various “business” deposits taken covered**

- If not refunded as per the terms of acceptance.
- Includes from employees, advance for goods / services, advance against property deal.

- ✓ **Inter corporate deposits are exempt.**

- ✓ **Existing deposits – to be repaid.**

- ✓ **MCA clarified : amounts received by Private Companies prior to 1st April, 2014 shall not be treated as Deposits.**

Thank You...



By Haresh Jani & Associates
Company Secretaries