

CORPORATE LAWS
For B.Com Semester I(CBCS)
Paper –CC4

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COMPANIES ACT ,2013

Some of Key Provisions in new Companies Act-2013

- ❖ Requirement to constitute Remuneration and Nomination Committee and Stakeholders Grievances Committee
- ❖ Granting of More powers to Audit Committee
- ❖ Specific clause pertaining to duties of directors
- ❖ Mode of appointment of Independent Directors and their tenure
- ❖ Code of Conduct for Independent Directors
- ❖ Rotation of Auditors and restriction on Auditor's for providing non-audit services
- ❖ Enhancement of liability of Auditors
- ❖ Disclosure and approval of Related Party Transaction
- ❖ Constitution of National Financial Reporting Authority, an independent body to take action against the Auditors in case of professional mis-conduct
- ❖ Mandatory expenditure on CSR activities
- ❖ Enabling Shareholders Associations/Group of Shareholders for taking class action suits and reimbursement of the expenses out of Investor Education and Protection Fund

BACKGROUND

- The Companies Act, 2013 has been enacted and it received
 - the assent of the President of India on August 29, 2013.
- A substantial portion of the Act, will be by way of Rules. In more than 330 areas, the Rules will clarify the requirements.

- This Act will come in force as and when notified. As of now only 98 sections have been notified.
- It hallmarks the transition of 'Government regulated'
 - regime to a new regime of self regulation
- It lays significant emphasis on e-governance and corporate governance measures.

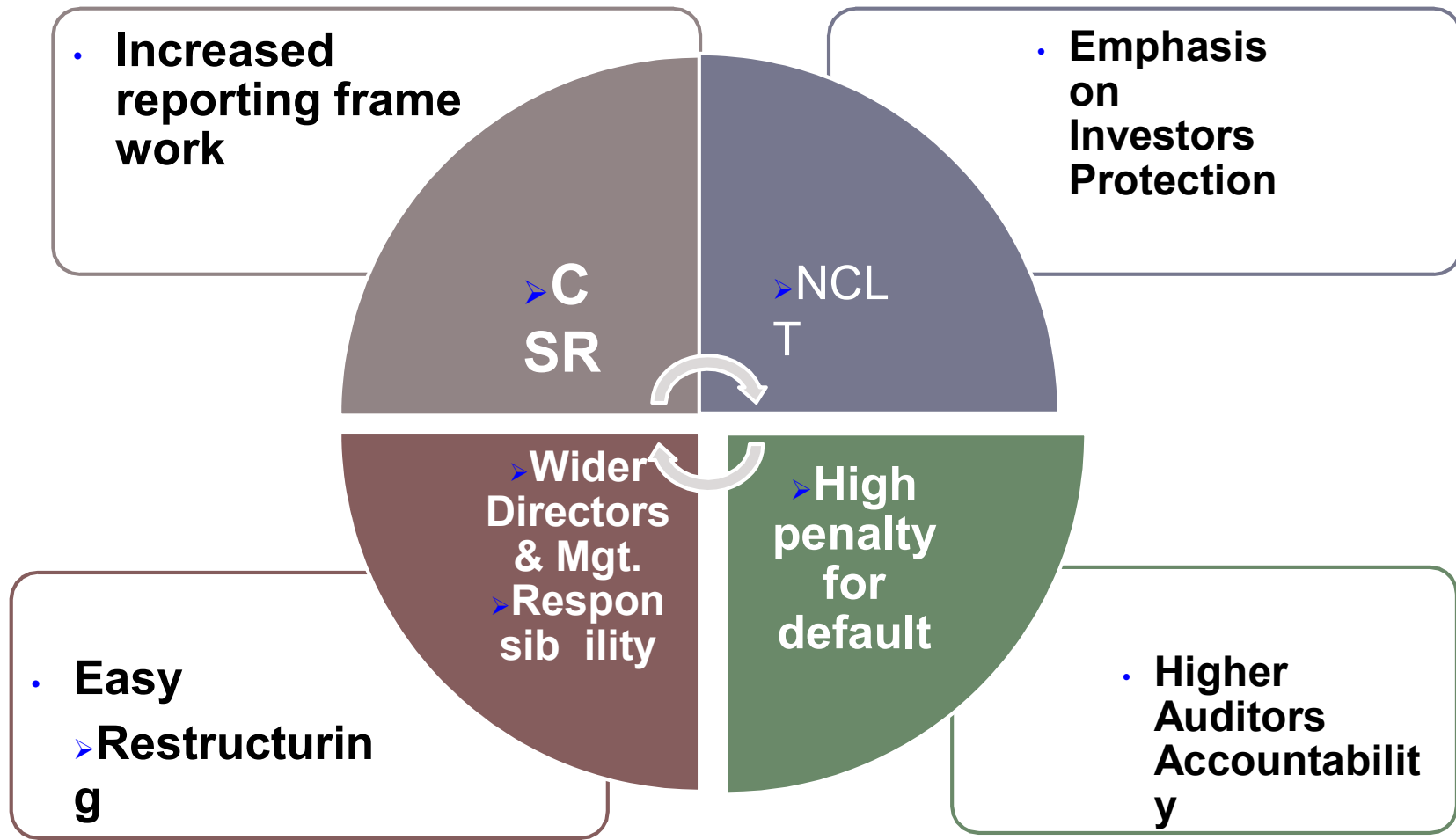
WHAT IS NEW IN COMPANIES ACT,2013

COMPANIES ACT, 1956	COMPANIES ACT, 2013
658 Sections	470 Clauses
13 Parts	29 Chapters
15 Schedules	7 schedules

Background (contd)...

- This Act shall come into force on such dates as the Central Governemnt may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of the Act. It is not mandated to enforce the entire Act in totality at one point
- MCA notification 12.09.2013
 - MCA has issued a notification bringing into force 98 sections of the Companies Act, 2013 from 23.09.2013
- MCA Circular on 23.09.2013
 - The circular provided clarification on the application of existing Accounting Standards until the standards are prescribed by the Central Government. It also clarified that if the notice was issued prior to 23.09.2013, the resolutions (special or ordinary as may be required) may be passed in accordance with the Companies Act, 1956.
- MCA Circular on 18.09.2013
 - MCA has clarified that the relevant provisions of the 1956 Act corresponding to provisions of 98 sections of 2013 Act brought into force, will cease to have effect from 12.09.2013.

Focus Areas in New Act



Some New definitions

Section 2 (6) Definition of Associate Company (New Definition)

The term Associate Company has been defined in the Act. Associate Company means a company in which that other company has a significant influence i.e. control of atleast 20% of total share capital or of business decision under an agreement and includes a joint venture company.

Section 2(12) Book and Paper can be kept in electronic form **(Term modified)**

The term book and paper includes books of account, deeds, vouchers, writings, documents, minutes and registers maintained on paper or **in electronic form.**

➤ **Section 2 (40) Definition of Financial Statement (New Definition)**

➤ financial statement” in relation to a company, includes—

- (i) a balance sheet as at the end of the financial year;
 - (ii) a profit and loss account, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year;
 - (iii) cash flow statement for the financial year;
 - (iv) a statement of changes in equity, if applicable; and
 - (v) any explanatory note annexed to, or forming part of, any document referred to in sub-clause (i) to sub-clause (iv):
- Provided that the financial statement, with respect to One Person Company, small company and dormant company, may not include the cash flow statement;

Section 2(49) Definition of Interested Director

The Definition of Interested Director is very exhaustive now. “interested director” means a director who is in any way, whether by himself or through any of his relatives or firm, body corporate or other association of individuals in which he or any of his relatives is a partner, director or a member, interested in a contract or arrangement, or proposed contract or arrangement, entered into or to be entered into by or on behalf of a company

Section 2 (51) Key managerial personnel (New Definition)

The term key managerial personnel in relation to a company means:

- i) the Chief Executive Officer or the Managing Director or the Manager
- ii) the Company Secretary;
- iii) the whole-time Director;
- iv) the Chief Financial Officer
- v) such other officer as may be prescribed

➤Section 2(60) Officer who is in default (Modified definition)

➤For the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any penalty or punishment by way of imprisonment, fine or otherwise, means any of the following officers of a company, namely:—

(i) whole-time director;

(ii) key managerial personnel;

(iii) where there is no key managerial personnel, such director or directors as specified by the Board in this behalf and who has or have given his or their consent in writing to the Board to such specification, or all the directors, if no director is so specified;

(iv) any person who, under the immediate authority of the Board or any key managerial personnel, is charged with any responsibility including maintenance, filing or distribution of accounts or records, authorises, actively participates in, knowingly permits, or knowingly fails to take active steps to prevent, any default

(v) any person in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act, other than a person who gives advice to the Board in a professional capacity;

(vi) every director, in respect of a contravention of any of the provisions of this Act, who is aware of such contravention by virtue of the receipt by him of any proceedings of the Board or participation in such proceedings without objecting to the same, or where such contravention had taken place with his consent or connivance;

(vii) in respect of the issue or transfer of any shares of a company, the

- > share transfer agents, registrars and merchant**
- > bankers to the issue or transfer**

Section 2(68) Members in Private Company	The limit of maximum number of members has been increased from 50 to 200
Sec 2(76) Related Party	<p>The term related party has been defined in the Act as under, Related Party Means:-</p> <ul style="list-style-type: none"> (i) a 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 a member or director; (v) a public company in which a director or manager is a director or holds along with his relatives, more than two per cent. of its paid-up share capital;

- (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) a holding, subsidiary or an associate company of such company; or**
 - (B) a subsidiary of a holding company to which it is also a subsidiary;**
- (ix) such other person as may be prescribed;**

- **Section 2(85) Definition of Small**

- **Company**

- **“small company” means a company,**
- **other than a public company,**
- (i) paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than five crore rupees; or**
- (ii) turnover of which as per its last profit and loss account does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than twenty crore rupees:**
- **Provided that nothing in this clause shall apply to—**
- (A) a holding company or a subsidiary company;**
- (B) a company registered under**
- **section 8; or**

Section 12 Publication of Name of the Company with Corporate Identification Number in the Letter Head (New requirement)

The company shall get its name, address of its registered office and the Corporate Identity Number alongwith telephone number, fax number, if any, e-mail and website addresses, if any, printed in all its business letters, billheads, letter papers and in all its notices and other official publications.

New Definitions added

- **Associate Company :- in relation to another company, means a** a company in which that other company has a significant influence but which is not a subsidiary company of the company having such (control at least 20% of total share capital)
Exception:- :- in relation to another company, means a (i) subsidiary company
(ii) joint venture Company
- **Financial Statement:-includes-**
 - (i) Balance sheet
 - (ii) Profit and loss account, or income and expenditure account
 - (iii) Cash flow statement
 - (iv) any explanatory note attached to, or forming part of, any of the above document
- **Financial Year :-** for a company or body corporate, means the period ending on the 31st day of march every year.
- **Key Managerial Personnel:-** means –
 - (i) chief executive officer or the managing director or the manager
 - (ii) company secretary
 - (iii) whole-time director
 - (iv) chief financial officer
- (iv) such other officer as may be prescribed

➤ **New Definitions added**

□ **PROMOTER:-** A person -

(a) named as such in a prospectus or identified by the company in the annual return referred

➤ in section 92

(b) having control over the affairs of the company (directly or indirectly whether as a shareholder, director or otherwise)

(c) in accordance with whose advice, directions or instructions the board of directors of the company is accustomed to act.

➤ Exception:- person acting in professional capacity [clause 2(69)]

➤ **RELATED PARTY:-** means-

(i) Director or his relative

(ii) Key Managerial Personnel or his relative

(iii) Firm, in which a director, manager or his relative is a partner

(iv) Private Company in which a Director or Manager is a member or director

(v) Public Company in which a Director or Manager is a Director or holds along with his relatives, more than two per cent. of its paid-up share capital

(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

➤ **Turnover –**

➤ means the aggregate value of the realization of amount made from the sale, supply or distribution of goods or on account of services rendered, or both, by the company during a financial year; (clause 2(91))

➤ **Fraud - includes :**

➤ (i) any act, omission, concealment of any fact. (ii) abuse of position committed by any person.

➤ with intent to deceive/ gain undue advantage / injure the interests of, company or shareholders or creditors or any other person, [whether or not there is any wrongful gain or wrongful loss]

Incorporation of Company

➤ **One Person Company –**

➤ the intent is apparently to permit entrepreneurship of a single individual to obtain the benefit of a corporate form of organization

➤ **Features:-**

1. formed as a private limited company.
2. only one person as a member
3. It is a one shareholder corporate entity, where legal and financial liability is limited to the company only.
4. minimum of 1 director
5. Provision of Annual General Meeting is not applicable .
6. Minimum one meeting of the Board of Directors has been conducted in each half of a calendar year and the gap between the two meetings is not less than ninety days

- **Small Company** :- a Company, other than a public company, of which
- (i) Paid-up share capital -not exceeding 50 lakh rupees or such higher amount but which shall not exceed 5 crore rupees
- or
- (ii) Turnover - as per its last profit and loss account, not exceeding Rs.2 crore rupees or such higher amount but which shall not exceed Rs. 20 crore rupees
- exception;-
 - (a) a holding company or a subsidiary company;
 - (b) a company registered under section 8; or
 - (c) a company or body corporate governed by any special act;
- **Commencement of business –**
- **No need to obtain certificate of commencement of business** and only declaration and verification is required by the public company.

➤ **Memorandum of Association:**

□ (1) Printing and signature of Memorandum by subscriber not required.

(2) Bifurcation of the objects clause into main, ancillary and other objects is not required. Only objects for which company is incorporated along with matters considered necessary for its furtherance shall be mentioned.

(3) The Company cannot provide for other object clause.

Acceptance of Deposits by Companies

- **Prohibition on Acceptance of Deposits from Public**
- Only the following companies may invite deposits from the public
 - (i) Banking companies
 - (ii) Non Banking Financial Companies (NBFC)
 - (iii) Notified companies
 - (iv) Public company having such net worth or turnover as may be prescribed as per audited balance sheet of the immediately preceding financial year
- A company other than those specified above:- Invite, accept or renew deposits only from its members

Meeting of Shareholders

- Voting through electronic means by members at meetings is permitted.

- **DECLARATION AND PAYMENT OF DIVIDEND**

- **No Compulsory Transfer of Profits to Reserves.** A Company MAY, if consider appropriate, before the declaration of any dividend in any financial year, transfer such percentage of its profits for that financial year to the reserves of the company

- **Unpaid dividend can be claimed any time:-**Time limit of seven years will not apply.

ACCOUNTS & AUDIT

- Maintenance of books of accounts and other books and papers in
 - electronic mode is now permitted
- Financial year in relation to a company shall be period ending on 31st March every year and where a company has been incorporated on or after 1st January of a year, the period ending 31st March of the following year shall be financial statement.
- Financial Statement of all Companies to include cash flow statement irrespective of size.
- **Consolidated Financial Statement :-** If Company has one or more subsidiaries then along with financial statement, consolidated financial statement of the company and all its subsidiaries will be prepared AND shall also be laid before the Annual General Meeting.
- Subsidiary shall for the purpose of this requirement include associate company and joint venture.

- Matters to be stated in Auditor's Report interalia include:
- Whether, in his opinion, the financial statements comply with the accounting standards.
- The observations or comments of the auditors on financial transactions or matters which have any adverse effect on the functioning of the company.
- Whether the directors is disqualified from being appointed as a director under sub-section (2) of section 164.

- Any qualification, reservation or adverse remark relating to the maintenance of accounts and other matters connected therewith.
- Whether the company has adequate internal financial controls system in place and the operating effectiveness of such controls.
- such other matters as may be prescribed.
- The Auditors shall also report on:
- Whether the company has disclosed the effect, if any, of pending litigations on its financial position in its financial statement.
- Whether the company has made provision for foreseeable losses, if any on long term contracts including derivative contracts.
- Whether there has been delay in depositing money into the Investor Education and Protection Fund by the company.

ACCOUNTS & AUDIT

- Internal Audit Mandatory for ;
 1. All Listed Company,
 2. other public Limited Company[any having loan exceeding specified amount]
- Directors report of all listed Company and Auditors Report of all Companies to comment on effectiveness of Internal Audit
- Appointment of Statutory Auditors for 5 years only.

ACCOUNTS & AUDIT

- **Appointment of Auditors:-**
- Appointment of Statutory Auditors for 5 years term .
- However, the company shall place the matter relating to such appointment for ratification by members at every annual general meeting.
- If change before 5 year then Special Resolution + Approval of Central Government
- **Exception:-** Government Companies/ Government Controlled Companies
- **Prohibition on Reappointment:**
- Listed company or class of Companies as may be prescribed, shall not appoint or re-appoint-
 - (a) an INDIVIDUAL as auditor for more than one term of five consecutive years
 - (b) an AUDIT FIRM as auditor for more than two terms of five consecutive years(Clause 139(2)).
- Automatic reappointment of existing auditor (without passing any resolution) at AGM where no auditor is appointed/ reappointed at AGM.
- Limited Liability Partnerships may be appointed as Auditors
- Auditing Standards to be made mandatory

DIRECTORS

□ **Number of directors**

⑩ Minimum : Public company -3 Private -2 , One Person Co.-1.

⑩ Maximum : limit increased to 15 from 12 .

➤ More directors can be added by passing of special resolution without getting the approval of Central Government.

□ **Maximum number of Directorship:-** Not more than 20 companies instead of 15 and out of this 20, he cannot be director of more than 10 public Companies.

□ **Woman director :-**At least one woman director shall be on the Board of such class of Companies as may be prescribed.

□ **Resident Director :-**Every company shall have at least *One Director* who has STAYED IN INDIA for a total period of NOT LESS THAN 182 DAYS IN PREVIOUS CALENDAR YEAR.

Independent Director

- **Under Companies Act, 1956 :**
- Not applicable to unlisted companies (whether public or private)
- Applicable only to listed companies under Listing Agreement:
- 1/3 rd to 1/2 of total directors to be independent directors (depending upon executive/non-executive nature of chairman)
- **Under new Companies Act, 2013:**
- Requirement: 1/3rd of total directors to be independent directors.
- Applicability:
 1. All Listed Companies
 2. Companies notified by Central Govt i.e. as per draft rules:
 - (a) Public Cos with paid up share capital in excess of Rs. 100 crores, or
 - (b) Public Cos with outstanding loans/borrowings/ debentures/ deposits in excess of Rs.200 crores.

- Mandatory reopening or recasting:
- A company can reopen its books of accounts

Accounts of Companies

- Revision of Financial statement or Board's Report
- Voluntary Revision
- The company may, if it appears to the directors that the Financial Statements or Board's Report are not in compliance with the provisions of the Act, may prepare revised financial statement or a revised Board's Report in respect of any of the three preceding financial year with the approval of Tribunal.

- Mandatory reopening or recasting:
- A company can reopen its books of accounts and recast its financial statements if:
- The relevant accounts were prepared in fraudulent manner or Affairs of the company were mismanaged during the relevant period casting a doubt on the reliability of the financial statements.
- On an application by Central Government, IT authorities SEBI or any regulatory body and an order being made by Court of Tribunal.

Definition of Independent Director

➤ An independent director in relation to a company, means a director other than a managing director or a whole-time director or a nominee director:

(a) who, in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience;

(b)(i) who is or was not a promoter of the company or its holding, subsidiary or associate company;

➤ (ii) who is not related to promoters or directors in the company, its holding, subsidiary or associate company;

Definition of Independent Director

- (c) who has or had no pecuniary relationship 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
- (d) none of whose relatives has or had 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

Definition of Independent Director

- (e) who, neither himself nor any of his relatives—
 - holds or has held the position of a key managerial personnel or is or has been employee of the company or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed;
 - (i) is or has been an employee or proprietor or a partner, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of—
 - (A) a firm of auditors or company secretaries in practice or cost auditors of the company or its holding, subsidiary or associate company; or
 - (B) any legal or a consulting firm that has or had any transaction with the company, its holding, subsidiary or associate company amounting to ten per cent. or more of the gross turnover of such firm;
 - (ii) holds together with his relatives two per cent. or more of the total voting power of the company; or
 - (iii) is a Chief Executive or director, by whatever name called, of any nonprofit organisation that receives twenty-five per cent. or more of its receipts from the company, any of its promoters, directors or its holding, subsidiary or associate company or that holds two per cent. or more of the total voting power of the company; or

Definition of Independent Director

- (f) who possesses such other qualifications as prescribed :
- An independent director shall possess appropriate balance of skills, experience and knowledge in one or more fields of finance, law, management, sales, marketing, administration, research, corporate governance, technical operations or other disciplines related to the company's business.

Definition of Independent Director

➤ Definition of independent director under Companies Act, 2013 wider in scope than listing agreement/SEBI ESOP guidelines.

The criteria is based on:

- ❑ Independence from Management
- ❑ Independence from Promoter Group
- ❑ No substantial shareholding
- ❑ Other significant relationship which may cause a conflict of interest
- ❑ **Tenure of Independent Director**
- ❑ 5 (original term) + 5 years (additional term subject to a special
➤ resolution).
- ❑ After expiry of term - ineligible for re appointment for 3 years.

Code of conduct for Independent Director

- Section 149 (7) provides that **Company & Independent Directors**
 - shall abide by Schedule IV
- Schedule IV provides for following:
 1. Guidelines for professional conduct
 2. Role & functions of independent Director
 3. Duties of independent Director
 4. Manner of Appointment
 5. Re-appointment
 6. Resignation / removal
 7. Separate Meeting
 8. Evaluation Mechanism

Guidelines of professional conduct for Independent Director

- An independent director shall:
 - (1) uphold ethical standards of integrity and probity;
 - (2) act objectively and constructively;
 - (3) act in a bona fide manner in the interest of the company;
 - (4) devote sufficient time and attention for informed and balanced
- decision making;
- (5) not abuse his position to gaining direct or indirect personal advantage or advantage;
- (6) refrain from any action that would lead to loss of his
- independence;
- (7) where circumstances arise which make an independent director lose his independence, the independent director must immediately inform the Board accordingly;
- (8) assist the company in implementing the best corporate
- governance practices

Role & Functions of Independent Director

➤ The independent directors shall:

➤ 1) bring independent judgment on the Board's deliberations

(2) bring an objective view in the evaluation of the performance of board and management;

(3) scrutinise the performance of management

(4) satisfy themselves on the integrity of financial information and that financial controls and the systems of risk management

(5) safeguard the interests of all stakeholders, particularly the minority shareholders;

(6) balance the conflicting interest of the stakeholders;

(7) determine appropriate levels of remuneration of executive directors, key managerial personnel and senior management and have a prime role in appointing and where necessary recommend removal of executive directors, key managerial personnel and senior management;

(8) moderate and arbitrate in the interest of the company as a whole, in situations of

➤ conflict between management and shareholder's interest.

Duties of Independent Director

- Some of duties are:

- undertake appropriate induction and regularly update and refresh their skills, knowledge

- strive to attend all meetings

- participate constructively and actively in the committees of the

- Board

- strive to attend the general meetings

- not to unfairly obstruct the functioning

- ensure that adequate deliberations are held before approving

- related party transactions and are in interest of the Company

- assist in protecting the legitimate interests of the company, shareholders and its employees

- not to disclose confidential information

Manner of appointment of Independent Director

- Appointment process shall be independent of the company management, balance should be between skills, experience and knowledge in the Board
- Appointment shall be approved at the meeting of the shareholders.
- Explanatory statement to the notice shall include a statement that in the opinion of the Board, the independent director proposed fulfils the conditions specified in the Act and the rules
- Process shall be formalised through a letter of appointment defining tenure, expectations by the Board, duties & liabilities etc.
- Term & condition of appointment shall be open for inspection at the registered office & posted on website

Other provisions Related to Independent Director

➤ Re-appointment:

- Re-appointment only on the basis of performance appraisal

➤ Resignation or Removal

- In case of resignation/removal, should be replaced by a new independent director within a period of not more than one hundred and eighty days

➤ Separate Meeting:

- At least One meeting in a year without presence of non independent directors & management to review performance of non independent directors, Board, Chairman and to assess quality, quantity etc. of flow of information to Board.

➤ Evaluation Mechanism:

- Performance appraisal of independent directors to be done by entire board excluding directors being evaluated

Directors: Resignation

□ **Resignation of director:-**

- ⑩ A director may resign from his office by giving notice in writing.
- ⑩ The Board shall on receipt of such notice, intimate the Registrar and also place such resignation in the subsequent General Meeting of the Company.
- ⑩ The director shall also forward a copy of resignation along with detailed
 - reasons for the resignation to the Registrar.
- ⑩ The notice shall become effective from the date on which the notice is received by the company or the date.

BOARD'S REPORT

- The requirements for disclosure in the Board's report interalia include:
- Extract of Annual Return
- Number of meetings of Board of Directors
- For listed and prescribed class of companies – policy on directors reappointment, remuneration and annual evaluation of the performance of the Board of Directors.
- Related party contracts
- Development and implementation of a Risk Management Policy.
- Corporate Social Responsibility.

- Listed company shall disclose in the Board's report, the ratio of the remuneration of each
- director to the median employee's remuneration and such other details.
- The report shall contain a separate section wherein a report on the performance and financial position of each of the subsidiaries, associates and joint venture companies included in the CFS.

- Director's responsibility statement shall state about:
- In the preparation of annual accounts, the applicable accounting standards had been followed alongwith proper explanation relating to material departures.
- Selection and application of accounting policies, judgments and estimates that are reasonable and prudent so as to give a true and fair view of the state of affairs of the company at the4 end of the fiancial year and of the profit and loss of the company for that period.

- Proper and sufficient care being taken for the maintenance of adequate accounting records- in accordance with the provisions of this Act for safeguarding the assets of the company and for preventing and detecting fraud and other irregularities.
- Preparation of the annual accounts on a going concern basis.
- For listed companies, whether internal controls have been laid down and such internal controls are adequate and were operating effectively.

- Devising of proper systems to ensure compliance- with the provisions of all applicable laws and that such systems were adequate and operating effectively.

Key Managerial Personnel

- **Appointment of Key Managerial Personnel [Clause 203(1)]**
 - ⦿ Every company belonging to such class or classes of companies as may be
 - prescribed shall have the wholetime key managerial personnel.
 - ⦿ an individual shall not be the chairperson of the company as well as the managing director or Chief Executive Officer of the company at the same time **Exception:-**(i) Articles of a company provide otherwise
 - (ii) Company does not carry multiple businesses

- **TIME PERIOD FOR FILLING VACANCY IN OFFICE OF KMP:-**
 - Board of Directors at Board Meeting shall appoint within 6 months.

MEETINGS OF BOARD OF DIRECTORS

- Not more than 120 days gap between two Board Meetings.
- **Participation In Board Meeting** :- *in person* or *through video conferencing* or other *audio visual means* which are capable of recording and recognizing the participation of the directors.
- **Notice of Board Meeting**:-A notice of not less than seven days in writing AND such notice shall be is required to be given all directors, whether in India or outside India. BY- hand delivery or by post or by electronic means.
- **Board Meeting at Shorter Notice**:-A meeting of the Board may be called at shorter notice to transact urgent business
- **Condition:**
 - 1) At least one independent director shall be present at the meeting.
 - OR
 - 2) In case of absence of independent directors, decisions taken at such a meeting shall be circulated to all the directors and shall be final only on ratification thereof by at least one independent Director.

COMMITTEE OF DIRECTORS

□ **STAKEHOLDERS RELATIONSHIP COMMITTEE :-**

1) **Every company** having more than 1000 shareholders, debenture-holders, deposit-holders and any other security holders at any time during a financial year

□ 2) consist of a chairperson who shall be a non-executive director and such other

➤ members as may be decided by the Board.

□ **NOMINATION AND REMUNERATION COMMITTEE –**

1) **Every listed company** and **prescribed class of companies**, shall constitute the Nomination and Remuneration Committee.

2) consist of three or more non-executive directors out of which not less than

➤ one half shall be independent directors.

➤ □

CSR COMMITTEE :

- **Every Company having** , Net worth \geq Rs.500 Crore; or
- Turn over \geq Rs. 1,000 Crore; or Net Profit \geq Rs. 5 Crore
- **Company** Committee to consist of at least 3 directors out of which at least 1 to be independent director.
- at least 2% of average net profits of the three immediately previous financial years to be spent on **CSR activities** specified in Schedule VII
- Disclosure in Director's Report about the policy adopted in
- the process, giving reasons on failure of implementation

Related Party Transaction

- Except with the consent of the Board of Directors given by a resolution at a meeting of the Board and subject to such **conditions as may be prescribed**, no company shall enter into any contract or arrangement with a related party with respect to-
 - ❑ (a) sale, purchase or supply of any goods or materials;
 - ❑ (b) selling or otherwise disposing of, or buying, property of any kind;
 - ❑ (c) leasing of property of any kind;
 - ❑ (d) availing or rendering of any services;
 - ❑ (e) appointment of any agent for purchase or sale of goods, materials, services or property;
 - ❑ (f) such related party's appointment to any office or place of profit in the
- company, its subsidiary company or associate company; and
 - ❑ (g) underwriting the subscription of any securities or derivatives thereof, of the company.

Related Party Transaction

➤ **Special Resolution:**

□ If paid up capital exceeds prescribed limit (presently Rs. 1 crore or more) or transactions exceeds prescribed limit (presently, 5% of annual turn over or 20% of net worth etc.) then prior approval of shareholders by way of Special Resolution required .

➤ **Justification of transaction:**

□ Details of Contract / arrangement shall be disclosed in Boards' Report with justification of transaction

➤ **Consequence:**

□ If consent not received by Board/ Shareholders or not ratified within 3 months : transaction shall be voidable at the option of the Board (+) Interested Director to indemnify the Company for losses



□ **Secretarial Audit**

- The Act provides for provision related to secretarial audit in Listed &
- certain prescribed companies.
 - The Secretarial Audit Compliance Report from Company Secretary to be attached to Board's Report in certain prescribed companies
 - The Act prescribes the functions of the Company Secretary.
 - to report to the Board about compliance with the provisions of this Act, the rules made there under and other laws applicable to the company;
 - to ensure that the company complies with the applicable secretarial
- standards;

Merger : Simplified

- Currently all compromise / arrangements including reconstruction
 - / mergers have to go through court route.
- Court process delays the corporate restructuring.
- Section 233 provides for mergers/ amalgamations outside the
 - Tribunal process & this facility is available to:
 - ✓ Merger / amalgamation of small companies.
 - ✓ Merger / amalgamation between holding company and WOS.
 - ✓ Such other class of companies as Central Government may
 - prescribed.

Others Imp. Provisions

Serious Fraud Investigation Office

- Statutory status to SFIO has been proposed. Investigation report of SFIO filed with the Court for framing of charges shall be treated as a report filed by a Police Officer.**
- SFIO shall have power to arrest in respect of certain offences of the Act which attract the punishment for fraud. Those offences shall be cognizable and the person accused of any such offence shall be released on bail subject to certain conditions provided in the relevant clause of the Act**

Prohibition of Insider Trading

New clause has been introduced with respect to prohibition of insider trading of securities. The definition of price sensitive information has also been included

Directors and the key managerial personnel of a company are prohibited from forward dealings in securities of the company

Other Imp. Provisions

Investor Protection Measures

Issue and Transfer of Securities and Non Payment of Dividend by Listed Companies shall be administered by SEBI

Fraudulent Inducement of Persons to Invest Money is punishable with Imprisonment for a Term which may extend to Ten Years and with Fine which shall not be less than Three Times the Amount involved

Suit may be filed by a person who is affected by any Misleading Statement in the Prospectus or who has invested money by fraudulent inducement

Class Action Suits

Specified No. of Members, Depositors or any Class of them may file an application before the Tribunal

Where the Members or Depositors seek any Damages or demand any other suitable action from or against an audit firm, the liability shall be of the firm as well as of each partner who was involved in making any improper statement of particulars in the audit report or who acted in a fraudulent, unlawful or wrongful manner

The order passed by the Tribunal shall be binding on the company and all its Members, Depositors and Auditors