Companies Act, 2013

Key Changes & Impact

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The Companies Act, 2013 got President Assent on 29th August 2013 with 29 chapters, 470 sections and 7 Schedule as against 658 Sections and 14 Schedules in The Companies Act, 1956. The Ministry of Corporate Affairs is rolling out the Companies Act, 2013 in phase's viz., 98 Sections were enacted with effect from 12.09.2013 and as late as March '14 end has rolled another set of 184 sections which were notified and made applicable from 1st April, 2014 along with Rule for 17 Chapters. It is pertinent to point out here that there has been a paradigm shift in the way the earlier Companies act 1956 was administered and the way Companies Act 2013 is going to be administered. In almost 75% of sections in the Companies Act, 2013 the concept of delegated legislation is there i.e. the act is to be governed by Rules to be notified from time to time.

Most important of the Legislation which have been made applicable is withdrawal of various exemption given to Private Limited Companies which was there in the previous Act. Certain important and key changes are enumerated hereunder:-

- Every further issue of shares would require to be first offered to existing shareholder, Else the approval of existing Shareholder by Special Resolution will be required and Price to be determined by Registered Valuer.
- Now only two kinds of capital can be issued, Equity and Preference. Equity Shares can be issued with different rights.
- Interested Director will not participate in proceedings concerning his interest.
- Every Public company to have Key Managerial person i.e. Managing Director or whole time director having a paid up capital of more than Rs 10 Cr.
- Managing Directors term will not be more than 5 years.
- No company can accept deposit from Members.
- Consent to act as Director is now mandatory while being appointed as Director in a Company and in case of resignation of a Director the same has to be backed by a statement "Reason for Resignation as Director" is required to be filed with Registrar of Companies simultaneously by the Director as well as the Company.
- All New Companies need to obtain Commencement of Business Certificate from Registrar of Companies.
- Private Company can have maximum number of members 200 instead of 50 earlier.

- Share Application can not be accepted from more than 50 person at a time, else will be considered as offer to public. Allotment has to be made in 60 days else money will have to be refunded in 15 days. Share Application money to be kept in a separate bank account and can not be accepted in cash. Interest will be charged from 60th day @ 12%. Penalty for any violation has been fixed at either the amount of Issue or Rs.2 Crores which ever is higher.

- Public Companies having Share Capital of Rs. 10 crores or more or turnover of Rs.100 crores or more or borrowings more than Rs.50 crores shall have to appoint two Independent Director within one year commencing from 1st April,2014 and shall have to constitute Audit Committee comprising of at least 3 Board Members. The said class of companies need to necessarily constitute a Nomination & Remuneration Committee.

- Maximum Number of Directorship In companies by any person shall not be more than 20.

- Companies having Net worth of Rs. 500 crores or more or turnover of Rs.1000 crores or more or Net Profit of Rs.5 crores or more during any Financial year shall have to appoint Corporate Social Responsibility (CSR) Committee and will have to spend at least 2% of the Average Net profits of the Company made during the three immediately preceding financial years in CSR activity.

- No company shall give any guarantee or provide any loans directly or indirectly to any director, his relative, concern in which director is interested, any private company of which such director is director or member, any Body corporate. Any violation of the said would attract a penalty/Fine both to company as well as director ranging from Rs.5 lakhs to Rs.25 lakhs or six month imprisonment or both. Loan to Wholly owned Subsidiary and loan given in the ordinary course of business of the company is only exempt.

- Accounting and providing of Depreciation has been substituted by new Schedule II where instead of the rates the concept introduced is useful lives of assets.

- Financial Year of any company has been fixed and should necessarily end/close on 31st March of each year barring certain companies having foreign holding or subsidiary companies which requires compulsory consolidation outside India but even for that prior approval of Tribunal would be required.

- Consolidated Financial Statement has to be prepared and filed with Registrar of Companies by Holding company in respect of its subsidiary, associate company and joint ventures.

THANK YOU

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