Major Changes brought by the Companies Act, 2013

a New look on Directors' Report
A PARADIGM SHIFT FOR THE CORPORATE

The Companies Act, 1956

The Companies Act, 2013
PROMINENT INFLUENCERS TO THE NEW COMPANY LAW

The Influencers

IPO Scam

Peerless

Stock Market Scam

Sesa Sterlite

Satyam

Pradeep Overseas

Sahara
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<th>Increased Regulatory Framework</th>
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<td>Wider Director and Management Responsibility</td>
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ENTRENCHMENT

[Section -5]

The Articles of Association of the company may contain provisions for entrenchment whereby specified provisions of the Articles can be altered only if conditions or procedures that are more restrictive than those applicable in case of special resolution have been met with.
ONE PERSON COMPANY

[Section – 2(62) and 3(1)(c)]

➢ Promoter shall be a natural person, Indian citizen and resident in India (182 days during previous year);
➢ Has to appoint a nominee with his consent and he shall be natural person, Indian citizen and resident in India and in any event of death etc of the member, nominee becomes member;
➢ No person shall incorporate more than one OPC;
➢ Vacancy in nominee to be filled up in 15 days;
➢ OPC to convert in to Private Company or Public Company – when paid up exceeds Rs. 50 lakhs or Annual average turn over exceeds Rs. 2 crores or balance sheet total exceeds Rs. 1 crore;
➢ OPC can be a Section 8 Company (section 25 of CA 1956);
➢ Change the MOA and AOA within 6 months of conversion
ONE PERSON COMPANY - PROCEDURAL EXEMPTIONS

- Annual Return (Section 92) – The Annual Return is required to be signed by CS, or where there is no CS, by one Director of the company;
- Financial Statement (Section 2 (40)) states that no Cash Flow Statement is required;
- Board Meeting once in 6 months;
- Section 96 – No general meeting requirements etc. (Section 96);
- The filing requirements are simple

Issues

- No transfer provisions – even in model AOA. Only talks about transmission. (Sch I – Table F)
- In case of more than one director on minutes/ quorum etc
SMALL COMPANY

[Section 2(85)]

“Small Company” means a company other than a Public Company

- With paid-up capital not exceeding Rs.50 lakh or such higher amount as may be prescribed not exceeding Rs.5 crores; and
- Turnover of which does not exceed Rs. 2 crore or such higher amount as may be prescribed not exceeding Rs.20 crore rupees, as per last profit and loss account;

Provided this is not applicable to the following:

- A holding company or a subsidiary company
- A company registered under section 8
- A company or body corporate governed by any special Act
SMALL COMPANY - EXEMPTIONS / PRIVILEGES

• Annual Return needs to be signed only by one Director
• No cash flow statements
• Board meeting once in 6 months
ASSOCIATION OF PERSONS - SECTION 464

- The number for association or partnership not to exceed 100 (increased from 20) – Rule 29.10 restricts to 50.
- Restriction not to apply to HUF or an association or partnership constituted by professionals who are governed by special Acts.
PRIVATE LIMITED COMPANY

FEATURES:

- Minimum capital – Nil
  No Requirement of Minimum Paid Up Capital (wef May 26, 2015) (Companies Amendment Act, 2015);
- Maximum members is 200 (from 50);
- Private Company which is a subsidiary of a company, not being a private company, shall be deemed to be a public company. However it is permitted to keep the same Articles of Association (AOA);
CONDITIONS:

- restricts the right to transfer its share
- except in case of One Person Company, limits the number of its members to two hundred excluding present and past employees
- prohibits any invitation to the public to subscribe for any securities of the company - for any shares in, or debentures has been replaced with any securities
- Existing Fourth condition has been taken out –
  - Prohibits any invitation or acceptance of deposits from persons other than its members, directors or their relatives
  - Hence the deposit can be accepted only from the members or Directors (Rule 5.2.(1) (8) of the Company.
Exemptions of a Private Limited Company

- Holding, Subsidiary and Associate Company will not cover under Related Party for the purpose of section 188.

- If anything else mentioned in MOA & AOA then MOA & AOA prevail over the section 43 and 47.

- Section: 62(1)(a)(i) and (2): In case 90%, of the members of a private company have given their consents in writing or in electronic mode then Offer Can Be Close Before 15 Days.

- Section 62(1)(b): Now for ESOP Ordinary Resolution is enough

- Section 67 – Buy Back

- Acceptance Of Deposits From Members Made Easier

- If anything else mentioned in AOA then AOA prevail over the section 101 to 107 and 109.
- Section 117(3)(g) will not apply on Private Limited Company
- Section 141(3)(g) - Number of Companies for Appointment of Auditors
- Section 160 - Candidature Not Required For Appointment of Director at General Meeting
- Section 162 - Appointment of directors need not to be voted individually.
- Section 180 - Restrictions on powers of Board - Not Apply
- Section 184(2) - Disclosure of interest by director.
- Section 185 - Loan to Director is allowed, subject to certain conditions.
➢ Section 188(1): Restriction On Voting Right In General Meeting In Case Of Related Party Transaction Not Applicable

➢ Section 196(4) & (5): Appointment of MD, WTD & Manager.
PRIVATE PLACEMENT

➢ It covers all Securities
➢ Offer Shall be made by issue of Offer Letter and by Special Resolution
➢ Offer shall be made to persons whose name appears in the register on the Record Date
➢ Offer of securities shall not be made to more than 50 persons or higher as may be prescribed in a Financial Year (excluding QIB’s and employees offered securities under ESOP). The Rule has prescribed the same at 200 persons.
➢ No fresh offer shall be made unless earlier allotment is completed.
➢ The monies payable on subscription of securities not to be made in cash.
➢ Allotted within 60 days from the date of receipt of allotment money. If not allotted it shall be refunded within 15 days from the completion of 60 days.
If the Company fails to refund the same within the stipulated time, it shall be liable to pay interest @ 12% from the expiry of sixtieth day.

Complete details of the offer shall be filed with the Registrar within 30 days from the date of circulation of offer letter.

Company shall not release any public advertisement or use marketing tools to inform the public at large.

Application money parked in a separate account.

The promoters and Directors shall be liable for a penalty which may extend to the amount involved in the offer or invitation or Rs. 2 Crore, whichever is higher.
Public Companies cannot give any loan or provide any security or guarantee in connection with a loan to a Director or any other person in whom the Director is interested, except to MD & WTD under prescribed circumstances.

EXCEPTION: ORDINARY COURSE OF BUSINESS
DEPOSIT - 73 to 76

Deposit Section 2 (31)

Includes any receipt of money by way of deposit or loan or in any other form by a company, but does not include such categories of amount as may be prescribed in consultation with the RBI
Shareholder’s approval

Only from members

Secured or unsecured

Circular to all shareholders

Creation of deposit repayment reserve account

To provide deposit insurance – upto Rs. 20000/- is guaranteed

Creating security on the deposits and creation of charge and file the same with ROC
One year to comply with new provision – file in 3 months details with ROC on outstanding deposits and repay in one year.

Tribunal can extend the time.

No more suo – moto action from NCLT on default – only on application.
Public Company can accept deposit from other than members based on turnover or net worth

Net worth 100 crs or turnover 500 crs

Special Resolution

Credit rating
Rules

- Share Application money can be kept only for 60 days, if not allotted repay in another 15 days. Otherwise treated as deposit.
- Exemption as per rules still continues (13 exemptions as per rules)
- Rule 2.(1) (b) VIII any amount received by a private company from a person who, at the time of the receipt of the amount, was a director of the company or any amount received from its shareholders including joint shareholders.
- Security deposit from employees (maximum one year salary)
- Bonds or debentures secured by a first charge or pari passu charge or bonds/debentures compulsorily convertible in to shares of the company within five years
- Supply advance - maximum of 365 days
- From promoters – provided it is pursuance of a Bank loan agreement – it can be from promoters or relatives
Limits –
  section 73 – 25% of paid up and FR
  section 76 – 10% from members + 25% from public of paid up and FR
  Govt. Company – 35% of paid up and FR

Issues:
  Less source now
  Cost will go up
  Repayment within one year is tough
Not more than two layers of investment companies

Exemption

Indian Company acquires a foreign company and that have more investment subsidiaries and that is allowed under laws of that country.

Investment subsidiary for the purpose of meeting the requirement under any law.
LIMITS FOR INVESTMENT

Any loan to person, body corporate, guarantee, security for a loan to any body corporate or acquiring the securities of any other body corporate.

Unanimous approval of the Board at the meeting up to 60% of Paid up capital, free reserves and securities premium account or 100% of free reserves and Securities premium account.

Prior approval by special resolution at General meeting above 60% of Paid up Capital, free reserves and securities premium account or 100% of free reserves and Securities premium account.
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- Financial Year
- Financial Statement
- Consolidated Financial Statement
- Associate Company
- Subsidiary Company
- Reopening of Accounts
- Revision of Financial Statement
- Appointment of Auditor
- Disqualification of Auditor
- Duties of Auditor
- NFRA
- Depreciation
- Corporate Social Responsibility
- Dividend
- Related Party and Related Party Transactions
- Internal Audit
Financial Year [Sec 2(41)]

- **April to March**
  - Incorporated On or Before 31st December
    - 31st March of Current Year
  - Incorporated On or after 1st January
    - 31st March of Following Year

- **Transition Period**
  - 2 years

- Adopt different Financial Year on Application to the Tribunal
- Applicable to company having holding or subsidiary company outside India and Requires to prepare consolidation financial statements outside India.
  - (No other reason for application)
Financial Statement [Sec 2(40)]-

- Explanatory Note
- Statement of Changes in Equity
- Cash Flow Statement
- Profit & Loss Account
- Balance Sheet

Financial Statement includes CFS

- One Person Company
- Dormant Company
- Small Company

NOT APPLICABLE
Clause 32 of the Listing Agreement mandates Listed Companies to prepare CFS. Neither AS 21 nor Companies Act 1956 requires other companies to prepare CFS.

Mandatory for all Companies to prepare CFS in respect of the following entities:
- Subsidiary Company
- Associate
- Joint Venture Company

CFS will have to be done in addition to SFS. CFS should be prepared in same form and manner as Standalone Financial Statement (SFS) of holding company.

Impact
All companies including private companies need to prepare CFS. They need to gear up their financial reporting process for the same.

CFS should comply with notified AS.
Reopen and revision of accounts mandatory to CFS also.
Financial Statement Authentication [Sec 134]

**Part I**
Chair person when authorised by Board

**OR**

Two Directors, out of which one shall be MD and CEO, when he is a director

**Part II**
CFO

**PART III**
Company Secretary
Associate Company [Sec 2(6)]

- Company A
- Company B

Significant Influence

- Control of ≥ 20% Total Share Capital
- Control of Business Decisions under Agreement

OR

- Associate Company is not a subsidiary but includes Joint Venture Company
- Consolidated Financial Statements
- Considered as Related Party
- Auditor’s Disqualification

Implications
Subsidiary company [Sec 2(87)]

- **Holding**
  - Control the Composition of Board of Directors
  - Controls > 50% of Total Share Capital either at:
    1. Its own
    2. Together with 1 or more of its subsidiary

- **Holding Company**
  - Total Share Capital includes both equity and Preference Share Capital
  - Restriction on number of layers of subsidiaries

- **Subsidiary**
  - 51%
  - 20%
  - 20%

- **Subsidiary**
  - 51%
  - 20%
  - 20%
Reopening of Books of Accounts [Sec 130]

Applicants
- SEBI
- CG
- IT
- Other Statutory Regulatory Body
- Any person concerned

Grounds for Reopening
1. Account prepared in fraudulent manner
2. Doubtful on reliability

Period ??

Tribunal/Court of competent jurisdiction

Books of Accounts as defined under Section 2(13)
Revision of Financial Statement [Sec 131]

**Applicant**
- Company

**Grounds for Reopening**
- Non compliance of provisions under
  1. Sec 129
  2. Sec 134

**Period For Revision**
- For 3 Preceding Years but once in a year

**Financial Statements Only**
Appointment of Auditor [Section 139]

- LLP eligible to become Auditor
- Appointment for a term of 5 years and ratification in every AGM
- Requirement for rotation of Auditor introduced
- Applicable to all companies except small companies and OPC
- Individual Auditors - one term limited to 5 years
- Firm Auditor - two terms limited to 10 years
- Cooling Period of 5 years before the reappointment of the same firm.
- If no auditor re-appointed in AGM, existing auditor shall continue
- Transition period of three years for complying with the requirement
Discussion

- Period served by auditor earlier to this act counted in the number of years
- Whether rotation shall bring independence?
- Whether rotation is desirable when no public interest is involved?
Disqualification of Auditors [Sec 141]
DISQUALIFICATION FOR AUDITOR

➢ A Body Corporate
➢ An officer or employee of the Company
➢ a person who is a partner, or who is in the employment, of an officer or employee of the company
➢ a person who, or his relative or partner, holding any security or interest in the company, subsidiary company, holding or associate company, or subsidiary of such holding company
➢ is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of Rs. 5 Lakh shall not be eligible for appointment;
Auditor - Duties

- To Report Fraud to the Board
- To Attend GM unless exempted by the company
- Comply with Auditing Standards also
- Upto 20 Companies EXCLUDING Private Companies for each partner
- Report to CG in case fraud committed by officers or employees
- Adverse Remarks in Auditors Report has to be read in AGM
- Adverse Remarks in Auditors Report has to be commented
- Report on internal financial reporting system
National Financial Reporting Authority [Sec 132]

- Renamed National Advisory Committee on Accounting Standards
- Formulation and laying down of accounting and auditing policies and standards
- Monitor and enforce the compliance with accounting standards and auditing standards
- Oversee the quality of service of the professions
- Suo motu or on reference made by Central Government-professional or other misconduct by CA’s
- Quasi-judicial body
- 15 member team with part-time & full-time members
- Appeal available to Appellate Tribunal
Depreciation

**Schedule XIV of the Companies Act 1956**

Specifies minimum rates of depreciation to be provided on assets.

Two methods WDV and SLM

Different rates for multiple shifts

**Companies Act 2013**

Schedule II of the Companies Act 2013

Specifies systematic allocation of depreciable amount over its useful life

Useful life of assets are mentioned in the Schedule

No other methods

**Impact**

Companies will be divided into three classes to decide the application of depreciation rates

1. Classes of companies prescribed and who comply with AS
2. Classes prescribed by a regulatory authority
3. Other Companies
Corporate Social Responsibility [Sec 135]

Net worth ≥ 500 crores

Turnover ≥ 1000 crores

Net Profit ≥ 5 crores

CSR Committee

Composition
Consists of 3 or more director out of which One director independent director

Functions
1. Formulate and recommend CSR Policy
2. Recommend amount of expenditure to be incurred on activities
3. Monitor CSR Policy

Contribution
Company need to spend minimum 2% of its average net profits made during the 3 immediately financial years
Dividend [Sec 123]

Dividend Payment
- Out of Profit of the Company for THAT year after depreciation
- Accumulated Profits for any Previous Financial Year

Rate for Transfer to Reserves as decided by Board

Interim Dividend
- Out of Profit of the Company for THAT year
- Surplus Profits in the Profit & Loss A/c

Incase the company incurred loss during the quarter preceding the date of declaration of interim dividend – up to a rate of average dividend declared during 3 preceding years
Unpaid Dividend [Sec 124]

- Unpaid Dividend Payment
- Within 90 days of making Transfer
- Unclaimed dividend and shares for 7 years transferred to IEPF
- Unclaimed Shares or Dividend entitled to get refund
Related Party [Sec 2(76)]

- Director OR his Relative
- KMP OR his Relative
- Firm where director, manager or relative is a partner
- Private Company in which a director or manager is a member or director
- Public Company in which a director or hold along with its relatives more than 2% of its paid-up capital
- Body Corporate whose board, MD or manager act as per direction of director or manager except in professional capacity
- Body Corporate whose board, MD or manager act as per direction of director or manager except in professional capacity
- Holding, Subsidiary or associate company OR a subsidiary of Holding Company
Related Party Transaction [Sec 188]

- Selling or otherwise disposing of, or buying, property of any kind
- Leasing of property of any kind
- Appointment of any agents for purchase or sale of goods, materials, services or property
- Appointment of any related party to any office or place of profit in the company or its subsidiary company or associate company
- Contract for underwriting the subscription of securities or derivatives thereof

- Ordinary Course of Business Transactions
- Arms length transactions

Inclusions

Exclusions

Combined Provisions for Sec 294, 294A, 297 and 314 of Companies Act 1956
Related Party Transactions [Sec 188]

**Approvals**
- Approval at the Board Meeting
- Approval by Special Resolution if
  - Related party cannot vote on resolution
  - No Government Approval required

**Limits**
- Paid-up capital of Rs. 1 crore or more OR
- Transaction value including the transactions during the year exceeds 5% of the annual turnover or 20% of the net worth as per the latest audited financial statement which ever is high

No Government Approval required
Internal Audit [Sec 138]

Every Listed Company

- Paid up Capital > 50 crores
- Outstanding Loan & Borrowings > 100 crores
- Accepted Deposits > 25 crore

Public Company

Internal Auditor Being:
- Chartered Accountant
- OR
- Cost Accountant
- OR
- any other professional decided by the Board
DEFINITION

DIRECTOR

*Director appointed to the Board of a Company (Section 2(34))

BOARD OF DIRECTORS / BOARD

*Collective body of Directors of the Company (Section 2(10))
**Managing Director (Section 2(54))**

- *Managing Director*
  - Articles
  - Agreements
  - Board of Directors
  - General Meeting

Entrusted with substantial powers of Management

Occupying position by whatever name called

**Explanation:**
The following do not form part of substantial powers:
1. Affixing Common Seal of the Company;
2. Draw and endorse cheque and negotiable instruments on behalf of the Company;
3. Sign Share Certificate;
4. Direct registration of transfer of shares
Manager – Section 2(53)

Manager

Individual

Subject to

Superintendence, Control, Directions of Board

Management of the entire affairs of the Company &

Includes Director occupying position by whatever name called

No Change
TYPE OF DIRECTOR

- Managing Director
- Whole-time Director
- Additional Director
- Alternate Director
- Woman Director
- Resident Director
- Independent Director
- Nominee Director
KEY MANAGERIAL PERSONNEL

DEFINITION (Section 2(51))

CEO  OR  Managing Director  OR  Manager

Company Secretary  OR  Whole-time Director  OR  CFO

Such other officer as may be prescribed – Officer includes any director, manager or KMP
Appointment of KMP (Section 203)

Listed Company

Company having a paid up share capital of Rs.10 Crore or more – Rule No. 13.88883

Managing Director
  OR
CEO
  OR
Manager
  OR
WTD, in absence of the above

Company Secretary

Chief Financial Officer
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)
(No. of Members can go beyond 15 by passing a Special Resolution in General Meeting)
At least 1 woman director for prescribed class or classes of companies.

\textit{2nd proviso to Section 149(1)}

- As per the Rules: Listed Companies, and every other public company with paid up capital > Rs 100 Crore or more. (Rule 11.3) Turnover of > 300 crore

Companies with prescribed number of small shareholders or paid up capital and listed Companies to have 1 director elected by Small Shareholders

\textit{Section - 151}

- As per Rules: A listed company may suo moto or upon the notice of > 500 or 1/10\textsuperscript{th} of the total number of small shareholders, whichever is lower, elect a small shareholders’ director from amongst the small shareholders

\textbf{Resident Director}

At least 1 director to be a person who has stayed in India for at least 182 days in the previous calendar year
Every listed public Company to have at least one-third of the total number of directors as Independent Directors (ID)

Central Government has prescribed the minimum number of Independent Directors in case of any class or classes of public Companies as two.

(As per Rules: Public Companies having paid up share capital of Rs. 10 crore or more or outstanding loans or borrowings or debentures or deposits, exceeding Rs. 50 cr) or Turnover of Rs. 100 Cr

Every Company existing shall, within one year from such commencement or from the date of notification of the rules as may be applicable shall comply with the requirement of Section 149(4)
A person of integrity. Not the promoter of Company/Holding/Subdiary Associate Company. Even relative of Promoter is disqualified.

**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). (Rule 11.4)

Responsibility of due diligence for appointment of independent directors to be on company.
APPOINTMENT OF DIRECTOR – SECTION 152

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

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. $2/3^{rd}$ 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.
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 100,000 or such higher amount as may be prescribed
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.

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.

Person to be appointed as Director alternate to Independent Director shall possess all the qualifications that an Independent Director is required to possess.
NEW DISQUALIFICATIONS FOR DIRECTORS

Conviction for offence dealing with Related Party Transaction anytime during previous 5 years 164(g)

Not having obtained Director Identification Number (Section 152(3))

Conviction for any offence and sentenced for an imprisonment extending to 7 years or more
**NUMBER OF DIRECTORSHIPS – SECTION 165**

- Director in maximum 20 companies
- Directorship to include alternate directorship
- Of these 20 companies, one cannot be a Director in more than 10 public companies (including private companies which are holding or subsidiary companies of public companies)
- Members may 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
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
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<th>VACATION OF OFFICE OF DIRECTOR</th>
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<td>• When Director fails to attend all Board Meetings for consecutive period of 12 months <em>even when the leave of absence has been granted</em></td>
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<td>• When Director is disqualified by an order of court or Tribunal under any Act not only the Companies Act.</td>
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<td>• When all directors have vacated the office:</td>
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<td>• the promoter shall appoint minimum number of Directors</td>
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<tr>
<td>• Central Government may appoint Directors till company makes appointment in General Meeting</td>
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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
PUNISHMENT FOR CONTRAVENTION

Punishment (if no specific punishment provided in this Chapter)

Persons Covered:
1. Company
2. Officer in Default

Fine > Rs. 50,000

Fine may extend to Rs. 5 Lakhs
RESTRICTION ON NON-CASH TRANSACTIONS INVOLVING DIRECTORS

APPLICABLE TO: 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 (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.
BOARD’S REPORT

[Section 134]

A Report of the Board of Directors shall be attached to the financial statement laid before a company in general meeting.
ENHANCED DISCLOSURES & INFORMATION
IN BOARD OF DIRECTORS’ REPORT

- Extract of the Annual Return in Form MGT 9;
- Number of meetings of the Board;
- Directors’ Responsibility Statement;
- A statement on declaration given by IDs u/s 149(6) that they meet the criteria of independence;
- Particulars of loans, guarantees or investments u/s 186;
- In case of a company required to constitute a NRC u/s178(1), its policy on appointment & remuneration of directors, KMP etc.;
- Explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made:-
  - by the auditor in his report; and
  - by the company secretary in practice in his secretarial audit report;
ENHANCED DISCLOSURES & INFORMATION
IN BOARD OF DIRECTORS’ REPORT

- Particulars of contracts or arrangements with related parties referred to u/s 188(1);
- State of the company’s affairs;
- Amounts proposed to carry to any reserves;
- Amounts recommended for dividend payment
- Material changes and commitments affecting the financial position of the company which have occurred between end of the FY and the date of the report;
- The conservation of energy, technology absorption, foreign exchange earnings & outgo;
- Development and implementation of risk management policy including identification of risks which may threaten existence of company;
- CSR policy and its implementation;
ENHANCED DISCLOSURES & INFORMATION IN BOARD OF DIRECTORS’ REPORT

➢ A statement indicating the manner of formal annual evaluation made by the Board of its own performance and that of its committees and individual directors (for prescribed companies).
➢ Such other matters as may be prescribed.
RULE 8: MATTERS TO BE INCLUDED IN BOARD’S REPORT

- Board’s Report shall be prepared based on stand alone FS of the company.
- Board’s 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 consolidated FS is presented.
- Every listed company and every other company having a paid up capital of Rs 25 crs or more calculated at the end of the preceding FY shall include a statement indicating the manner in which formal annual evaluation has been made by Board on its own performance and that of its committees and individual directors.
- Financial summary or highlights;
- Change in the nature of business, if any;
RULE 8: MATTERS TO BE INCLUDED IN BOARD’S REPORT

- Details of directors or KMPs who were appointed or have resigned during the year;
- Name of companies which have become or ceased to be the subsidiaries, joint ventures or associate companies during the year;
- Deposits covered under chapter V of the Act;
- Deposits which are not in compliance with the requirements of chapter V of the Act;
- Significant and material orders passed by the regulators or courts or tribunals impacting the going concern status and company’s operations in future;
- Adequacy of internal financial controls with reference to the Financial Statements;
RULE 12 : EXTRACT OF ANNUAL RETURN IN MGT-9

- Registration and other details;
- Principle business activities of the company;
- Particulars of holding, subsidiary and associate companies;
- Shareholding pattern;
- Changes in promoters’ shareholding;
- Shareholding pattern of top 10 shareholders;
- Shareholding pattern of directors & KMPs;
- Indebtedness;
- Remuneration of directors and KMPs;
- Penalties/punishment/compounding of offences.
DIRECTORS’ RESPONSIBILITY STATEMENT
SHALL STATE THAT:-

➢ In the preparation of the annual accounts, the applicable accounting standards had been followed along with proper explanation relating to material departures;
➢ The directors had selected such accounting policies and applied them consistently and made reasonable and prudent judgments and estimates so as to give true and fair view of the state of affairs of the company.
➢ The directors had taken proper and sufficient care for the maintenance of adequate accounting records for safeguarding the assets and for preventing and detecting fraud and other irregularities;
➢ The directors had prepared the accounts on a going concern basis; and
The directors, in case of a listed company, had laid down adequate internal financial controls which were operating effectively.

The directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively.
ENHANCED DISCLOSURES & INFORMATION
IN ANNUAL RETURN

- Principal business activities, particulars of its holding, subsidiary and associate companies
- Details of shares, debentures and other securities with shareholding pattern
- Indebtedness
- Members and debenture holders with changes therein
- Promoters, directors, KMP with changes therein
- Meetings of members or class thereof, board and other committees and details of attendance
- Remuneration of directors and KMP
- Penalties imposed on the company, its directors or officers and details of compounding of offence
- Shares held by FIIs
ADDITIONAL DISCLOSURES IN EXPLANATORY STATEMENT

- Nature of concern or interest, financial or otherwise, of director, manager, KMP and relatives of directors, manager and KMP

- Any other information and facts that may enable members to understand the meaning, scope and implications of the items of business

- Failure to make such disclosure – promoter, director, manager liable to compensate the company to the extent of the benefits derived by them
WHO CAN BE PROSECUTED?

OFFICER IN DEFAULT

➢ WHOLE TIME DIRECTOR
➢ KMP
➢ ANY DIRECTOR DELEGATED BY BOARD (WITH THE CONSENT OF SUCH DIRECTOR) OR ALL DIRECTORS
➢ ANY PERSON UNDER THE AUTHORITY OF THE BOARD/KMP WHO IS CHARGED WITH RESPONSIBILITY AND KNOWINGLY PERMITS DEFAULT
➢ A PERSON WHOSE DIRECTIONS BOARD IS ACCUSTOMED TO ACT
➢ EVERY DIRECTOR WHEN CONTRAVENTION TAKE PLACE WITH HIS CONSENT OR CONNIVANCE
➢ FOR ISSUE OR TRANSFER OF SHARES – REGISTRARS, TRANSFER AGENTS AND MERCHANT BANKERS;
NON COMPOUNDABLE OFFENCES

- Imprisonment
- Imprisonment and Fine
- Second or subsequent Compoundable Offence
- When the investigation against the Company is initiated or pending, no compounding is possible (Section 441(1) 3rd proviso)
Consequences

- Appearing before Criminal Courts
- Threat of Arrest
- Imprisonment
- Penalty
- Ineligibility to be appointed as MD/WTD in case of fine exceeding Rs.1,000 or imprisonment for any period of time
DEFENSES
SECTION 463

- "HAS ACTED HONESTLY AND REASONABLY"
- "THE COURT MAY RELIEVE HIM EITHER WHOLLY OR PARTLY"
- The Complaint has to establish malafide or ill motive (mens rea) without which no prosecution can occur
- Typographical errors cannot be ground to prosecute
- Delay caused by events beyond control
WHO CAN PROSECUTE

[SECTION 621]

- ROC
- SHAREHOLDER
- CENTRAL GOVERNMENT

High Court Has Power To Prevent Abuse Of The Process Of Any Court
THANK YOU