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# IMPORTANT APPLICABLE PROVISIONS TO PRIVATE LIMITED COMPANY & VARIOUS ALTERNATIVES FOR CONVERSION UNDER COMPANIES ACT 2013

# STRUCTURE

| Companies Act, 1956 | | Companies Act, 2013 |
|---|---|---|
| 13 Parts | → | 29 Chapters |
| 658 Sections | → | 470 Sections |
| 15 Schedules | → | 7 Schedules |

# CHAPTERS

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| Chapter I | Preliminary & Definitions (Sec 1 &2); |
| Chapter II | Incorporation related (Sec 3 to 22); |
| Chapter III | Prospectus & Allotment of Securities (Sec 23 to 42); |
| Chapter IV | Share Capital & Debentures (Sec 43 to 72); |
| Chapter V | Acceptance of Deposits (Sec 73 to 76); |
| Chapter VI | Registration of Charges (Sec 77 to 87); |
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# CHAPTERS

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| Chapter IX | Accounts related (Sec 128 to 138); |
| Chapter X | Audit & Auditors (Sec 139 to 148); |
| Chapter XI | Appointment & Qualification of Directors (Sec 149 to 172); |
| Chapter XII | Meetings of Board & Powers (Sec 173 to 195) |
| Chapter XIII | Appointment of Managerial Personnel (Sec 196 to 205); |
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# CHAPTERS

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| Chapter XVII | Registered Valuers (Sec 247); |
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| Chapter XIX | Revival & Rehabilitation of Sick Companies (Sec 253 to 269); |
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# CHAPTERS

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| Chapter XXIII | Government Companies (Sec 394 to 395) |
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| Chapter XXVII | NCLT & Appellate Tribunal (Sec 407 to 434); |
| Chapter XXVIII | Special Courts (Sec 435 to 446); |
| Chapter XXIX | Miscelleneous (Sec 447to 470); |

# SCHEDULES

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|---|---|
| Schedule I (Sec 4 & 5); | MOA & AOA Draft Formats; |
| Schedule II (Sec 123); | Depreciation Rates; |
| Schedule III (Sec 129); | Instructions for preparation of FS; |
| Schedule IV (Sec 149(8); | Code for Ind. Directors; |
| Schedule V (Sec 196 & 197); | Appointment of MD/WTD without CG Approval; |
| Schedule VI (Sec 55 & 186) | Classification of Business; |
| Schedule VII (Sec 135) | CSR Activities. |

# PROVISIONS EFFECTIVE FROM 12.09.2013

| Sections | Definitions |
|---|---|
| 2(1) | Abridged Prospectus |
| 2(3) | Alteration |
| 2(4) | NCLT |
| 2(6) | Associate Company |
| 2(8) | Authorised Capital |
| 2(9) | Banking Company |
| 2(10) | Board of Directors |
| 2(11) | Body Corporate |
| 2(12) | books or Paper |
| 2(14) | Branch Office |
| 2(15) | Called Up Capital |
| 2(16) | Charge |
| 2(17) | Chartered Accountants |
| 2(18) | CEO |

# PROVISIONS EFFECTIVE FROM 12.09.2013

| Sections | Definitions |
|---|---|
| 2(19) | CFO |
| 2(20) | Company |
| 2(21) | Company Limited by Guarentee |
| 2(22) | Company Limited by Shares |
| 2(24) | Company Secretary (exclude in practice) |
| 2(25) | Company Secretary in practice |
| 2(26) | Contributory |
| 2(27) | Control |
| 2(28) | Cost Accountant |
| 2(29) | Court |
| 2(30) | Debentures |
| 2(32) | Depository |
| 2(33) | Derivatives |
| 2(34) | Director |
| 2(35) | Dividend (includes interim dividend) |

# PROVISIONS EFFECTIVE FROM 12.09.2013

| Sections | Definitions |
|---|---|
| 2(36) | Documents |
| 2(37) | ESOPS |
| 2(38) | Expert |
| 2(39) | Financial Institution |
| 2(40) | Financial Statements |
| 2(43) | Free Reserves available for dividend excludes unrealised gains or any change in the carrying amount of asset or liability recognised including surplus in profit and loss account on measurement of asset |
| 2(44) | Global Depository Receipt |
| 2(45) | Government Company |
| 2(46) | Holding Company |
| 2(49) | Interested Director |
| 2(50) | Issued Capital |
| 2(51) | Key Managerial Person |
| 2(52) | Listed Company |

# PROVISIONS EFFECTIVE FROM 12.09.2013

| Sections | Definitions |
|---|---|
| 2(53) | Manager |
| 2(54) | Managing Director |
| 2(55) | Members |
| 2(56) | Memorandum |
| 2(57) | Net Worth |
| 2(58) | Notification |
| 2(59) | Officer |
| 2(60) | Officer in Default |
| 2(61) | Official Liquidator |
| 2(63) | Ordinary or Special Resolution |
| 2(64) | Paid Up Share Capital |
| 2(65) | Postal ballot |
| 2(66) | Prescribed |
| 2(68) | Private Company |
| 2(69) | Promoter |
| 2(70) | Prospectus |

# PROVISIONS EFFECTIVE FROM 12.09.2013

| Sections | Definitions |
|---|---|
| 2(71) | Public Company |
| 2(72) | Public Financial Institution |
| 2(73) | Recognised Stock Exchange |
| 2(74) | Register of Companies |
| 2(75) | Registrar |
| 2(76) | Related Party |
| 2(77) | Relative |
| 2(78) | Remuneration |
| 2(79) | Schedule |
| 2(80) | Schedule Bank |
| 2(81) | Securities |
| 2(82) | SEBI |
| 2(84) | Share |
| 2(86) | Subscribed Capital |
| 2(87) | Subsidiary Company |

# PROVISIONS EFFECTIVE FROM 12.09.2013

| Sections | Definitions |
|---|---|
| 2(88) | Sweat Equity Shares |
| 2(89) | Total Voting Power |
| 2(90) | Tribunal |
| 2(91) | Turnover |
| 2(92) | Unlimited Company |
| 2(93) | Voting Right |
| 2(94) | Whole Time Director |
| 2(95) | Respective meanings for undefined terms |

# PROVISIONS EFFECTIVE FROM 12.09.2013 (EFFECTING PRIVATE COMPANIES)

| Section | |
|---|---|
| 19 | Subsidiary Company not to hold shares in the holding Company |
| 21 | Documents or contracts made on behalf of the Company to be authenticated by KMP or authorised person by the Board |
| 22 | Execution of Bills of Exchange or Hundies to have Seal and Signature |
| 51 | Payments of Dividend in proportion to paid up amount |
| 57 | Application of Shares Premium Account to be treated in par with Paid up capital |
| 58 | Refusal of Registration of transfer of shares in case of private companies appealable |
| 59 | Rectification of Register of Members |

# PROVISIONS EFFECTIVE FROM 12.09.2013 (EFFECTING PRIVATE COMPANIES)

| Section | |
|---|---|
| 65 | Unlimited Company to provided for reserve share capital on conversion into limited |
| 69 | Transfer of sum to Capital Redemption Reserve account in case of buy back of shares |
| 70 | Prohibition of Buy back in certain circumstances |
| 86 | Punishment for contravention |
| 91 | Power to Close Register of Members or debenture holders or other security holders for listed companies and prospective listing |
| 100 | Calling of Extra ordinary General meeting by members |
| 102 | Statement to be Annexed with the Notice |
| 103 | Quorum for the meetings |
| 104 | Chairman of the Meeting |

# PROVISIONS EFFECTIVE FROM 12.09.2013 (EFFECTING PRIVATE COMPANIES)

| **Section** | |
|---|---|
| 105 | Proxies |
| 106 | Restriction on voting rights |
| 107 | Voting by show of hands |
| 111 | Circulation of Members resolution |
| 114 | Ordinary & Special Resolutions |
| 116 | Resolutions passed at the Adjourned Meetings |
| 127 | Punishment for failure to distribute dividend |
| 133 | Central Government to prescribe Accounting Standards |
| 161 | Appointment of Additional Director, Alternate Director & Nominee Director |

# PROVISIONS EFFECTIVE FROM 12.09.2013 (EFFECTING PRIVATE COMPANIES)

| Section | |
|---|---|
| 163 | Option to adopt principle of proposed representation for appointment of Directors |
| 176 | Defects in appointment of directors not to invalidate actions taken |
| 180 | Restriction on the powers of the board |
| 181 | Company to contribute towards bonafide charitable funds |
| 182 | Prohibition regarding restrictions for political contributions |
| 183 | Powers to the Board to contribute towards National Defence Funds etc |
| 185 | Loans to Directors etc |
| 192 | Restriction on non cash transactions involving Directors |
| 379 | Application of Act to Foreign Companies |

# PROVISIONS EFFECTIVE FROM 12.09.2013 (EFFECTING PRIVATE COMPANIES)

| Section | |
|---|---|
| 405 | Power of Central Government to direct companies to furnish Information for Statistics |
| 439-453 | Punishment Provisions |
| 456 | Protection for action taken in good faith |
| 457 | Non disclosure of information in certain cases |
| 460 | Condonation of delay in certain cases |
| 462 | Power to exempt certain classes of Companies from the Act |
| 463 | Power to grant relief in certain cases |
| 467 | Power of CG to ammend Schedules |
| 468 | Power of CG to make rules relating to winding up |
| 469 | Power of CG to make rules |
| 470 | Power to remove difficulties |

# EFFECTIVE SECTIONS FROM 1.4.2014

| Section 2 (2) | Accounting Standards |
|---|---|
| **Section 2 (7)** | Auditing Standards |
| **Section 2 (13)** | Books of Account |
| **Section 2 (31)** | Deposit |
| **Section 2 (41)** | Financial Year |
| **Section 2 (42)** | Foreign Company |
| **Section 2 (47)** | Independent Director |
| **Section 2 (48)** | Indian Depository Receipt |

# EFFECTIVE SECTIONS FROM 1.4.2014

| **Section 2 (62)** | **One Person Company** |
|---|---|
| **Section 2 (83)** | Serious Fraud Investigation Office |
| Section 2 (85) | Small company |
| Section 2 (87) | Explanation (d) of definition of subsidiary |

# DEFINITIONS

- Associate Company [Section 2(6)]
  - Associate company will be considered as Related Party and will have implications under financial statements and related party contracts
- Private Company [Section 2(68)]
  - Restricts the right to transfer its shares
  - Except in case of OPC limits number of members to 200;
  - Minimum Paid up Capital of Rs. 1 Lac or more as may be specified from time to time;
  - Prohibits invitation to the public to subscribe for any **securities** of the Company
- Articles to contain a clause that prohibits a Company to accept deposits from person other than its members, directors and relatives.

# OFFICER IN DEFAULT TO INCLUDE

## 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.
- 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.

# LIST OF EXEMPTIONS WITHDRAWN FOR PRIVATE LIMITED COMPANIES

- Approval required from members to issue further share capital (Section 62);
- Certificate of commencement of business required (Section 11);
- Passing of Resolution by postal ballot made mandatory to Companies having more than 50 members (Section 110);
- Stringent conditions prescribed for acceptance of deposit from the members (Section 73 & 74)

# LIST OF EXEMPTIONS WITHDRAWN FOR PRIVATE LIMITED COMPANIES

- Loan to Directors and related parties approval required(Section 185);
- Inter Company Investments & Loans Approval to be taken(Section 186);
- Appointment of 2 or more persons as Director by single resolution (Section 162);
- Consent to Act as Director to be filed mandatorily (Section 152)

# LIST OF EXEMPTIONS WITHDRAWN FOR PRIVATE LIMITED COMPANIES

- Appointment of Managerial person approval required(Section 196);
- Interested Director not to participate in voting (Section 184);
- Appointment & Tenure of MD(Section 203);
- Restriction on kind of capital to be issued (Section 43)

## COMMENCEMENT OF BUSINESS

| **Companies Act, 1956** | **Companies Act, 2013** |
|---|---|
| Private company can commence its operations immediately after its incorporation. | even a Private Company cannot commence its business immediately after incorporation. |
| Only public companies had to seek certificate of commencement of business. (Section 149) | Private Company can commence its business or make any borrowings only after it files with ROC a statement that the subscription money and minimum paid up capital has been brought in. (Section 11) |

# INVESTMENTS IN SUBSIDIARY

| Companies Act, 1956 | Companies Act, 2013 |
|---|---|
| Investments permitted subject to compliance of Section 372-A | A subsidiary company can't hold shares in its holding company, either by itself or through its nominees. |
| No such direct provision | A holding company can't allot or transfer its shares to any of its subsidiary companies. |

# CERTAIN EXEMPTIONS STILL CONTINUES

- SLP not to be filed before allotment of shares;
- Limits of payment of managerial remuneration in the events of inadequate or lower profits;
- Provisions relating to non retirement of Directors by rotation in the AOA;
- Can frame own rules relating to filling up casual vacancy in the Articles;
- Provide any additional disqualification for Directorship in AOA over and above the provisions of the Act;
- Provide other ground for vacation of office as Director in AOA in addition the provisions of the Act.

# CHAPTER II- FORMATION OF COMPANY

| **Section 3** | **Formation of Company** |
|---|---|
| **Section 2 (83)** | Serious Fraud Investigation Office |
| Section 4 | Memorandum of Association |
| Section 5 | Articles of Association |
| Section 6 | Act to over ride MOA & AOA |
| Section 7 | Incorporation of Company (sub section (7) excluded) |
| Section 8 | Formation of Company with Charitable Objects (sub section (9) excluded) |

# CHAPTER II- FORMATION OF COMPANY

| **Section 9** | **Effect of Registration** |
|---|---|
| **Section 10** | Effect of MOA & AOA |
| Section 11 | Commencement of Business |
| Section 12 | Registered Office of the Company |
| Section 13 | Alteration of Memorandum |
| Section 14 | Alteration of Articles (Except second proviso to sub-section (1) and sub-section (2)) |
| Section 15 | Alteration of Memorandum or Articles to be noted in every copy |

# CHAPTER II- FORMATION OF COMPANY

| | |
|---|---|
| **Section 16** | **Rectification of Name of the Company** |
| **Section 17** | Copies of memorandum, articles, etc., to be given to members |
| Section 18 | Conversion of companies already registered |
| Section 19 | Subsidiary Company not to hold shares in holding Company |
| Section 20 | Service of documents |

# CIRCULAR NO. 2/2014 DATED 11.02.2014

| | |
|---|---|
| Use of word "National" | • in the name not permitted for Registration of Companies/LLP;<br>• Allowed only if State/Central Government has a stake in the Company/LLP; |
| Use of word "Bank" | • NOC from RBI to be submitted |
| Use of word "Stock Exchange" or "Exchange" | • NOC from SEBI toe be filed by the Promoters |

# DEFINITIONS TO RECOLLECT IN ACT

# CERTAIN HIGHLIGHTS OF THE ACT

A specific provision is added stipulating that the AOA may contain entrenchment provisions whereby specified provisions may be altered only if conditions or procedures that are more restrictive than those applicable to a special resolution, are complied with.

Such entrenchment shall either be made on formation of a company or by an amendment to the Articles agreed by all the members in case of a private company and by a special resolution in case of a public company;

# CERTAIN HIGHLIGHTS OF THE ACT

Subscribers & First Directors to give an Affidavit at the time of Incorporation stating

that they are not convicted of any offence in connection with the promotion, formation, or management of or guilty of any fraud or misfeasance or breach of duty in relation to any Company under the new enactment or any previous Company law during the preceding five years

(Additional Document now to be given at the time of Incorporation)

# CERTAIN HIGHLIGHTS OF THE ACT

Particulars of Interest to be filed at the time of Incorporation, if any, relation to first Directors;

Any incorrect or false statement to be liable for a fine and attraction of imprisonment;

Company to be regarded as Holding Company if the former holds more than 50% of the total share capital. It includes equity as well as preference also.

# SECTION -3

- Company can be formed for any lawful purpose by:
  - Company limited by guarantee;
  - Company limited by shares;
  - An unlimited Company.

  - One person Company cannot be formed
    - as Company limited by guarantee
    - for investment activities
    - for NBFC business

# ADDITIONAL REQUIREMENTS AT THE TIME OF INCORPORATION

- Subscribers and First Directors to give Affidavit;
- Address for correspondence till the Registered office is established;
- Proof of Identity of the Subscribers & First Directors including their interest in the Company;
- Incorrect Information liable for penalties under Section 447 of the Act

# SHIFTING OF REGISTERED OFFICE

FORM INC-23

Time Limit reduced to 15 days for information of shifting of registered office;

Special Resolution required for shifting of RO from local limits;

Approval of RD required for Shifting of RO from one state to the other.

Applicable only on confirmation by issue of certificate to that effect;

Penalty of `1000 per day to extend up to `1lac

# MEMORANDUM & ARTICLES

To be on the same lines as per the earlier law

- bifurcation of Objects Clause into Main, Ancillary & Others removed;

Applicability of the respective forms specified in Table A, B, C, D and E in Schedule I as may be applicable to such Company;

Permission given to include additional matters in its Articles as is considered necessary by the management;

## MEMORANDUM & ARTICLES

- The provisions of specific requirements by the management can be at the time of formation or at a later stage by passing special resolution;

- Special resolution for private Company to have consent of all the members.

- Article may also contain provisions for entrenchment which can be altered only by passing special resolution. For both the purpose, the Notice of the same to be given to the Registrar in the form and manner specified.

# MEMORANDUM & ARTICLES

- Can adopt Model Articles at the time or Incorporation;
- Model Articles given in Table F,G,H,I and J in Schedule I to the extent as may be applicable to the Company;
- The Company can take the draft from the same and suitably modify the requisite clause as per their requirements;

## EXISTING COMPANIES WHAT TO DO

- Act will always over-ride the Clauses of the MOA and AOA;
- Requisite amendment in the Clauses will be required to be made by each of the Company;
- The same to be amended by passing Special Resolution in the EGM/AGM and file Form MGT-14 for giving effect thereto;

## NO COMMENCEMENT OF BUSINESS

- A company having a share capital shall not commence business or exercise any borrowing powers unless a declaration is filed with Registrar by a director verified in the manner as may be prescribed that:

- ✓ every subscriber to the memorandum has paid the value of shares agreed to be taken by him;
- ✓ Paid-up capital is not less than `5 lakh/1lakh
- ✓ the company has filed with the Registrar the verification of its registered office.

# STRIKING OF NAME IN CERTAIN CASES

- Non payment of subscription money within 180 days;
- Non commencement of Business within 1 year from the date of incorporation;
- Non Application for Change of Status as Dormant Company voluntarily to ROC, in the event of non carrying of business or operation for 2 immediately preceding FY;

# EFFECT OF INCORRECT INFORMATION

# EFFECT OF INCORPORATION

Acquisition of Corporate Status and can exercise all functions;

Subscribers to become debtors of the Company and money can be recovered by the Company;

No commencement of business allowed, in case of non contribution by subscribers;

Any default in non compliance liable for penalty extending up to `5000 on Company & `1000 per day to the officer in default.

## CONCEPT OF DORMANT COMPANY

- Company is formed and registered under this Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company may make an application to the Registrar for obtaining the status of a dormant company.

# FORMS TO BE FILED FOR DORMANT COMPANIES

| | |
|---|---|
| MSC-1 | • Application for Status as Dormant |
| MSC-3 | • Return of Dormant Companies |
| MSC-4 | • Application for Conversion of Status into ACTIVE |

# SMALL COMPANY

Paid Up capital less than 50Lacs (other specifications) not exceeding 5Crores; or

- Lesser Stringent Regulatory Framework (Clause 2(85))
- Proposed Draft is in preparation, wherein certain clauses of the Bill shall not apply to the Small Company.

Turnover as per last FY PL does not exceed Rs. 2 crores (other specifications)

- Not apply to holding or subsidiary
- Company registered under Section 8;
- Company or body corporate governed by any Special Act.

# ONE PERSON COMPANY (OPS)

Only a Natural person, citizen of India and a resident of India can float OPS (Draft Rules)

Nominee also to be a citizen of India, Natural Person and a resident of India.

# OTHER RESTRICTIONS (RULES)

- Restriction on Incorporating more than 1 such Companies;
- If the nominee becomes the owner, the time limit of 180 days given to meet the compliance;
- Minor cannot be a Nominee or Shareholder in a Company
- Cannot be formed for Charitable Objects/NBFC/ Investment Activities

# ONE PERSON COMPANY (OPS)

- Clause 2 of the Act- OPS has only Single Member;
- Person will be the Subscriber to MOA & AOA;
- In the Name OPS to be prefix added to the Name viz.. XYZ Private Limited (OPS);
- Mandatory Nomination form to be filed with the Registrar at the time of Incorporation;
- Nomination can be amended and changed;
- Consent of the Nominee, required for the same and can be withdrawn in future;

# ONE PERSON COMPANY (OPS)

- Nomination to be a part of MOA and any changes in future to be incorporated in MOA;
- Annual Return filed by such Company to be signed by CS or by Director otherwise;
- Exemption from holding AGM to such Companies (Clause 98);

# MEMORANDUM DRAFTING

Capital Clause requirement for OPS

I, whose name and address is given below, am desirous of forming a company in pursuance of this memorandum of association and agree to take all the shares in the capital of the company

# MEMORANDUM DRAFTING (NOMINEE CLAUSE)

8th Clause

Shri/Smt.....
son/daughter of .....,
resident of..... Aged .....
Years shall be the nominee in
the event of death of the sole
member

# ON REGISTRATION

In case of OPC to be mentioned below the Name of the Company;

To mention CIN Number printed on the business letter heads and other important documents;

Former name to be mentioned for at least 2 years along with the New Name in all the documents and also on the Paint Board at the Registered Office of the Company;

# ONE-PERSON COMPANY

One shareholder/one director company

Avoids need of second person

Director vs. shareholder

- Concept of succeeding shareholder

Conversion from sole proprietor to OPC

Meetings

Formation

# CONVERSION OF OPC INTO PVT/PLC

**Compulsory**

- Paid Up Capital increased beyond Rs. 50 Lacs
- Turnover exceeds Rs. 2Crores
- Time limit of six months given

**Voluntary**

- Can be done any time after 2 years from the date of incorporation

# EFFECT OF CONVERSION

# CONVERSION OF EXISTING COMPANIES INTO OPC

# PROCEDURE

- Obtain NOC from Members and Creditors
- Pass Special Resolution for Conversion
  - Time Limit of Filing 30 days
  - Form MGT-14 to be filed
- Form INC-6 for conversion Application
- Affidavit by Directors about consent from Members & Creditors, Capital and Turnover;
- List of Members & Creditors
- Latest Audited Statement of Accounts
- NOC from Secured Creditors

# PRIVATE PLACEMENT

| Companies Act, 1956 | Companies Act, 2013 |
|---|---|
| Not permitted | A private company may do private placement through private placement offer letter |
| Not permitted | Number of persons can't exceed 50 in a financial year |
| Cash subscription permitted up to certain limit | Money can be brought only through cheque or demand draft or other banking channels but not by cash |

# SHARE CAPITAL

| Companies Act, 2013 |
| --- |
| **Variations of shareholders rights**<br>Rights of a particular class of shares may be varied through special resolution |
| **Unpaid Share Capital**<br>• If authorised by Articles, a company can accept unpaid amount, even if the same is not called up by the Board<br>• However, that shareholder will not have any voting rights, until and unless that amount is called up |
| **Alteration**<br>A company can increase, sub-divide, consolidate, convert, cancel its share capital through ordinary resolution |

# ISSUE OF SHARES

**Sweat equity shares**

- A company may issue sweat equity shares through special resolution, which will rank pari paasu with other equity shares
- Such shares can't be issued, before 1 year has elapsed from the date the company commences business

**Preference shares**

A company can't issue irredeemable preference shares and should be redeemable within a period not exceeding 20 years from the date of their issue

**Bonus Shares**

A company can issue bonus shares if its authorised through Articles and members, provided it has not defaulted in any of the statutory payments

# SHARES AND SHARE CAPITAL

- Issue of shares at discount prohibited except in case of sweat equity
- Issue of preference shares, exceeding 20 years maturity, permitted for infrastructure projects.
- Specific provisions introduced for issue of shares on private placement, bonus shares and GDRs
- Consolidation and division which results in changes in the voting percentage of shareholders shall require approval of the Tribunal to be effective

# ALLOTMENT OF SHARES

| Companies Act, 1956 | Companies Act, 2013 |
|---|---|
| No Such restrictions | Companies are time bound to allot the shares within a period of sixty (60) days from the date of receiving application. If they fail to allot the shares within prescribed duration then the entire amount should be repaid by companies within 15 days to the respective applicants. |
| No Such restrictions | Non repayment within prescribed duration would be considered as default & from the 76th day the whole application money held by company will be treated as deposit. |

# FURTHER ISSUE OF SHARE CAPITAL

| **Companies Act, 1956** | **Companies Act, 2013** |
|---|---|
| Provisions relating to rights issue and Preferential allotment are not applicable to a private company. [Section 81 and 81(1A)] | A private company can make further allotment only by means of Rights Issue, ESOP or Private placement/preferential allotment and needs to comply with the all the provisions relating to these types of allotment. [**Section 62**] |

## POWER OF COMPANY TO PURCHASE ITS OWN SECURITIES.

- This provision is essentially the same as before, except for the change in the definition of securities premium reserve;
- If Buyback is done out of free reserves or securities premium account, a sum equal to the nominal value of the shares so purchased shall be transferred to the Capital Redemption Reserve Account.
- No company can purchase its own shares directly or indirectly from its subsidiary or investment company

# DIFFERENTIAL VOTING RIGHTS

| Companies Act, 1956 | Companies Act, 2013 |
|---|---|
| Provisions relating to issue of shares with differential voting rights are not applicable to a private company [Section 86] | A private company has to comply with the provisions contained in Section 43 read with the rules issued there under to issue shares with differential voting rights. [Section 43] |

# DEBENTURES

| **Companies Act, 2013** |
| --- |
| A company can issue fully or partly convertible debentures, with the shareholders approval through special resolution |
| Debentures with voting rights can't be issued. |
| Secured and unsecured debentures can be issued |

# CHAPTER V- ACCEPTANCE OF DEPOSITS

| | |
|---|---|
| **Section 73** | **Prohibition on acceptance of deposits from public** |
| **Section 74** | Repayment of deposits, etc., accepted before commencement of this Act. (only Sub section 1) |
| Section 76 | Acceptance of deposits from public by certain companies |

# RULES RELATING TO DEPOSIT

- Not Applicable to banking company, NBFC, NHB and specified Companies
- Deposit excludes
  - Amount received from Govt, local authority or statutory authority;
  - Sums received form Foreign Government, Foreign or International banks, IFC, ADB, CWDC etc. subject to compliance of FEMA Act, 1999;
  - Facility from Banks, PFC, CP, ICD's, Share Application Money (up to 60 days);
  - Loans from Directors;

# RULES RELATING TO DEPOSIT

- A private Company and an un-eligible public company cannot accept loans or deposits from any person other than its Directors.
- Comply with all the conditions mentioned including creation of reserve account, deposit insurance, credit rating, etc
- Share application money received but not allotted shall be treated as deposit;
- Any money received as advance in the course of ordinary business shall be treated as deposit if goods or services are not provided within 365 days of receipt

# RULES RELATING TO DEPOSIT

- Private Companies and an un-eligible public company will have to file a return of deposits on 30th June if they have any deposit received from person other than director;

- Existing Deposits as at 31.03.2014,
  - Companies to file a statement with the Registrar within 3 months of the commencement of the Act i.e. 30th June 2014 in Form DPT-4;
  - Refund the Deposit on Maturity or 1 year whichever is less.

# WHAT WILL NOT BE A DEPOSIT

- Any amount received from any other Company;
- Any amount received against subscription to any securities including share application money provided the securities are allotted within 60 days from the date of receipt of the application money or advance;
- Any amount received from a person who at the time of receipt was a director provided the director furnishes a declaration that the amount given is not out of borrowed funds

# WHAT WILL NOT BE A DEPOSIT

- Any amount raised by issue of bonds or debentures secured by first charge on any assets referred to in Schedule III of the Act excluding intangible assets;
- Any amount received from an employee of the company not exceeding his annual salary in the nature of non interest bearing security;
- Any amount received as a Non- interest bearing amount received or held in trust;
- Advances received for sale of property, capital goods supply under long term projects, Supply of goods or services ;
- Any amount brought from the relatives in compliance of stipulation of guarantee by financial institutions.

# ACCEPTANCE OF DEPOSITS FROM RELATIVES OF DIRECTORS

| **Companies Act, 1956** | **Companies Act, 2013** |
|---|---|
| A Private Company can accept deposits/ loans from relatives of directors by virtue of exemption available in the definition of private company. [Section 3(1)(iii)] | A private company is prohibited to accept unsecured loans/deposits from relatives of directors. [Section 73 read with rules issued there under] |

# CHAPTER VI- REGISTRATION OF CHARGES

| **Section 77** | **Duty to Register Charges** |
|---|---|
| **Section 78** | Application for registration of charge. |
| Section 79 | Section 77 to apply in certain matters. |
| Section 80 | Date of notice of charge. |
| Section 82 | Company to report satisfaction of charge. |

# CHAPTER VI- REGISTRATION OF CHARGES

| | |
|---|---|
| **Section 83** | **Power of Registrar to make entries of satisfaction and release in absence of intimation from company** |
| **Section 84** | Intimation of appointment of receiver or manager. |
| Section 85 | Company's Register of Charges |
| Section 87 | Rectification by Central Government in Register for charges |

# CREATION OF CHARGE

| Companies Act, 1956 | Companies Act, 2013 |
|---|---|
| No Such provisions | Duty to Register charge<br>A charge created within or outside India, on its property or assets or any of its undertakings, whether tangible or otherwise, and situated in or outside India has to be registered with concerned Registrar of Companies(ROC) |
| | Company to report satisfaction of charge.<br>Company to intimate satisfaction of charge to concerned ROC. |

# CHAPTER VII- MANAGEMENT & ADMINISTRATION

| **Section 88** | **Register of Members** |
|---|---|
| **Section 89** | Declaration in respect of beneficial interest in any share |
| Section 90 | Investigation of beneficial ownership of shares in certain cases |
| Section 92 | Annual return |
| Section 93 | Return to be filed with Registrar in case promoters' stake changes |
| Section 94 | Place of keeping and inspection of registers, returns, etc. |

# DOCUMENTS MAINTENANCE (SECTION 88)

- Form No. MGT-1 (for Companies having share capital)
  - Registers of Members for each class of shares;
  - Register of Debenture Holders;
  - Register of any other Security Holders;
- Form No. MGT-2 (for Companies not having share capital)
  - Registers containing full details of Members;
  - Register of Debenture Holders;
  - Register of any other Security Holders;

(Existing Companies to comply with the requirements by 30th September, 2014)

# DOCUMENTS MAINTENANCE (SECTION 88)

- Form No. MGT-3 (for Companies having share capital and having foreign security holders or beneficial owners)
- Form No. MGT-4
  - Declaration in respect of beneficial interest in shares;
- Form No. MGT-5
  - Declaration in respect of beneficial interest in shares by registered owner;
- Form No. MGT-6
  - Declaration in respect of beneficial interest in shares by beneficial owner;

# PENALTY FOR CONTRAVENTION

- Company & Every officer of the company
  - Fine which shall not be less than **Rs.50,000/-** but which may extend to **Rs3,00,000/- and**
  - **Failure is a continuing one-** fine which may **extend to Rs.1000/- for every day**, after the first during which the failure continues

# CHAPTER VII- MANAGEMENT & ADMINISTRATION

| **Section 95** | **Registers, etc., to be evidence** |
|---|---|
| **Section 96** | Annual general meeting |
| Section 101 | Notice of meeting |
| Section 108 | Voting through electronic means |
| Section 109 | Demand for poll |
| Section 110 | Postal ballot |

# CHAPTER VII- MANAGEMENT & ADMINISTRATION

| | |
|---|---|
| **Section 115** | **Resolutions requiring special notice.** |
| **Section 117** | Resolutions and agreements to be filed |
| Section 118 | Minutes of proceedings of general meeting, meeting of Board of Directors and other meeting and resolutions passed by postal ballot. |
| Section 119 | Inspection of minute-books of general meeting (except sub-section (4)) |
| Section 120 | Maintenance and inspection of documents in electronic form |
| Section 121 | Report on annual general meeting |
| Section 122 | Applicability of this Chapter to One Person Company |

# ANNUAL RETURN

| Companies Act, 1956 | Companies Act, 2013 |
|---|---|
| Basic Details relating to Directors, Shareholders, Capital and percentage holdings. | Additional details to be included in Annual Return:<br>• Remuneration of Directors and KMP<br>• Principal business activities<br>• Particulars of its holding, subsidiary & associate companies<br>• Details of Board meeting, shareholders meetings with attendance details<br>• Penalty/punishment imposed on the company, its directors or officers and details of compounding of offences<br>Also an extract of annual return will be a part of Directors Report |

# SIGNATORIES

| Companies Act, 1956 | Companies Act, 2013 |
|---|---|
| **Signing of Annual Return**<br>Director + CS/Manager<br>If no CS/Manager, then MD + Director<br>If no MD, then 2 directors (Section 161) | **Signing of Annual Return**<br>• Private Company being a Small Company –CS,<br>• If no CS, then 1 Director<br>• Private Company, other than Small Company – CS + Director<br>• If no CS, then PCS + Director (Section 92) |
| **Signing of Director's Report**<br>By Chairman of the Board if he is authorized by board or by such number of directors of the board as are required to sign the balance sheet and the profit and loss account of the company by virtue of sub- sections (1) and (2) of section 215 (Section 217) | **Signing of Director's Report**<br>Chairperson, if he is authorized by board or 2 Directors out of which one shall be Managing Director or by the Director where there is one Director (Section 134) |

# BOARD MEETINGS

- All companies required to hold first board meeting within 30 days of incorporation.
- Length of notice for calling board meeting specified (at least 7 days notice to be given).
- Period between two board meetings not to exceed 120 days.
- Board Meeting through video conferencing permitted.

# MEETING OF BOARD

| |
|---|
| • Gap between 2 board meetings should not be more than 120 days<br>• Items like approval of financial statement and Directors Report can't be done through video conferencing |
| **Quorum**<br>Presence of director through video conferencing will be counted as quorum. |
| **Passing of resolution by circulation**<br>• Circular resolution is approved if majority of the directors agree for the same.<br>• No requirement of having directors constituting quorum to be present in India<br>• 1/3rd of directors can ask for the circular resolution to be decided in a Board meeting |

# MEETING OF BOARD

**Powers of Board**

Matters like issuing securities, approval of financial statements and Directors Report, diversifying business, casual vacancy, appointment and removal of KMP, selling investments more than 5% or more of the paid up share capital and free reserves

**Restrictions on Powers of Board**

- The section has now been made applicable on private companies as well
- Approval of members is required through special resolution, instead of ordinary resolution earlier

# MEETINGS

| |
|---|
| **AGM**<br>• First AGM has to b convened within 9 months from the closure of financial year.<br>• Business hours of AGM has been specified as 9 a.m. and 6 p.m. |
| **EGM**<br>Board may call EGM, when required or on the requisition of members |
| **Representations of Corporate in general meetings**<br>If a body corporate is a member of a company, then the Board or other governing body may authorise some person to attend the general meeting |

# NOTICE OF GENERAL MEETING (GM)

| **Companies Act, 2013** |
| --- |
| • 21 clear days notice has to be given for every GM. (Notice in electronic form permitted)<br>• Notice of to be sent to every director<br>• Every GM can be done with shorter notice with 95% shareholders approval |
| **<u>Statement to be annexed to notice</u>**<br>Every company is required to give explanatory statement for every special business, whereby interest of director and the manager, key managerial personnel and their relatives has to be given |

# CONDUCT OF MEETINGS

| |
|---|
| **Quorum**<br>2 members personally present shall be the quorum for a general meeting |
| **Chairman of meetings.**<br>Members can elect a chairman amongst themselves, on show of hands, unless otherwise provided in AOA |
| **Proxies**<br>A member who is entitled to attend and vote at a general meeting, may appoint proxy |
| **Minutes of the proceedings**<br>Secretarial Standard-5 will have to be followed for recording Board and members meetings |

# VOTING AT THE MEETINGS.

| |
|---|
| **Restriction on voting rights**<br>Company can restrict voting powers of members, if calls have not been paid by him |
| **Voting by show of hands**<br>Voting on any resolution to be decided by show of hands |
| **Demand of poll**<br>Member/members present in person or by proxy having at least 1/10th of the total voting power or holding paid up shares of at least Rs. 5 Lakhs may demand a poll. |

# VOTING AT THE MEETINGS. **POSTAL BALLOT**

For private companies having members more than 50, following prescribed matters shall be passed through postal ballot:

- Alteration in objects clause of Memorandum, Articles for conversion of private company into public or vice versa
- Change in place of registered office
- Issue of shares with differential rights
- Variation in the rights of shareholders.
- Buyback of shares, Appointment of small shareholder director
- Sale of the whole or substantially the whole of an undertaking of a company

# GENERAL MEETINGS

| Companies Act, 1956 | Companies Act, 2013 |
| --- | --- |
| Private companies can exempt themselves from the applicability of Sections 171 to 186 by mentioning so in its AOA. These sections deal with length of notice for General Meetings, explanatory statement etc. | All requirements regarding general meetings as specified in the Act are applicable to Private Companies. No exemption can be sought basis of AOA. |

# CHAPTER VIII- DECLARATION & PAYMENT OF DIVIDEND

| | |
|---|---|
| **Section 123** | **Declaration of dividend** |
| **Section 126** | Right to dividend, rights shares and bonus shares to be held in abeyance pending registration of transfer of shares |

# DECLARATION OF DIVIDEND

- Dividend allowed out of profits for the year or accumulated profits or both
- Depreciation to be provided in both cases as per Schedule II
- No provision to declare dividend without providing for full depreciation
- Transfer to reserves at option of company
- Interim dividend can be declared out of CY profits or PL surplus
- If loss in the current FY upto the end of earlier quarter when interim dividend is declared – rate cannot exceed average of last 3 yrs

# DECLARATION OF DIVIDEND

- No dividend to be declared if company fails to comply with provisions related to acceptance and repayment of deposits
- Transfer to IEPF for Unpaid Dividend along with unpaid / unclaimed dividend, **company reqd to transfer all the shares on which dividend has remained** unpaid /unclaimed to IEPF
- Claimant of shares transferred as above entitled to claim from IEPF as per laid down procedures

# CHAPTER IX- ACCOUNTS OF COMPANIES

| | |
|---|---|
| **Section 128** | **Books of account, etc., to be kept by company.** |
| **Section 129** | Financial Statements |
| Section 133 | Central Government to prescribe Accounting Standards |
| Section 135 | Corporate Social Responsibility |
| Section 136 | Rights of Members to get Statement of Account |
| Section 137 | Copy of Financial statement to be filed with Registrar |
| Section 138 | Internal Audit |

# FINANCIAL YEAR

- Financial Year shall commence on 1st April and end on 31st March for all types of Companies;
- Maximum period allowed is 15 months;
- Foreign Holding or Subsidiary Company can have different FY for consolidation of accounts (Approval from Tribunal required)
  - Time limit of 2 years given to comply with the requirements (provision effective 1.4.2014)

# FINANCIAL STATEMENTS

- Balance Sheet;
- Profit and Loss Account/Income & Expenditure Account;
- Cash Flow Statement (OPC, Dormant excluded);
- Statement of changes in Equity; and
- Any explanatory note annexed to or forming part of, any document referred above;

# BOOKS OF ACCOUNT & PAPERS

- Sums of money received and expended and matters relating to receipts and expenditure;
- All sales and purchases of goods and services;
- Assets and Liabilities;
- Cost records as applicable to classes of Company specified u/s 148;
- deeds, vouchers, writings, documents, minutes and registers maintained
  - In paper or in electronic form

# POWER TO AUTHENTICATE

| **Companies Act, 1956** | **Companies Act, 2013** |
|---|---|
| By two directors including Managing Director , if there is one and Company Secretary , if there is one | Any document or proceeding requiring authentication by a company or contracts made by or on behalf of a company may be signed by any KMP or an officer of Company, duly authorised by Board. |
| **Authentication of financial statements of the company**<br>By two directors including Managing Director , if there is one and Company Secretary , if there is one (Section 215) | **Authentication of financial statements of the company**<br>• Chairperson, if he is authorized by board or 2 Directors out of which one shall be Managing Director<br>• The CEO, if he is a Director of the company, The CFO and the CS of the company, wherever they are appointed. (Section 134) |

# FINANCIAL STATEMENTS

| Companies Act, 1956 | Companies Act, 2013 |
|---|---|
| No such provisions | Books of accounts may be kept in electronic form. |
| **Consolidation of Accounts**<br>Consolidation is not mandated under the Companies Act, 1956 for any company.<br>Listing agreement requires consolidation for listed companies having subsidiaries.<br>(Clause 32 of Listing agreement and AS 21) | **Consolidation of Accounts**<br>A company having subsidiary or associate company, shall prepare a consolidated financial statement, in addition to its financial statements and shall lay the same for approval in AGM. |
| **Contents**<br>• Balance Sheet, Statement of Profit & Loss<br>• Cash flow Statement (applicable only to listed companies and companies having Turnover in excess of 50 crores or borrowings in excess of 10 crores) AS 3 and listing agreement | **Contents**<br>• Balance Sheet<br>• Statement of Profit & Loss<br>• Cash Flow Statement (Except for OPC, Small Company and Small Company)<br>• Statement of Changes in Equity<br>• Notes to accounts |

# FINANCIAL STATEMENTS, BOARDS REPORT

**Voluntary revision of financial statements or Board's report**

The Board may revise the financials statements or Directors Report for any of the 3 previous financial years, if the same didn't comply with the statutory requirements. However, prior approval from Tribunal is required

Additional information (beyond what we now cover) will have to be provided in Directors Report:

- Inter-corporate loans and investment
- details of related party contracts
- Risk Management
- Extract of Annual Return

# DEPRECIATION PROVISIONS

- Current Provisions
- ✓ As per life of asset (AS 6) or rates prescribed by Sch. XIV
- ✓ Schedule XIV prescribes rates (SLM and WDV) so as to
- ✓ write off 95 % of the cost of an asset
- ✓ Separate rates for Double/Triple shift
- ✓ Assets costing < 5,000 100 % depreciation

- As per Companies Act, 2013
- ✓ Schedule II lays down useful life to compute depreciation
- ✓ Useful life is the period over which an asset is available for use by an entity
- ✓ Residual life not to be more than 5%
- Carrying amount of the asset on that date to be depreciated over the remaining useful life (Transition Period). If remaining useful life is NIL, after retaining the residual value, If the remaining carrying amount to be recognized in retained earnings

# CHAPTER X- AUDIT & AUDITORS

| | |
|---|---|
| **Section 139** | **Appointment of auditors** |
| **Section 140** | Removal, resignation of auditor and giving of special notice (except second proviso to sub-section (4) and sub-section (5)) |
| Section 141 | Eligibility, qualifications and disqualifications of auditors |
| Section 142 | Remuneration of auditors |
| Section 143 | Powers and duties of auditors and auditing standards |
| Section 144 | Auditor not to render certain services. |

# CHAPTER X- AUDIT & AUDITORS

| | |
|---|---|
| **Section 145** | **Auditor to sign audit reports etc.** |
| **Section 146** | Auditors to attend general meeting. |
| Section 147 | Punishment for contravention. |
| Section 148 | Remuneration of auditors |

# AUDITORS

**Appointment of auditors**

- Member have the option to rotate the audit team and can also appoint multiple auditors

**Maximum term of auditor**

- Maximum term of office as auditor for an individual is one term of five consecutive years and for an audit firm, is two terms of five consecutive years each.
- Cooling off period of 5 years has been specified for both

**Existing Companies to comply with the requirements within 3 years from 1.4.2014**

# AUDITORS ROTATION CRITERIA

**Listed**

**Unlisted**

- Paid Up Share Capital Rs. 10 Crores or more; or
- Public Borrowings from FI, Banks or Public Deposit of Rs. 50 Crores or more

**Private Limited**

- Paid Up Share Capital Rs. 20 Crores or more or
- Public Borrowings from FI, Banks or Public Deposit of Rs. 50 Crores or more

# AUDITORS

| Companies Act, 1956 | Companies Act, 2013 |
|---|---|
| No such restrictions | **Auditor not to render certain services.**<br>An auditor can't provide the following services to company, its holding or subsidiary company<br>(a) accounting and book keeping services<br>(b) internal audit<br>(c) design and implementation of any financial information system<br>(d) actuarial services<br>(e) investment advisory services<br>(f) investment banking services<br>(g) rendering of outsourced financial services<br>(h) management services |

# AUDITORS

| Companies Act, 1956 | Companies Act, 2013 |
|---|---|
| **Number of Companies an auditor can audit**<br>For Private Companies, no limit is there as Section 224(1B) is not applicable to private companies | **Number of Companies an auditor can audit**<br>20 Companies in total.<br>Private companies cannot appoint a person as auditor if he is already auditor for 20 other companies. (Section 141) |
| | **Auditors to attend general meeting**<br>All the general meeting notices have to be sent to the auditor and he shall attend every general meeting, unless exempted by company. He will also have a right to be heard |

# FORMS TO BE FILED

| | |
|---|---|
| Form No ADT-1 | • Appointment of Auditors<br>• Time Limit 15 days from the date of meeting in which Auditor is appointed |
| Form No. ADT-2 | • Application to CG for removal of Auditor before expiry of term |
| Form No. ADT-3 | • Compliance by Auditor after resignation<br>• Time Limit 30 days<br>• Fine of Rs. 50,0000 to Rs. 5,00,000 |

# ADDITIONAL GROUNDS FOR DISQUALIFICATION

- a person or a firm who, whether ***directly or indirectly, has business relationship*** with the **company**, or its **subsidiary**, or **its holding or associate company** or subsidiary;
  - commercial transactions which are in the nature of professional services **permitted;**
  - commercial transactions **which *are in the ordinary course of business of the company at arm's length price – like sale of products or services to the auditor*,** as customer, in the ordinary course of business, by companies ***engaged in the business of telecommunications, airlines, hospitals, hotels and such other similar businesses***

# ADDITIONAL GROUNDS FOR DISQUALIFICATION

- a person whose ***relative is a director*** or is in the ***employment of the company*** as a ***director or key managerial personnel;***
- a **person** who is **in full time employment** elsewhere or
- **a person** or a **partner** of a firm holding **appointment** as its **auditor**, if **such persons** or **partner** is at the **date of such appointment** or reappointment holding appointment as auditor of ***more than 20 companies;***
- a person who has been convicted by a court of an offence involving fraud and a period of ten years has not elapsed from the date of such conviction;
- **any person** whose **subsidiary** or **associate** company or any **other form of entity**, is **engaged as on the date of appointment** in consulting and ***specialised services*** as provided ***in section 144***
- 

# REPORT OF AUDITORS TO INCLUDE

- **Additional Requirements**
- Observations or comments on financial transactions or matters having adverse effect on the company's functioning *(No need to report this in thick bold & italics)*
- Whether the company has adequate internal financial controls in place and operative effectiveness of such controls;
- If any frauds against the company by any of its officers, or employees, are noticed by the auditor, the auditor shall report the same to the CG, within such time / manner as may be laid by rules
- Other matters as may be prescribed:
  - Whether the company has disclosed the effect, if any, of pending litigations on its financial position;
  - Whether the company has made provision for foreseeable losses, if any, on long term contracts including derivative contracts;
  - Whether there has been a delay in depositing money into theInvestor Education and Protection Fund by the company

# SUMMARY OF AUDITS TO BE DONE

| | **Statutory** | **Internal** | **Secretarial** | **Cost** |
|---|---|---|---|---|
| Relevant Sections | 139-147 | 138 | 204 | 147 |
| Applicability | All Companies | Listed & Public Companies having capital > 10 cr or loans > 25cr | Listed Cos and Public Cos> 100 Crores | To be Notified |
| Conducted by | CA/CA Firm | CA/Cost Acct | CS in Practice | Cost Act in Practice |
| Scope of Audit | Financial Statements | Functions & Activities | Secretarial records | Cost Records |
| Standards Applicable | AS, NAFRA specified | ICAI (Optional) | ICSI Standards | ICWAI |
| Frequency | Annual | Boards to decide | Annual | Annual |
| Reports to be submitted to | Members | Board | Members | Board |

# CONSTITUTION OF BOARD

# CHAPTER XI- APPOINTMENT & QUALIFICATIONS OF DIRECTORS

| | |
|---|---|
| **Section 149** | **Company to have Board of Directors** |
| **Section 150** | Manner of selection of independent directors and maintenance of data bank of independent directors |
| Section 151 | Appointment of director elected by small shareholders |
| Section 152 | Appointment of directors |
| Section 153 | Application for DIN. |
| Section 154 | Allotment of DIN |

# CHAPTER XI- APPOINTMENT & QUALIFICATIONS OF DIRECTORS

| **Section 155** | **Prohibition to obtain more than one Director Identification Number** |
|---|---|
| **Section 156** | Director to intimate DIN |
| Section 157 | Company to inform DIN to Registrar |
| Section 158 | Obligation to indicate DIN |
| Section 159 | Punishment for contravention |
| Section 160 | Right of persons other than retiring directors to stand for directorship |

# CHAPTER XI- APPOINTMENT & QUALIFICATIONS OF DIRECTORS

| **Section 161** | **Appointment of Add Dir, Alt. Dir & Nom Dir** |
|---|---|
| **Section 164** | Disqualifications of Director |
| Section 165 | Number of Directorship in Company |
| Section 166 | Duties of Directors |
| Section 167 | Vacation of Office as Director |
| Section 168 | Resignation of Director |
| Section 169 | Removal of Directors (except sub-section 4) |
| Section 170 | Register of Directors, KMP & their Shareholding. |
| Section 171 | Members right to Inspect |
| Section 172 | Punishment |

# KEY MANAGEMENT PERSONNEL

| Companies Act, 1956 | Companies Act, 2013 |
|---|---|
| Under CA, 1956, irrespective of the capital, Private Companies are not mandated to appoint MD/WTD/Manager etc. except Whole Time Company Secretary in case of companies having paid up capital of Rs. 5 Crores or more. [Section 269 & 383A] | All companies, including private companies, having paid up capital of Rs. 5 Crores or more are required to have the following whole time KMP:<br>1. MD/CEO/Manager/WTD;<br>2. Company Secretary; and<br>3. CFO<br>[Section 203] |

# BOARD OF DIRECTORS

| Companies Act, 1956 | Companies Act, 2013 |
|---|---|
| **Resident Director**<br>No requirement to have director resident in India. | **Resident Director**<br>At least 1 director should be resident in India(182 days) in the previous calendar year<br>For existing companies, company should fulfill the requirement of the resident director within one year from the date of notification. |
| **Consent to act as director**<br>In case of private companies, consent to act as director is not mandatory to be filed with ROC. [Section 264] | **Consent to act as director**<br>A person appointed as a director shall not act as a director unless he gives his consent to hold the office as director and such consent has been filed with the Registrar within thirty days of his appointment [Section 152] |

# BOARD OF DIRECTORS

| Companies Act, 1956 | Companies Act, 2013 |
|---|---|
| | **Disqualifications**<br>Additional disqualifications are as follows<br>• Convicted of offence dealing with related party transactions<br>• Convicted of any offence and sentenced for the same for a period of 7 years or more. He will not be eligible to be appointed as a director in any company |
| **Number of directorships**<br>Private Companies are not counted for the purpose of determining the limit of 15 companies in which a person can act as a director at any given time. [Section 275] | **Number of directorships**<br>• A director can hold maximum 20 directorships (including alternate directorship) Out of this, maximum 10 public companies directorships is allowed<br>• Members may specify lesser limit |

# BOARD OF DIRECTORS

| Companies Act, 2013 |
| --- |
| **Resignation of director.** |
| A director may resign by giving a notice in writing to Company and the Board shall take note of the same and intimate concerned ROC with the same. |
| **Vacation of office of a director** |
| Additional ground of vacation has been given as violation of any related party transaction provision or for not attending board meetings for a period of 12 months, with or without leave of absence. |

# BOARD OF DIRECTORS

| Companies Act, 1956 | Companies Act, 2013 |
| --- | --- |
| **Appointment of 2 or more directors by single resolution**<br>Provision relating to appointment of directors to be voted on individually is not applicable to a private company which is not a subsidiary of a public company. [Section 263] | **Appointment of 2 or more directors by single resolution**<br>At a general meeting of a company, a motion for the appointment of two or more persons as directors of the company by a single resolution shall not be moved unless a proposal to move such a motion has first been agreed to at the meeting without any vote being cast against it. [Section 162] |

# BOARD OF DIRECTORS

| Companies Act, 2013` |
| --- |
| **Appointment of additional director, alternate director and nominee director**<br>• A person who fails to get appointed as a director in a general meeting, can't be appointed as additional director by the Board<br>• Alternate director can be appointed, for a director who is not present in India for at least 3 months, Nominee director can be appointed as per the Articles of Company |
| All the documents containing the signature of director, should also mention director's name and **DIN (Director Identification Number) along with their Signature.** |

# CONSTITUTION OF BOARD

Public Company -3, Private Company-2, OPC-1. Maximum increased to 15 from 12;

More Directors can be added by passing of special resolution without getting the approval of Central Government as earlier required;

At least one woman director shall be on the Board of such class or classes of companies as may be prescribed

# DIRECTORS

Additional/ Alternate/ Casual Vacancy
Managing Director/ Whole time director
Director
Small shareholders' Representative director
Woman Director
Independent director

# APPOINTMENT

## Resident Director

- one of the directors in a company shall be a person who has stayed in India for 182 days or more in the previous calendar year
- Transition Period: 1 year

## Woman Director

- Listed Companies
- Paid Up Capital of 1 cr or more or Turnover of 300 Cr or more
- Transition Period: 6 months

# APPOINTMENT AND DISQUALIFICATION OF DIRECTORS

# DISQUALIFICATION OF DIRECTORS

| | |
|---|---|
| Ground for disqualification | • Failure to file accounts and annual return<br>• Provision extended to all companies including private companies |
| Additional grounds for vacation of office as director | • Director to vacate office as director if he remains absent from all meetings of the BOD held during 12 months whether with or without seeking leave of absence of BOD |
| Limits on directors | • Maximum limits increased to 15 |

# DISQUALIFICATION OF DIRECTORS

## DIR-8

- Information by Director about Disqualification u/s 164(2)

## DIR-9

- Information by Company to Registrar about Disqualification
- Time Limit 30 days

## DIR-10

- Application for Removal of Disqualification

# RESIGNATION OF DIRECTOR

Resigning Director

- file resignation letter with ROC
- Time Limit 30 days,
- Detailed Reason for resignation (Form DIR-11)

Effective Date on which notice of resignation is received by the company or the date, if any, specified by director in the notice, whichever is less.

Where all directors of the company resign, the promoter or in his absence, CG will have to appoint required number of directors till new directors are appointed in a general meeting

# BOARD OF DIRECTORS

| Companies Act, 1956 | Companies Act, 2013 |
| --- | --- |
| Maximum 12 Directors permitted; | Now increased to 15 with SR can be even greater; |
| Maximum 15 Companies in which a person can be a Director; | Restricted to 20 (max 10 PLC) Time of 1 year given to comply; |
| No mandatory provision for residency in India; | 1 Director – person stayed in India for atleast 182 days in PCY |
| Resigning Director filing of resignation Directly no provision; | Concerned Director now allowed to file his resignation. |
| Appointment of MD & WTD in case of public companies; | All listed & other companies having paid up capital >5cr to have 1MD or WTD and CS and CFO |

# CHAPTER XII- MEETINGS OF BOARD AND ITS POWERS

| **Section 171** | **Members right to Inspect** |
|---|---|
| **Section 172** | Punishment |
| Section 173 | Meetings of Board |
| Section 174 | Quorum for Meeting of Board |
| Section 175 | Passing of resolution by Circulation |
| Section 177 | Audit Committee |
| Section 178 | Nomination and remuneration committee and stakeholders relationship committee |
| Section 179 | Powers of Board |
| Section 184 | Disclosure of Interest by Director |
| Section 186 | Loan & Investment by Company |

# CHAPTER XII- MEETINGS OF BOARD AND ITS POWERS

| | |
|---|---|
| **Section 187** | **Investment to be held in own name** |
| **Section 188** | Related Party Transactions |
| Section 189 | Register of Contracts or arrangements in case of interested party |
| Section 190 | Contract of Agreement with Managing/WTD |
| Section 191 | Payment to director for loss of office, etc., in connection with transfer of undertaking, property or shares |
| Section 193 | Contract by One Person Company |

# RELATED PARTY TRANSACTIONS

| Companies Act, 1956 | Companies Act, 2013 |
| --- | --- |
| | • Any transaction with related party for sale, purchase of goods and services, leasing of property office of profit will require board approval<br>• Details of such contract will have to be included in Directors Report with justification |

# RELATED PARTY TRANSACTIONS

| Companies Act, 1956 | Companies Act, 2013 |
|---|---|
| Approval required in certain cases | **Prior approval of Shareholders**<br>Prior approval of the company by a special resolution is required in the case of a company having such paid up capital or transactions value not exceeding such amount as may be prescribed<br>[First proviso to Sec.188(1)] |
| | **Exemptions:**<br>Approvals are not necessary for transactions entered in ordinary course of business other than those which are not on an arm length's basis. |

# RESTRICTION ON NON-CASH TRANSACTIONS INVOLVING DIRECTORS.

| **Companies Act, 2013** |
| --- |
| • No director or a person connected to him or holding, subsidiary or associate company can acquire assets from company for other than cash and vice versa, except with prior approval of members through ordinary resolution |
| Every contract or arrangement entered into shall be referred to in the Board's Report along with the justification for entering into such contract or arrangement. |

## RESTRICTIONS ON LOAN TO DIRECTORS (SECTION 185)

- Effective from 12.09.2013
- Fresh Loans given or renewed after that date, provisions would apply;

# LOANS TO DIRECTORS

| Companies Act, 1956 | Companies Act, 2013 |
|---|---|
| **Loan to directors**<br>Restrictions relating to giving of loans, advances or providing securities, guarantees to directors and other interested entities are not applicable to a private company. [Section 295] | **Loan to directors**<br>All companies, including private companies, are restricted from giving loans, advances or providing securities, guarantees to directors and other interested entities barring few exceptions. [Section 185] |

# LOANS AND INVESTMENTS

**Loan to directors**

- The section has now been made applicable on private companies as well
- Central Government approval has been done away with
- Company can give loan to M.D. W.T.D. as a part of conditions of service or as per a scheme approved by shareholders

**Loan and Investment by Company**

- The section has now been made applicable on private companies as well
- Company can't do investment through more than 2 layers of investment companies
- Scope of section has been widened to include loans and investment with any person also.

# OTHER CHANGES

- Private Company including those which are subsidiary of a public Company would be able to offer financial assistance to any person for the purchase of shares in the Company or in the holding Company;
- Director to give Deposit of Rs. 1 Lac for appointment (Except re-appointment) for standing as a Director including Notice of 14 days in writing to be given (Section 160);
- Financial Statements of the private limited company to be made available for inspection (Section 137);
- Date of Birth of the Director to be mentioned in the Register of Directors;

# RESTRICTIONS ON POWERS OF BOARD

# LOANS AND INVESTMENTS BY COMPANY (SECTION 186)

- To be authorised by Special Resolution at a general meeting
- Such Loans and Investments not to exceed 60% of its paid up capital, free reserves and securities premium or 100% of free reserves and securities premium whichever is lower;
- Rate of Interest not to be below the prevailing yield of Govt. Security (as per the closet tenure)
- Govt. given the power to prescribe limits for the Companies Registered under Section 12 of SEBI Act, 1992.
- Effective from 1.4.2014 onwards, notified on 12.09.2013 corresponding circular issued to defer the effective date.

# CORPORATE SOCIAL RESPONSIBILITY

| Companies Act, 1956 | Companies Act, 2013 |
|---|---|
| **No requirement to spend on CSR activities** | **<u>CSR Committee</u>**<br>• An unlisted public company or a private company which is not required to appoint an independent director shall have its CSR Committee without such director<br>• A private company having only two directors on its Board shall constitute its CSR Committee with two such directors<br>• With respect to a foreign company covered under these rules, the CSR Committee shall comprise of at least two persons of which one person shall be as specified under clause (d) of sub-section (1) of section 380 of the Act and another person shall be nominated by the foreign company. |

# APPLICABILITY OF CSR

- Section 135 of the Act applicable from 1.4.2014;
- Applicable Schedule VII and CSR Rules, 2014 to all Companies;
- Companies to spend 2% of Average Net profit of the last 3 years for CSR activities;
- Company can withdraw if the criteria is not fulfilled for 3 consecutive years after its application.
- Criteria
  - Net profit of Rs. 5 Crores or more; or
  - Net worth of Rs. 500 Crores or more; or
  - Turnover of Rs. 1000 Crores or more;

# CORPORATE SOCIAL RESPONSIBILITY

| Companies Act, 1956 | Companies Act, 2013 |
|---|---|
| **No requirement to spend on CSR activities** | The CSR Committee shall institute a transparent monitoring mechanism for implementation of the CSR projects or programs or activities undertaken by the company. |
| **No requirement to spend on CSR activities** | **CSR policy shall include**<br>• List of CSR projects or programs which a company plan to undertake<br>• Monitoring process of such projects or Programs<br>• The CSR Policy of the company shall specify that the surplus arising out of the CSR projects or programs or activities shall not form part of the business profit of a company. |

# FORMAT OF ANNUAL REPORT OF CSR ACTIVITIES TO BE INCLUDED IN THE BOARD'S REPORT

| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) |
|---|---|---|---|---|---|---|---|
| Sr. No. | CSR Project or activity identified | Sector in which project is covered | Projects or programs 1) Local area other 2)Specify the State and district where projects or program was undertaken | Amount outlay (budget) project programs wise | Amount spent on the project or programs Sub-heads: (l ) Direct on projects or programs- (2) Overheads: | Cumulative expenditure up to the reporting period | Amount spent Direct or through implementing agency |
| 1 | | | | | | | |
| 2. | | | | | | | |
| 3. | | | | | | | |
| | Total | | | | | | |

# RESIDUAL CHAPTERS

| | |
|---|---|
| Chapter XVI – Nidhi Companies | • Section 406 Power to modify Act in its application to *Nidhis.* |
| **Chapter XXVIII** Special Courts | • Section 442 Mediation and conciliation penal. |
| **Chapter XXIX** Miscellaneous | • Section 454 Adjudication of penalties.<br>• Section 455- Dormant company<br>• Section 464 Prohibition of association or partnership of persons exceeding certain number. |

# SEVEN PUNISHMENTS (EFFECTIVE DATE 12.09.2013)

**Section 447**

- Punishment for fraud
- Penalty upto the fraud amount extendible upto 3 times;
- Imprisonment not less than 6 months extendible upto 10 years

**Section 448**

- **Punishment for false statement. Includes Attestation & Certification**
- Penalties on the lines of Section 447

**Section 449**

- **Punishment for false evidence**
- Fine upto Rs. 10 Lakhs;
- Imprisonment not less than 3 years extendible upto 7 years

# SEVEN PUNISHMENTS (CONTD)

**Section 450**

- **Punishment where no specific penalty or punishment is provided**
- Fine extendible upto Rs. 10000/- for first time and subsequent contravention Rs. 1000/- per day;

**Section 451**

- **Punishment for Repeated Defaults**
- if a company or an officer of a company commits an offence punishable either with fine or with imprisonment and where the same offence is committed for the second or subsequent occasions within a period of three years, then, both shall be punishable with twice the amount of fine for such offence in addition to any imprisonment provided for that offence

**Section 452**

- **Punishment for wrongful with-held of Property**
- Fine Rs 1 Lakh extendible upto Rs. 5 Lakhs;
- Imprisonment extendible upto 2 years

# PUNISHMENT FOR IMPROPER USE OF "LIMITED" OR "PRIVATE LIMITED"

- Section 453
  - if any person or persons trade or carry on business under any name or title, of which the word "Limited" or the words "Private Limited" or any contraction or imitation thereof is or are the last word or words, that person or each of those persons shall, unless duly incorporated with limited liability, or unless duly incorporated as a private company with limited liability, as the case may be, punishable with fine which shall not be less than Rs. 500 but may extend to Rs. 2500 for every day for which that name or title has been used.
- Thus, only companies incorporated under the Act, shall use the words "Limited" or "Private Limited" in the trade name.

# PROVISIONS RELATING TO SFIO

- Statutory status to SFIO proposed and SFIO is given wide powers
- SFIO's report to be treated as report filed by Police Officer
- SFIO will have power to arrest in certain cases which attract punishment for Fraud and person accused of such offence shall be released on bail subject to conditions as mentioned in the relevant provisions of this bill.
- Protection of employees during investigation by the authority is provided
- During inquiry and investigation or on request of creditor having due of more than one lakh, the central government may by order direct that transfer, removal or disposal of funds, assets, properties of the company shall not take place during such period not exceeding three years or may put restrictions and conditions as deemed fit
- Foreign companies are also covered.

# PROVISION RELATED TO COMPANY'S STATIONERY

- As per the Companies Act , 2013 the Companies are required to get the following **items printed in all its business letters, billheads, letter papers, letter heads and in all its notices and other official publications** from 01/04/2014 ;
- Name of the company,
- Address of the company's registered office,
- **Corporate Identity Number**,
- Telephone number,
- Fax number(if any),
- E- mail addresses,
- Website addresses (if any);

# OPTIONS AVAILABLE TO COMPANIES

# ROC COMPLIANCES

- Annual e- filing of Balance Sheet ( Form 23AC) which is filed with ROC shall be governed by the relevant provisions/ Schedules / Rules of the Companies Act , 1956 in respect of financial year that commenced earlier than 1st April, 2014.
- Annual e- filing of Profit and Loss Account ( Form 23ACA) which is filed with ROC shall be governed by the relevant provisions/ Schedules / Rules of the Companies Act , 1956 in respect of financial year that commenced earlier than 1st April, 2014.
- Annual e- filing of Compliance Certificate ( Form 66) which is filed with ROC shall be governed by the relevant provisions / Rules of the Companies Act , 1956 in respect of financial year that commenced earlier than 1st April, 2014.
- Apart from the aforesaid mentioned, auditor's report and Board of Directors report (Board Report ) shall also be governed by the relevant provisions / Rules of the Companies Act , 1956 in respect of financial year that commenced earlier than 1st April, 2014.

# CONVERSION OF COMPANY INTO LLP

**A company may convert into LLP only if**

- There is no security interest in its assets subsisting or in force at the time of application
- The partners of LLP to which it converts comprises of all the shareholders of the company and no one else.

# PROCEDURE

1)

- Filing with the registrar **Form 18** along with the fees prescribed by the Central Government containing following details
  - The name and registration number of the company;
  - The date on which company was incorporated

2)

- Incorporation documents and statements referred to in section 11

# CERTIFICATE OF REGISTRATION

- On receiving the documents , registrar shall issue certificate of registration provided all the provisions of this act and rules made therein are complied
- The certificate issued shall certify that the LLP is, on and from the date specified in the certificate registered under LLP Act 2008, provided
  - LLP shall within 15 days of registration inform the concerned ROC with which it is registered under provisions of companies Act 1956, about the conversion and details of LLP in **Form 14**

# POWERS OF REGISTRAR

- Nothing in the act shall be construed as to require registrar to register any LLP if he is not satisfied with the particulars or other information furnished under the provisions of this act
  - Provided that an appeal may be made before the tribunal in case of refusal of registration by the registrar.
- The registrar may, in any particular case, require the documents to be verified in such manner, as he considers fit.

# EFFECTS OF REGISTRATION

- On and from the date of registration specified in the certificate of registration issued:
  - (a) There shall be a LLP by the name specified in the certificate of registration registered under this act;
  - (b) All tangible and intangible property vested in the company, all the assets and liabilities relating to the company and the whole of the undertaking of the company shall be transferred to and shall vest in the LLP without further assurance, act or deed; and
  - (c) The company shall be deemed to be dissolved and removed from the records of the registrar of companies.

# LEGAL MATTERS

- If any property vested in the company is registered with any authority, LLP as soon as practicable take all necessary steps to notify the authority of the conversion in such form and manner as the authority may determine
- All proceedings by or against the company which are pending before any court, tribunal or authority on the date of registration may be continued, completed and enforced by or against the LLP.
- Any conviction, ruling, order or judgment of any court, tribunal or other authority in favor of or against the company may be enforced by or against the LLP

# EXISTING AGREEMENTS & CONTRACTS

- Every agreement to which the company was a party immediately before the date of registration , shall have effect as from the date as if:
  - The LLP were a party to such an agreement instead of the company;
  - For any reference to the company, there were substituted in respect of anything to be done on or after the date of registration a reference to the LLP.
  - All deeds, contracts, schemes, bonds, agreements, applications, instruments and arrangements subsisting immediately before the date of registration relating to company or to which the company is a part shall continue in force on and after that date as if they relate to LLP as if LLP were named therein instead of the company.

# EXISTING APPOINTMENT, AUTHORITY OR POWER

- Every appointment of the company in any role or capacity which is in force immediately before the date of registration shall take effect and operate from that date as if the LLP were appointed
- Any authority or power conferred on the company which is in force immediately before the date of registration shall take effect and operate from the date as if it were conferred on the LLP.

# NOTICE OF CONVERSION IN CORRESPONDENCE

- The LLP shall ensure that for a period of **twelve months** commencing not later than **fourteen days** after the date of registration, every official correspondence of LLP bears the following
  - A statement that from the date of registration converted from a company into LLP
  - The name and registration number of company from which it was converted
- Any LLP which contravenes the provision
  - Shall be punishable with fine
    - Minimum 10,000 Maximum: 100,000
  - And further fine of minimum 50 Rs. and maximum 500 per day after the first day after which default continues

# TAXATION BENEFITS

- Taxed at general partnership firm present rate 30.9%
- No surcharge leviable;
- Taxable income to be considered after payment of remuneration and interest to designated partners like other partnership firms
- No requirement of payment of DDT;

# AUDIT REQUIREMENTS

- No Audit unless
  - Capital exceeds Rs. 25 Lacs; or
  - Turnover exceeds Rs. 60 Lakhs

- No Cap Limit on Number of Audits done by PCA

# TRANSFER OF ASSETS

## Assets and liabilities of company

- All the assets and liabilities of the company immediately before conversion becomes assets and liabilities of the LLP

## Stamp Duty

- All movable and immovable properties of the company automatically vest in the LLP.
- No instrument of transfer is required to be executed and hence no stamp duty is required to be paid.

# CAPITAL GAIN TAX

- No capital Gain tax shall be charged on transfer of property from company to LLP, subject to the following conditions
  - Total sales, turnover or gross receipts in business of the company do not **exceed sixty lakh rupees** in any of the three preceding year;
  - All The shareholders of the company become partners of the LLP in the same proportion
  - No consideration other than share in profit and capital contribution in the LLP arises to partners;
  - All assets an liabilities of the company become the assets and liabilities of LLP; and
  - No amount is paid, either directly or indirectly, to any partner out of accumulated profits of the company for a period of 3 years from the date of conversion.

# CARRY FORWARD AND SET OFF PROVISIONS

- Carry forward and set off losses and unabsorbed depreciation
  - The accumulated losses and unabsorbed depreciation of company is deemed to be loss/ depreciation of successor LLP for the previous year in which conversion was effected
  - Such Loss can be carried for further **eight years** in the hands of the Successor LLP.

# ADVANTAGES

- No limit on number of Partners can have unlimited number of partners;
- Minimal compliance Level & Cost effective model
- Continuation of Brand Value
  - The goodwill of the company and its brand value is kept intact and continues to enjoy the previous success story with legal recognition.

# LINE OF ACTION FOR EXISTING COMPANIES (A RECAP)

- Have CIN Number and Contact details printed on all important documents;
- Documents containing signatures of Directors, DIN to be mentioned;
- Company's not having Indian Directors to comply with the requirements (Dead Line : 31.03.2015)
- Allot the Shares to the Applicants or Refund the Money;
- Amend AOA by passing Special Resolution and filing Form MGT-14;
- Deposits held from members – File Form by 30.06.2014 & refund the Deposit in time

# LINE OF ACTION FOR EXISTING COMPANIES (A RECAP)

- Pass the SR in case borrowings are exceeding the paid up capital plus free reserves in GM and before the borrowings are exercised;
- Approval of the Related Party transactions to be done in the GM before the transactions are done. Approvals are not necessary for any transactions entered into by the company in its ordinary course of business other than those which are not on an arm length's basis;
- Financial Year 2014-15 has commenced, to ensure that the business is being done in accordance with the requirements of the Act.

WHEN LIFE CHANGES ITSELF TO HARDER.
CHANGE YOURSELF TO STRONGER.
THE JOURNEY OF THOUSAND MILES
STARTS WITH A FAITHFUL STEP

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