Seminar on ‘Preparedness by the Company Secretaries – Companies Act 2013’

Major Impact Areas on Private Companies

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2013 Act:

Major Impact Areas on Private Companies
2013 Act - Evolution

- Historic Legislation
- Controlled Regime to Liberalized Regime
- Self Regulation
- Focus on governance, compliances etc.
- Promote entrepreneurship
- Facilitate ease of doing business
- Recognition to professionals
2013 Act – Key Highlights

• Types of Companies
  – Private Company
  – Public Company

• Private Company
  – Maximum members increased to 200
  – One Person Company (OPC)

• Private Company – Small Company
  – Paid Up Capital : Rs. 50 lacs (not to exceed Rs. 5 Cr.)
  – Turnover : Rs. 2 Cr. (not to exceed Rs. 20 Cr.)
2013 Act – OPC

- One individual as a member: Sole Member
- Minimum one director
- Minimum Two Board Meetings
- Provisions of Board Meeting, Quorum and Interested Director – shall not apply to OPC
- No need to hold AGM
- Financial Statement – can be signed by one director
- Annual Return – can be signed by CS
- Use of word “OPC” with the name
2013 Act – Small Company

- Paid up capital and Turnover Threshold
- Minimum Two Board Meetings
- Cash Flow Statement not required
- Financial Statement – signed by one director
- Annual Return – can be signed by CS
- Status changes if Threshold is crossed
2013 Act – Private Company

- Applicability of s. 62 (Further Issue of Shares)
- Certification of Annual Return by PCS
- General Meeting – 21 days’ clear Notice
- General Meeting – shorter notice only with 99% consent
- Postal Ballot for certain transactions
2013 Act – Private Company…

- Secretarial Standards to be followed for Board/General Meeting minutes
- Books of Account – electronic form
- Board’s Report (s. 134) – details to be provided
- Corporate Social Responsibility
- Auditors’ appointment - Two 5 year terms
2013 Act – Private Company…

• Appointment of Internal Auditor (s. 138)

• Director to stay in India for 182 days (s. 149)

• Borrowing Powers provisions (s. 180) – exemption u/s 293 no more available - approval by shareholders

• Loans & Investment (s. 186) – exemption u/s 372A no more available
2013 Act – Private Company…

- Related Party Transactions (s. 188)
- Loans to Directors (s. 185) – exemption u/s 295 is no more available – no loan to directors etc.
- Managing Director (s. 196) – exemption u/s 269 is no more available
- Appointment of KMP; MD/CEO/WTD/CS/CFO
- Amendment of Articles: to be in line with 2013 Act
- Secretarial Audit Report
2013 Act - Secretarial Audit

- Section 204 – Secretarial Audit for bigger companies
  - Listed companies
  - Other companies as may be prescribed

- Secretarial Audit Report
  - Company Secretary in practice
  - Form of Report as may be prescribed

- Board’s Report – s. 134 (3)
  - Explain in full any qualification or observation or other remarks

- Contravention of s. 204 – punishable with fine
2013 Act - Secretarial Audit...

• Functions of Company Secretary (s. 205)
  – Report to the Board
    • Compliance of Companies Act and other laws applicable to the company;

• S. 205 (2)

  “......any other law for the time being in force.”
2013 Act - Secretarial Audit…

• Companies Act, 2013
• Securities and Exchange Board of India Act, 1992
• Reserve Bank of India Act, 1934
• Securities Contracts (Regulation) Act, 1956
• Depositories Act, 1996
• Foreign Exchange Management Act, 1999
• Competition Act, 2002
• Listing Agreement
• Any other law specifically applicable to the Company and all the related rules and regulations to the above mentioned acts.
2013 Act - Secretarial Audit…

- Secretarial Auditor ‘s duty u/s 143 (12) & (14)

  While conducting the audit of the Company, if Secretarial Auditor has reason to believe that an offence involving fraud is being or has been committed against the company by officers or employees of the company, then it is the duty of Secretarial Auditor to report the same to the Central Government.
2013 Act – Real Estate Companies

• Depreciation
  – Depreciation is systematic allocation of the depreciable amount of an asset over its useful life.
  – Companies to assess useful life, which requires technical evaluation and estimate of usage based on its geographic location and condition.
  – Likely to impact Profit & Loss Account
2013 Act – Real Estate Companies

• Restriction on multilayer investment subsidiaries

• Inter corporate loan, guarantee, security and investment
  – Covers not only to a body corporate but also to any other person
  – Rate of Interest – not be lower than prevailing yield on Government Security
2013 Act – Real Estate Companies

- Consolidated Financial Statement
  - Mandatory for all companies, which have subsidiaries, joint ventures or associates.
  - “Control” and “Subsidiary” are defined differently as compared to AS 21
  - Companies may have to look beyond board control and share ownership to decide “control”
2013 Act – To conclude

Challenges = Opportunities
Thank you!