

The Companies Act, 2013 New Concepts

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Statement of objects

- De-controls
- Self Regulation
- Shareholders' Democracy
- Encourages new businesses and their growth
- Higher transparency and more disclosures
- E-Governance
- Investor Protection /Minority Shareholders
- Professionals' enhanced role & accountability
- New Set ups: NFRA/SFIO/NCLT/MCP

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Chief Executive Officer Sec. 2(18)

- "Chief Executive Officer" means an officer of a company, who has been designated as such by it.
- Globally, a person who leads a business enterprise is generally designated as "CEO". The inclusion of the expression "Chief Executive Officer" in the Act is business oriented.

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Chief Financial Officer Sec. 2(19)

- "Chief Financial Officer" means an officer of a company, who has been designated as such by it.
- Globally, a person who leads the finance and treasury functions of a business enterprise is generally designated as "CFO". The inclusion of the expression "Chief Financial Officer" in the Act is business oriented.

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Company Liquidator Sec. 2(23)



- “Company Liquidator” means a person appointed by:-
 - a) the Tribunal in the case of winding up by the Tribunal; or
 - b) the company or creditors in case of voluntary winding , as a Company Liquidator from a panel of professionals maintained by the Central Government.

Company Liquidator Sec. 2(23)



- The Panel shall consist CSs, CAs, CMAs, Advocates etc. having at least 10 years’ experience in company matters.
- Liquidation proceedings are extremely rewarding professional engagement in several jurisdictions. Keeping in view very large number of companies under liquidation in India, it is a huge opportunity for PCS to include it as one of their core area of practice.

Control Sec. 2(27)



- “Control” shall include the right :-
 - i. to appoint majority of the directors; or
 - ii. to control the management or policy decisions exercisable by a person(s) including by virtue of their shareholding or management rights or shareholders agreements or voting agreements.

Expert Sec. 2 (38)



- “Expert” includes an engineer, a valuer , a chartered accountant, a company secretary, a cost accountant and any other person who has the power or authority to issue a certificate in pursuance of any law.

Financial Statement Sec. 2 (40)



- “Financial Statement” in relation to a company, includes –
 - i. A Balance Sheet as at the end of the FY;
 - ii. A Profit and Loss Account/An Income and Expenditure Account for the FY;
 - iii. Cash Flow Statement for the FY;
 - iv. A statement of changes in equity;
 - v. Any explanatory note annexed to any document referred to in sub-clause (i) to (iv)

Key Managerial Personnel Sec. 2 (51)



- “KMP” in relation to a company means:–
 - i. The Chief Executive Officer or the Managing Director or the Manager;
 - ii. The Company Secretary;
 - iii. The Whole Time Director;
 - iv. The Chief Financial Officer; and
 - v. Such other officer as may be prescribed.

Key Managerial Personnel Sec. 2 (51)



- Every listed company and other company having a paid-up share capital of ₹ 5 crs or more shall have the whole time MD or CEO, a CS and a CFO.
- KMPs are largely responsible for major corporate actions and consequently liable to penalty or punishment in the event of default as an “officer who is in default”.

Serious Fraud Investigation Office (SFIO) Sec. 2(83) & 211



- The Central Government (CG) shall establish an office to be called SFIO to investigate frauds relating to a Company.
- The CG refers matter to SFIO on receipt of:-
 - a. Report of Registrar; or
 - b. Special resolution from the company; or
 - c. In public interest; or
 - d. On request from Central/State Government.

Serious Fraud Investigation Office (SFIO) Sec. 2(83) & 211



- The SFIO shall be headed by a Director and consist of experts in the fields of corporate affairs, capital market, law, taxation, etc.
- The Company Secretaries have an opportunity of occupying prestigious position as experts in SFIO and play vital role in important investigations.

National Company Law Tribunal Sec. 2(90) , 408 & 434



- The Central Govt. shall set up a NCLT.
- Following shall stand transferred to NCLT on a date notified by the CG :-
 - i. All cases pending before CLB ;
 - ii. All proceedings under the Companies Act, 1956 including arbitration, compromise, arrangements and reconstructions and winding up of companies pending before any District Court or High Court .

National Company Law Tribunal Sec. 2(90) , 408 & 434



- Any reference/enquiry/proceeding/appeal pending before BIFR/Appellate Authority for Industrial and Financial Reconstruction under SICA, 1985 before commencement of the Companies Act, 2013 shall stand abated.
- Such a company may make a fresh reference to NCLT within 180 days from the commencement of the Companies Act, 2013.
- CS is authorised to appear before NCLT or Appellate Authority to present the case of his client (Sec. 432).

National Company Law Tribunal Sec. 2(90) , 408 & 434



- It is a landmark development for the profession of Company Secretaries.
- It substantially increases the scope of PCS who have a right to legal representation before NCLT & Appellate Tribunal on all matters including scheme of compromise or arrangement, scheme of merger and amalgamation, winding up of company etc.

One Person Company Sec. 2(62)



- OPC means a Company which has only one person as a member.
- A person may form an OPC by subscribing his name to the Memorandum.
- Memorandum of OPC shall indicate the name of the other person, with his consent, who shall become the member of OPC upon death of subscriber.
- The member shall be its first Director.
- The words "One Person Company" shall be mentioned in brackets below the name of OPC, wherever its name is printed, affixed or engraved.

One Person Company Sec. 2(62)



- AR to be signed by CS/Director.
- Holding of AGM not mandatory.
- Business at a GBM is transacted when a resolution is communicated by the member to the OPC and entered in Minutes Book and signed and dated.
- Business at a BDM (with only 1 director) is transacted by entering a resolution in Minutes Book and signing and dating it.
- Date of the resolution shall be deemed to be the date of the meeting.

One Person Company Sec. 2(62)



- OPC has to conduct at least 1 BDM in each half of a calendar year.
- The gap in 2 BDMs is not less than 90 days.
- No requirement of quorum for BDMs if there is only 1 director of OPC.
- Financial Statement shall be approved by 1 director for submission to Auditor.
- FS may not include Cash Flow Statement.

One Person Company Sec. 2(62)



- The introduction of OPC would encourage entrepreneurship and corporatisation of sole proprietorship business with limited liability of the member.
- It will generate more investment and jobs.
- SMEs will be able to avail credit facilities from lending institutions through this new business structure.
- PCS can play major role in advising OPCs.

Associate Company (AC) Sec. 2(6)



- AC in relation to another co. means a co. in which that other co. has a significant influence and includes a JV co.
- Subsidiary cos. of other co. are excluded.
- “Significant Influence” means control of at least 20% of total share capital or of business decisions under an agreement.
- AS 23 defined “Associate” for accounting for investment in Associates.

Associate Company (AC) Sec. 2(6)



- The concept of AC included in several provisions in the new law as a measure of good governance:
 - i. Definition of Related Party to ascertain RPTs.
 - ii. Consolidated Financial Statement of AC to be laid before the AGM of the Company.
 - iii. Annual Return of the Company to contain the particulars of its ACs.
 - iv. A person can't be ID if he is/was promoter of AC or related to promoter or director of AC or has/had pecuniary relationship with AC or its promoters/ directors during current/2 preceding FYs.

Dormant Company (DC) Sec. 455



- A Company formed and registered under new law for a future project or to hold an asset or intellectual property and having no significant accounting transaction or an inactive company may apply for status of “Dormant Company”.
- Registrar may allow the status of DC to the applicant company and issue a certificate.
- Registrar shall maintain a register of DCs.

Dormant Company (DC) Sec. 455



- “Inactive Company ” means a company which has not been carrying on any business or operations or has not made any significant accounting transaction during the last 2 FYs or has not filed Financial Statements and Annual Returns for the last 2 FYs.
- “Significant Accounting Transaction” means any transaction other than:
 - a. Payment of fees to the Registrar;
 - b. Payments made to fulfil requirements of law;
 - c. Allotment of shares to fulfil requirements of the Act;
 - d. Payments for maintenance of its office and records.

Dormant Company (DC) Sec. 455



- A DC shall have such minimum no. of directors, file such documents and pay such annual fee as may be prescribed to the Registrar to retain its dormant status.
- A DC may apply to become an active company by filing prescribed documents and fee.

Small Company Sec. 2(85)



“Small Company” means a company other than a public company:-

- i. paid-up share capital of which does not exceed Rs.50 lacs. or higher prescribed amount not exceeding Rs. 5 crs.; or
- ii. turnover of which as per its last P&L account does not exceed Rs.2 crs. or higher prescribed amount not exceeding Rs. 20 crs.

Small Company Sec. 2(85)



- This clause shall not apply to:-
 - A holding company or a subsidiary company;
 - A company registered for charitable objects;
 - A company governed by any special Act.
- Small companies are exempted from complying with the requirements of some of the provisions of the Act.

Independent Directors (IDs) Sec. 149



- Every listed public company shall have at least $\frac{1}{3}^{\text{rd}}$ of the total number of directors as IDs.
- The Central Govt. may prescribe minimum no. of IDs in any class(es) of public companies.
- ID is a director other than MD, WTD or ND.
- ID should, in opinion of Board, be a person of integrity with relevant expertise & experience.
- Must possess other prescribed qualifications.

Independent Directors (IDs) Sec. 149



- ID can hold office for 2 consecutive terms of 5 years each (total 10 years).
- Eligible for re-appointment after cooling period of 3 years during which period the ID shall not be appointed /associated with the company in any other capacity either directly or indirectly.
- Any tenure of an ID on the date of commencement of the Act shall not be counted as a term under Sec. 149.

Independent Directors (IDs) Sec. 149



- IDs shall not be entitled to any stock option but may be paid profit related commission besides sitting fee as may be prescribed.
- IDs shall abide by the Code of Conduct for IDs contained in Schedule 4 of the Act.
- An ID shall be held liable only for such acts of omission or commission by a company which had occurred with his knowledge, attributable through Board Processes, and with his consent or connivance or where he had not acted diligently.

Resident Director Sec. 149(3)



- Every company shall have at least one director who has stayed in India for a period of not less than 182 days in the previous calendar year.

Woman Director Sec. 149(1)



- In the prescribed classes of companies, there shall be at least 1 Woman Director.
- The Draft Rules prescribe that the following companies shall appoint at least 1 WD :-
- (i) every listed company;
- (ii) other public company having: -
 - (a) paid-up share capital of ₹100cr or more; or
 - (b) turnover of ₹300 cr or more

Woman Director Sec. 149(1)



- A transitional period of 1 year from the date of commencement of the Act has been provided to comply with this provision.
- It will ensure gender diversity on the Boards of such companies and may improve the quality of decision making.

Registered Valuers (RV) Sec. 247



- Valuation of any property, stocks, shares, debentures, securities, goodwill, any other asset or net worth or liabilities of a company shall be valued by a RV.
- The RVs shall have prescribed qualifications and experience and registered as a valuer on prescribed terms & conditions.
- Audit Committee/BoD shall appoint an RV.

Registered Valuers (RV) Sec. 247



- A RV appointed under Sec.247 shall:-
 - a) make an impartial, true and fair valuation;
 - b) exercise due diligence as a valuer;
 - c) make the valuation as per prescribed rules;
 - d) not undertake valuation of any assets in which he has a direct or indirect interest or becomes so interested during or after the valuation of assets.

National Financial Reporting Authority (NFRA) Sec. 132



- The Central Government (CG) may constitute a NFRA to provide for matters relating to accounting/auditing standards which shall:-
 - a) make recommendations to CG on the formulation of accounting and auditing policies and standards for cos. / auditors.
 - b) monitor and enforce compliance with accounting and auditing standards.
 - c) oversee the quality of service of professionals.
 - d) perform such others functions as may be prescribed.

National Financial Reporting Authority (NFRA) Sec. 132



- NFRA shall have power to investigate into matters of professional or other misconduct committed by any member or firm of CAs.
- Where professional or other misconduct is proved, NFRA shall have the power to make order for imposing penalty of not less than ₹ 10 lacs but which may extend to 10 times of the fees received in case of firms.

Rotation of Auditors Sec. 139



- No listed company or companies of prescribed classes shall appoint/ re-appoint:-
 - i. an individual as an Auditor for more than 1 term of 5 consecutive years; and
 - ii. an audit firm as an Auditor for more than 2 terms of 5 consecutive years.

Rotation of Auditors Sec. 139



- An auditor/ audit firm which has completed its term shall not be eligible for re-appointment as an Auditor in the same company for 5 years.
- Freedom has been provided to the members of a company to resolve that:-
 - a. in the audit firm appointed by it, the auditing partner and his team shall be rotated at such intervals as may be resolved by members, or
 - b. the audit shall be conducted by more than one auditor.

Whistle Blowing Sec. 177(9)



- Every listed/ prescribed classes of companies shall establish a vigil mechanism for directors and employees to report genuine concerns.
- The vigil mechanism shall provide for adequate safeguards against victimisation of persons who use such mechanism and for direct access to the chairperson of the Audit Committee in appropriate/exceptional cases.

Whistle Blowing Sec. 177(9)



- Details of such mechanism shall be disclosed on company's website and Board's Report.
- It is an important provision to upgrade Indian legislative framework to global best governance practice and will make the corporate managements' more accountable.

Functions of Company Secretary Sec. 205



- The functions of a CS shall include:-
 - a. To report to the Board about compliance with the provisions of the Act/ Rules and other laws applicable to the company;
 - b. To ensure that the company complies with the applicable secretarial standards;
 - c. To discharge such other duties as may be prescribed.

Duties of Company Secretary



- 1) To guide the directors, about their duties, responsibilities and powers;
- 2) To convene and attend Board, committee and general meetings, and maintain their minutes;
- 3) To obtain approvals from the Board, general meetings, the Government and such other authorities as required under the Act.

Duties of Company Secretary



- 4) To represent before the Regulators, Tribunal and Authorities under the Act ;
- 5) To assist the Board in the conduct of the affairs of the company;
- 6) To assist and advise the Board in ensuring good corporate governance;
- 7) To discharge such duties as may be assigned by the Board;
- 8) Duties prescribed under the Act/ Rules.

Secretarial Standards Sec. 118(10)



- Every company shall observe secretarial standards with respect to General and Board meetings specified by ICSI constituted under section 3 of the Company Secretaries Act, 1980 and approved as such by the Central Government.

Secretarial Audit Sec. 204



- Every listed and every public company having a paid-up share capital of ₹ 100 crs or more :-
- shall annex with its Board's Report, a Secretarial Audit Report given by a PCS.
- The company shall give all assistance and facilities to PCS, for auditing the secretarial records of the company.
- The BoD in its report shall explain in full any qualification or observation or other remarks made by the PCS in his report.

Secretarial Audit Sec. 204



- The provisions of Sec. 143 (powers and duties of auditors..) shall *mutatis mutandis* apply to PCS conducting secretarial audit u/s 204.
- If a company or any officer of the company or the PCS, contravenes the provisions of Sec. 204, the company, every officer of the company or the PCS, who is in default, shall be punishable with fine which shall not be less than ₹ 1 lac but which may extend to ₹ 5 lac.

Secretarial Audit Sec. 143(12),(15) & 204



- If a PCS conducting SA, has reason to believe that an offence involving fraud is being or has been committed against the company by its officers/employees, he shall immediately report the matter to the Central Government.
- If a PCS does not comply with the above provision, he shall be punishable with fine of minimum ₹1 lac and may extend to ₹ 25 lac.

Corporate Social Responsibility Sec. 135



- Every company having net worth of ₹ 500 cr or more or turnover of ₹ 1000 cr or more or a net profit of ₹ 5 cr or more during any FY shall constitute a Corporate Social Responsibility Committee(CSRC).
- The CSRC shall recommend to the Board a CSR Policy and the amount to be incurred on the activities provided in the policy.

Corporate Social Responsibility Sec. 135



- The Board shall approve the CSR Policy and disclose it in the Board's Report and on its website.
- The Board shall ensure that the activities included in the CSR Policy are undertaken by the company.
- The Board has to ensure that the company spends, in every FY, at least 2% of average net profits of the company made during 3 immediately preceding FYs.
- In case of failure to spend the amount, necessary reasons shall be disclosed in Director's Report.
- The company shall give preference to the local areas where it operates while spending the amount.

Corporate Social Responsibility Sec. 135



- Following activities may be included by companies in their CSR policies:-
- Eradicating extreme hunger and poverty;
- Promotion of education;
- Promoting gender equality and empowering women;
- Reducing child mortality and improving maternal health;

Corporate Social Responsibility Sec. 135



- Combating human immune-deficiency virus, malaria etc.;
- Ensuring environmental sustainability;
- Employment enhancing vocational skills;
- Social business projects;
- Contribution to Prime Minister's National Relief Fund;

Class Action Sec. 245



- Class action is a collective action filed by the plaintiff on behalf of a class of shareholders or users of goods or services or in relation to matters of public interest, seeking collective remedy.
- Requisite number of members or depositors may file an application before NCLT, if they are of the opinion, that the management or conduct of the affairs of the company are being conducted in a manner prejudicial to the interest of the company or its members or depositors.

Class Action Sec. 245



- The application for class action may claim damages or compensation or demand any other suitable action from :-
 - i. the company or its directors;
 - ii. the auditor including audit firm of the co;
 - iii. any expert or advisor or consultant or any other person for any incorrect or misleading statement made to the company etc.

Mediation & Conciliation Panel Sec. 442



- The Central Gov. shall maintain a panel of experts to be called as "Mediation and Conciliation Panel" for mediation between parties during the pendency of any proceedings before the Central Govt. or the Tribunal or the Appellate Tribunal under the new law.
- The Panel shall dispose of the matter referred to it within a period of 3 months from the date of reference.

E-Governance



- E-Governance has been proposed for various company processes like maintenance and inspection of documents in electronic form, option of keeping of books of accounts in electronic form, financial statements to be placed on company's website, holding of board meetings through video conferencing/other electronic mode, voting through electronic means etc.

E-Governance

- Online services would reduce the need for hard copy paper forms and have a positive impact on the environment.
- It will substantially improve the standards of disclosure and transparency, involve more and more stakeholders in the company processes and provide real time information and service to the shareholders and other stakeholders.

Thank you