

### **New rules to the game: An Analysis of Companies Act: 1956 VS 2013**

The Companies Act, 2013- a new era for corporate India. This modern legislation is to change the rules of game in Indian corporate law in the context of changing economic and business environment. To help decode the nuances and implications of this 2013 Act, we have analysed the key changes w.r.t. 1956 Act.

The 2013 Act is more concise as compared to the 1956 Act, with just 470 sections and 7 schedules. There are over 300 references in the 2013 Act to Rules that may be prescribed to implement and operationalise those sections. Therefore, the full impact of the 2013 Act can only be understood when the related Rules get finalized and two are read together.

| S.No | Particulars                          | 1956         | 2013  | Comments  |
|------|--------------------------------------|--------------|---|---|
| 1.   | Number of members of Private Company | Upto 50      | Increased upto 200                                  | Allows access to large pool of capital without the need to go public  |
| 2.   | One Person Company                   | No Provision | Separate regime for 'one person company' introduced | Allows individuals to adopt corporate structures for carrying out business under a simplified regime                        |
| 3.   | Concept of Dormant Company           | No Provision | Separate regime for a 'dormant company'             | Flexibility to create entities to house future project/ or valuable assets such as IPR ( Intellectual Property Rights) etc. |
| 4.   | Concept of Small Company             | No Provision | Separate regime for                                 | Allows individuals to adopt corporate   |

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|    |  |  | 'small company' introduced  | structures for carrying out business under a simplified regime   |
| 5. | Recognition of 'inter-se' shareholders arrangements on transferability of shares of public companies | Shares of public company are freely transferable                               | Recognition granted to transfer restrictions inter-se shareholders - 'right of first refusal' will be enforceable | Would hopefully clear existing ambiguity on legal enforceability on transfer restrictions under joint venture/shareholder agreements |
| 6. | Mandatory Transfer to reserves prior to declaration of dividend                                      | Mandatory transfer of 10% profits to reserves                                  | Requirement of mandatory transfer disposed  | Provides discretion in hands of company  |
| 7. | Declaration of Interim Dividend  | No restrictions  | Interim dividend can be declared only for surplus in P&L (profit & loss) account and current year profits         | Allows greater flexibility in dividend declaration   |
| 8. | Rights Issue   | No provisions for offer of shares to ESOP (employee stock option plan) holders | Provisions created for offering rights entitlement to   | Treats employees holding option at par with shareholders and protects their rights   |

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|    |                        |   | employees holding options   |  |
| 9. | Buyback of Shares      | Ambiguity whether more than one buyback offer can be made in one year                             | Mandatory 'cooling off period' of one year from date of closure of preceding buyback                          | Prohibits undertaking multiple buybacks with minimal intervals     |
| 10 | Acceptance of Deposits | Companies permitted to raise deposits from public   | Central government to prescribe rules for acceptance of deposits from public, including category of companies | Greater accountability/additional compliance requirement           |
| 11 | Loans to Directors     | Applicable to only public companies. Permission required from central government in certain cases | Applies to public and private companies. Companies cannot approach central government                         | Creates accountability by bringing private companies under the net |
| 12 | Loans & Investment by  | Covers  | Scope   | Brings into net loans  |

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|    | Companies   | loans/investment to/in body corporate/company            | expanded to include 'person'   | given by companies to individuals  |
| 13 | Step Down Subsidiary  | No restrictions on creating 'multi-layered' structures   | Prohibits making investments through more than two lawyers of investment companies             | Will impact the creation of multi-layered structures used for facilitating financial/strategic investments at various levels |
| 14 | Statutory Auditor Certificate for accounting treatment in case of Compromise/Arrangements | No requirement   | Mandatory statutory auditor certificate for listed and unlisted companies                      | Will prevent companies from undertaking financial reengineering contrary to accounting standards via court approval          |
| 15 | Notice to Authorities for Compromise/Arrangement  | Notice required to be served to shareholder/creditors    | In addition to shareholders and creditors, notice required to be served on regular authorities | Will ensure that all parties concerned are given due opportunity   |
| 16 | Class Action Suits  | No Specific provisions other than for small shareholders | Specific provisions introduced for class   | Damages/Compensation can be sought against all parties who have assisted in  |

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|    |                                  |  | action suit by specified number of members or depositors  | wrongdoings   |
| 17 | Rationalization of Sickness Laws | Applies only to industrial undertaking | Applies to 'any company'. Net worth criteria for determination of sickness dispensed with   | Every company would get an opportunity to approach tribunal and seek a revival and rehabilitation scheme. Secured creditors can approach tribunal |
| 18 | Rotation of Auditors             | No specific provisions                 | For listed companies and other companies as may be specified, individual auditor will be changed after five years and audit firm after 10 years | Mandatory rotation of auditors will enhance auditor's independence  |
| 19 | Postal Ballot                    | Applies only to public company         | Scope extended to include 'any  | Increased participation by members to ensure greater transparency   |

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|    |                                 |   | company'   |   |
| 20 | Corporate Social Responsibility | No specific provisions  | Specific provisions for creating Corporate Social Responsibility- 2% of average net profits during three preceding financial years | In line with government's focus on inclusive growth creates an almost mandatory requirement of spending 2% net profits on social activities |
| 21 | Appointment of Women Directors  | No specific provisions  | Prescribed companies to appoint one woman director   | Attempt to improve diversity and remove glass ceiling for women   |
| 22 | Cross Border Mergers            | Only merger of a foreign company with an Indian company permitted | Permits merger of Indian companies with foreign companies in specified jurisdictions   | Progressive move, will enable cross border consolidation of global businesses/assets  |
| 23 | Restriction on 'Treasury Stock' | No specific provisions governing issuance of 'treasury stock'     | Holding 'treasury stock' (arising on   | Will restrict creation of 'trust structures' often used by listed companies to retain   |

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|    |   |   | consolidation ) prohibited, whether trust or otherwise  | control or future monetization                                      |
| 24 | Merger of a Subsidiary with a Parent or between two Small Companies | No spate regime, dispensation granted based on precedents | Separate and simplified regime, no approval required from tribunal ( high court currently)    | Reduction in administrative burden, timelines and related costs     |
| 25 | Merger of listed company with unlisted company                      | No specific provisions governing it                       | Permits merger, subject to exit opportunity being offered to shareholders of listed company   | Provides ease of consolidation                                      |
| 26 | Objections to schemes by small creditor/minority shareholders       | No thresholds   | Objections can be raised by shareholders holding more than 10% or creditors owed more than 5% | Will ensure that only 'serious' objections are considered by courts |

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| 27 | Buyout of Minority Shareholders                 | No Specific provisions governing it    | Detailed mechanism for acquisitions of shares by majority shareholder from balance shareholders | With adequate safeguards, this is powerful tool for effective re-organization           |
| 28 | Buyback of shares under a Scheme of Arrangement | Court approval route used by companies | Permitted subject to compliance with buyback norms  | Will ensure that companies cannot bypass provisions of Companies Act via court approval |

Our article is based on the laws of India as on date. The views mentioned above are subject to changes from time to time and any such changes may affect the article. We have no responsibility to update our article for events and circumstances occurring after the date of this note, unless specifically requested for.