

## THE HIGHLIGHTS OF THE NEW COMPANIES ACT, 2013

The Ministry of Corporate Affairs has recently notified the New Companies Act, 2013. This has significantly changed the Legal corporate environment in India. We are pleased to circulate Key highlights to you as under –

### Key Highlights –

- As per **Section 12** of the Companies Act, 2013, all the companies are now mandated to print following items on all its business letters, billheads, letter papers and in all the notices and other official publications.
  - Name, Address of registered office
  - CIN Number (Corporate identification)
  - Tel, Fax, Email id and website address
  
- **Section 149 (3)** shall require every company to have One Resident Director. Resident Director is basically defined to mean a person who has stayed in India for not less than 182 days in a previous calendar year.
  
- No company (including private company) shall, directly or indirectly, **advance any loan or give** any guarantee or provide any security in connection with any loan, to any of the entities specified below, barring certain exceptions. **Section 185**
  - Director or any relative of a Director of the Lending Company.
  - The Firm in which Director or his relative is a Partner.
  - The Private Company in which Director is a member or Director.
  - Any body corporate in which  $\geq 25\%$  of voting power is exercised / controlled by Director or any other two or more "such director" together.
  - Director of the Holding Company

- Any body corporate the BOD or MD or manager whereof is accustomed to act in accordance with the directions or instructions of the board or of any director or directors of the lending company.

Every Company giving loans / guarantee or provide security / acquiring by way of subscription, purchase or otherwise, the securities of any other body corporate over and above the limits prescribed under section 186 (i.e., exceeding 60% of its paid-up share capital, free reserves and securities premium account **or** 100% of its free reserves and securities premium account, whichever is more) is required to seek prior approval of members vide a special resolution in a general meeting in addition to following certain other conditions and procedures as prescribed under **Section 186** of the Act.

- Provisions pertaining to **loans /deposits accepted** by the company –

Section 73 states that no company whether public or private can accept deposit from anybody without complying with the provisions mentioned in Section 73. Clause (viii) of Rule 2(c) specifically excludes loans from directors from the purview of deposit definition if the director gives a declaration that the amount he is lending is not out of borrowed funds. Clause (vi) of Rule 2(c) excludes loans received from any other company from the definition of Deposits.

If any company is desirous of obtaining loans from any other person, it shall have to comply with the Deposit rules; which includes obtaining credit rating, issuing circular, creating deposit repayment reserve account, etc.

Section 180(1)(c) states that if the amount to be borrowed by the company along with the amount already borrowed by the company exceeds the aggregate of its paid up share capital and free reserves then consent of the company by means of a special resolution shall be taken. The borrowings exclude temporary loans taken by the company i.e. loans repayable on demand or within 6 months from the date of such loan.

- The new Act has also defined & included various penalty provisions for contravention of relevant sections under the Act. It may be noted that amount of penalties are stringent compared to the old Companies Act.

### Key Highlights for New Company –

- All newly incorporated companies shall need to get the certificate of commencement of business before commencing the business or exercising the borrowing powers. **Section 11**
- All new companies shall have only main object and matters that are necessary for furtherance of main object in MOA. There shall not be any other objects in MOA for the newly incorporated companies. **Section 4**
- The Subsidiary Company of a Public Company shall be the public company for all the provision of the Act. **Section 2(71)**.

### Other Key Provisions –

- **“Financial statement”** is now defined under the Act and also comprises of the following:
  - (i) Cash flow statement for the financial year;
  - (ii) A statement of changes in equity, if applicable;
- **“Financial Year”** – will now universally mean the period beginning on 1st April and ending on the 31st day of March every year.
- Now Director also needs to inform his resignation to ROC within 30 days of his resignation.
- Private Companies to make further allotment of shares by right issue or bonus issue or by way of private placement of shares in accordance with part II of the Chapter 3 of the Companies Act, 2013. **Section 23**. The application money so received has to be allotted within 60 days of the closure of the issue, else need to be refunded. **Section 42 (6)**. No shares shall be issued on Discount. **Section 53**.
- Private Companies has to give 21 days clear Notice for General Meeting. In case of shorter Notice, consent of 95% of the members shall be mandatory. **Section 101**. Notice of the Meetings can be given in electronic mode.

- Resolution passed by the Board in their meeting as stated in Section 179 (3) shall be required to be filed with ROC. **Section 117**
  
- Every company having net worth of Rs. 500 Crores or more, or turnover of Rs. 1000 Crore or more or a net profit of Rs. 5 Crore or more during any financial year, shall constitute a CSR Committee of the Board consisting of three or more directors in compliance with applicable rules. Such company which falls under the above mentioned slabs is mandated to **spend at least 2% of the average net profits** of the company made during the 3 immediately preceding financial years on activities as notified under Schedule VII of the Act. **Section 135**
  
- The following class of companies shall be required to appoint an internal auditor or a firm of internal auditors, namely:-
  - (a) every listed company;
  - (b) every unlisted public company having-
    - (i) paid up share capital of fifty crore rupees or more during the preceding financial year; or
    - (ii) turnover of two hundred crore rupees or more during the preceding financial year; or
    - (iii) outstanding loans or borrowings from banks or public financial institutions exceeding one hundred crore rupees or more at any point of time during the preceding financial year; or
    - (iv) outstanding deposits of twenty five crore rupees or more at any point of time during the preceding financial year; and
  - (c) every private company having-
    - (i) turnover of two hundred crore rupees or more during the preceding financial year; or
    - (ii) outstanding loans or borrowings from banks or public financial institutions exceeding one hundred crore rupees or more at any point of time during the preceding financial year:

Provided that an existing company covered under any of the above criteria shall comply with the requirements of **section 138** and this rule within six months of commencement of such section.
  
- Only following companies needs to have auditors retiring every five years and audit firms every 10 year:
  - (a) all unlisted public companies having paid up share capital of rupees ten crore or more;

(b) all private limited companies having paid up share capital of rupees twenty crore or more;  
(c) all companies having paid up share capital of below threshold limit mentioned in (a) and (b) above, but having public borrowings from financial institutions, banks or public deposits of rupees fifty crores or more. **Section 139 (2)**

- There are provisions to constitute an **Audit Committee and a Nomination and Remuneration Committee** by every listed company and certain public companies.
- Every listed company and certain public companies (defined) have to appoint at least one women Director. Also there are provisions for public company to appoint at least two independent Directors.
- The changes have compelled the Ministry to shut its website till April 15<sup>th</sup> 2014 to incorporate all the amendments.

We hope you will find this intimation useful and in case you wish to have more information or assistance on the subject, kindly feel free to write to us on [info@kdpaccountants.com](mailto:info@kdpaccountants.com)

Company Cell of KDP

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