



# Companies Act , 2013 - Transitioning from old Act to new Act

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# About Us



- Vinod Kothari & Company, Company Secretaries in Practice
  - Based out of Kolkata, Mumbai
- We are a team of consultants, advisors & qualified professionals having recently completed 25 years of practice.

***Our Organization's Credo:***

***Focus on capabilities; opportunities follow***



# Wealth of materials on Companies Act, 2013

There are lots of materials and articles on this topic here:

<https://india-financing.com/component/content/article/281.html>



# Understanding the enormity of transitioning task



# Why transitioning?

- The Companies Act, 1956 existed for more than half a century
  - The Companies Act, 2013 looks to completely change the face of company law legislation in India
  - It is replete with changes and new provisions
- The Companies Act, 2013 has introduced new information requirement, filing requirements.
  - Change in concepts, introduction of mandatory committees, composition of Board are a few others
- Compliance with Companies Act, 2013 will add pressure on the secretarial/finance department
  - The secretarial department will have to continue with its routine work
  - It **also** has to work towards a smooth transition
- Companies Act, 2013 puts huge compliance/transition burden on companies and especially for secretarial departments of large companies . Some such are:
  - Redrafting of charter documents,
  - Constitution of directors/KMPs (CFO)/committees
  - New method for depreciation

# Overview of what you may need to do for transitioning

- Identifying
  - New information requirements/ system needs
    - Several new filing requirements may need regular feeds from information systems so that compliances may be done by the Secretarial Department
      - For example, shareholdings of promoters/ Top 10 shareholders need to be reported within 15 days
  - Changes in existing accounting/information systems
    - For example, depreciation computation to change
- Identifying new controls
  - For example, controls on lending transactions
- Identifying need for redrafting charter documents
- Revisiting composition of board, committees
- training independent directors on their duties
- Revising /preparing SOP for corporate law compliances
- Whole lot of new filing requirements

# Two major types of transition services

- Regular transition services
  - This refers to transitioning into the new Act irrespective of any particular event
- Event-based transition services
  - Transitioning in respect of specific events
  - Such as
    - Giving of loans or making of investments
    - Merger/de-merger/restructuring
    - Public issue/ private placement
    - Or like events





# Regular transition services : Charter documents

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## What you may have to do soon

- Surely there is no need to revisit the Memorandum of Association
- But Articles
  - Most likely yes
- You may either have to either re-do the articles or at least ensure that the articles fall in line with the new Act

# Memorandum of Association

- For any new company:
  - “Other objects” need not be stated
  - No need to also obtain certificate of Commencement of Business
- In case the company has unutilised money raised through prospectus, change in objects shall not be effected unless:
  - Advertisement in newspaper and on website of company regarding such proposed change
  - Exit opportunity to existing shareholders
- In case company has altered its name in last 2 years:
  - Former name to be also mentioned in letterheads, print or affix at its registered office



# Articles of Association

- Model Tables to be referred to:

Class of Companies	Companies Act 2013 [In Schedule I]	Companies Act 1956 [In Schedule I]
Company limited by shares	Memorandum of Association: Table A Articles of Association: Table F	Memorandum of Association: Table B Articles of Association: Table A
Company limited by guarantee and not having a share capital	Memorandum of Association: Table B Articles of Association: Table H	Memorandum of Association and Articles of Association: Table C
Company limited by guarantee and having share capital	Memorandum of Association: Table C Articles of Association: Table G	Memorandum of Association and Articles of Association: Table D
Unlimited company not having share capital	Memorandum of Association: Table D Articles of Association: Table J	Not prescribed
Unlimited company having share capital	Memorandum of Association: Table E  Articles of Association: Table I	Memorandum of Association: Table E  Articles of Association: Table E



# Clauses in Articles - mandatory or recommendatory

Clause as in Act, 2013	Articles shall contain	Articles may contain
2 (54)		Contain the powers to be exercised by a managing director
2 (68)		Restrict the provision of transfer of shares in a private company
5	Regulations for management of the company	
5 (3)		Entrenchment provisions
Explanation to 43 (ii) (b)		preferential right to the payment of any fixed premium or premium on any fixed scale



# Clause in Articles - mandatory or recommendatory

Clause as in Act, 2013	Articles shall contain	Articles may contain
44	Nature of shares/debentures/other interest and provision for transferability of the same	
46		Manner of issue of shares
48		Variation of shareholders' rights
50		Authorisation to accept unpaid capital even if not called for
51		Authorisation to pay proportionate dividend
55 (2)		Authorisation to issue preference shares



# Clause in Articles - mandatory or recommendatory

Clause as in Act, 2013	Articles shall contain	Articles may contain
58		Power to refuse transfer or transmission in a private company
61		Power of limited company to alter the authorised share capital
62 (1)(a)(ii)		Restrict the right to renounce shares in case of further shares issued u/c 62
63(2)		Authority to capitalise profits or reserves to issue fully paid up shares
68		Authorisation to buy back shares



# Clause in Articles - mandatory or recommendatory

Clause as in Act, 2013	Articles shall contain	Articles may contain
85		Restriction for inspection of register of charges
88 (4)		A 'foreign register' for details of members residing outside India
103		Articles can provide for a larger number than prescribed.
104		Provision for chairman of meetings at general meetings
105		Proxy provisions for a company not having share capital





# Clause in Articles - mandatory or recommendatory

Clause as in Act, 2013	Articles shall contain	Articles may contain
106		Restriction on voting rights in case of unpaid shares
115		Resolutions requiring special notice
119		Restriction on inspection of general meeting minutes book
152		Appointment of first directors
152 (6)		Provision for retirement of all directors
161		Power to appoint additional /alternate /nominee director



# Clause in Articles - mandatory or recommendatory

Clause as in Act, 2013	Articles shall contain	Articles may contain
163		Appointment of not less than 2/3 <sup>rd</sup> of directors by proportional representation
164		In case of private companies, additional points of disqualifications
166	Duties of directors	
167		In case of private companies, may provide for additional grounds of vacation
174		Provisions for adjournment of BM in case of want of quorum



# Clause in Articles - mandatory or recommendatory

Clause as in Act, 2013	Articles shall contain	Articles may contain
179		Powers to be exercised by directors only in GM
197		SR to be passed for remuneration to director
203		Appointment of chairperson or same individual as MD or CEO
286		Prescribe obligations on directors and manager
304		Expiry of duration after which company shall be wound up
320		Distribution of property of company

## Other recommended articles

- Elaborate articles on board meetings by video conferencing
- Entrenchment provisions in case of joint venture companies
- Provisions for issuance of special classes of securities, such as subordinated securities



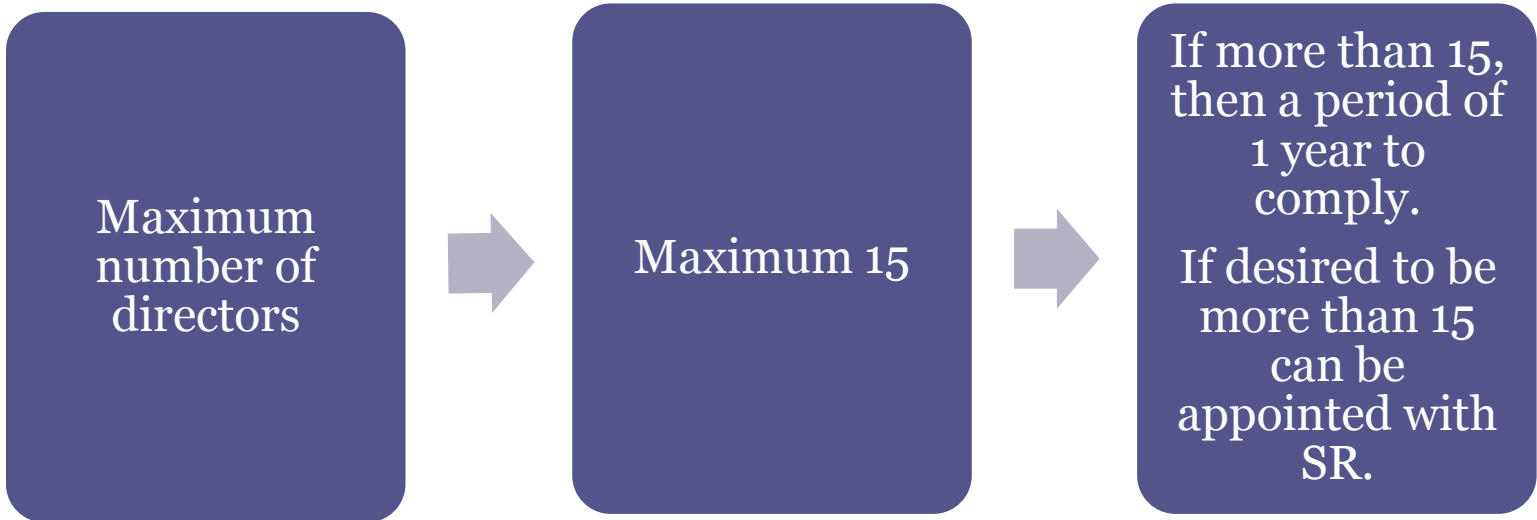
# Regular transition: Directors

# Composition of Board

## Scenario 1



## Scenario 2



# Composition of Board continued

- Check if:
  - Company has atleast one *resident* director
    - Resident = stayed in India for at least 182 days in the previous year.
  - In case of listed companies 1/3<sup>rd</sup> of Board strength should comprise of independent directors
- If answer is *No* to any one of the above:
  - Company has 1 year to comply.
- Also check:
  - Any director is holding director in more than 20 companies
    - If *yes*, director can choose companies in which he wishes to be director, resign from others and intimate to each of the companies and Registrar
      - All of this to be done within 1 year from commencement of Act.

# Composition of Board continued

- Be ready:
  - To appoint a woman director on the Board
    - This shall apply subject to the rules prescribed in this behalf.
  - In case the company is wanting to appoint an alternate director for an independent director:
    - The director should be qualified to become an independent director



# Composition of Board - appointment of ID

- The independent director on Board should not *particularly* have:
  - **pecuniary** relationship with the company, its holding, subsidiary or associate company, or their promoters, or directors
    - In the last immediately preceding 2 FYs
    - Existing directors may have to resign as the word *material* has been done away with may be out of inadvertence
  - **Himself or through his relatives :**
    - Hold key managerial position in the company, or its holding, subsidiary or associate company
    - is or has been an employee or proprietor or a partner in audit firm or PCS firm or cost audit firm. legal or consulting firm
      - in any of **3 financial years immediately before proposed appointment**

# Duties of directors

- Duties of directors now prescribed [Section 166]
  - Made very elaborate
  - Some serious ones include:
    - Directors to act in good faith.
    - Directors should act in accordance with the articles of association.
    - A director shall not assign his office.
    - A director shall not be involved in any activity in which he is interested.
- In case of contravention, punishable with fine which not less Rs. 1 lakh but which Rs. 5 lakhs



# Removal/Resignation/ Vacation of directors

- **Ensure that:**

- Resignation letter is *mandatorily placed before the board*
  - Resignation effective from date on which letter is received or date mentioned in the letter, whichever is later
- Board to now *mandatorily note* such resignation
- The *board and the director* to intimate the Registrar
  - Time for intimation by director – within 30 days of resignation
  - Time for intimation by company – to be prescribed

- **Vacation of office by directors**

- From the existing time limit of 3 months, the vacation of office for not attending board meetings is going to 12 months



# Loans to Directors

- Companies barred from giving loan to any directors or to any other person in whom the director is interested or give guarantee or provide any security in connection with any loan
  - May be given to MD or WTD
    - A part of conditions of service; **or**
    - If the scheme is sanctioned by SR
  - Also allowed if company in ordinary course provides loans
  - No CG approval is required under the Act, 2013.
  - Whether the loan/guarantee already provided will be dealt with is not clear.
- Disclosure has to be made when company is entering into a transaction with an entity associated with the director.
  - No need to take CG approval.



# Regular transition: Meetings



# Board Meetings

- At least 4 Board Meetings in a year, with a gap of not more than 120 days between 2 meetings.
- Notice of board meeting **shall** have to be sent at least 7 days before the meeting.
  - Not limited to only board meetings considering annual/quarterly accounts as per Cl. 41 of Listing Agreement
- Board meetings through video conferencing are also allowed as per the Act, 2013 though this was also allowed as per MCA circular
- The power of the board to make decisions in board meeting have been increased. Some new ones being-
  - to approve financial statement and the Board's report;
  - to diversify the business of the company;
  - to approve amalgamation, merger or reconstruction;
  - to take over a company or acquire a controlling or substantial stake in another company;
- **If a new company:**
  - First board meeting within 30 days of incorporation

# Circular Resolution

- In case the company intends to pass resolution by circulation:
  - Can be done even in a committee of directors
  - Circulate draft to all directors and not just *those in India or at usual address in India*
  - If 1/3<sup>rd</sup> directors wants same resolution to be passed in the Board
    - Chairman to put the resolution at a board meeting
  - Ensure resolution passed is placed in the next meeting and also made a part of minutes
  - Ensure resolutions passed do not contravene Clause 179(3) relating to *Powers of Board*



# Committees of Board

- No. of mandatory Committees now are:
  - ***Nomination and Remuneration Committee***
    - Every listed company and other classes of public companies as prescribed by the Central government shall form an Nomination and Remuneration Committee.
    - Should have 3 or more non-executive directors out of which not less than 1./2 be IDs.
    - The chairperson of the company can be appointed as a member of the committee, but **cannot** be appointed as the chairman of the committee.
  - ***Corporate Social Responsibility Committee***
    - Every company having-
      - Net worth of Rs.500 Crore or more; **or**
      - Turnover of Rs. 1000 Crore or more; **or**
      - Net Profit of Rs. 500 Crorein any financial year shall form a Corporate Social Responsibility Committee
    - Three or more directors to be members of the Committee
      - At least one of them should be ID





# Committees of Board continued

## ▫ *Audit Committee*

- Every listed company and other classes of public companies as prescribed by the Central government shall form an Audit Committee.
- At least 3 directors
  - majority should be Independent Directors
  - Therefore, it does not matter whether the Chairman is executive or Non-Executive
  - All the members of the committee shall be able to read and understand financial statements.

## ▫ *Stakeholders Grievances Committee*

- A company having more than one thousand shareholders, debenture holders, deposit holders any other security holders at any time during the year
- Chairman has to be non executive

## Powers of Board

- Has been increased substantially to also include:
  - Issue of securities, *and not only debentures*, within or outside India
  - Approve financial statement and Board's report
  - Diversify business
  - Approve amalgamation, merger or reconstruction
    - Only power to borrow money, invest funds, grant loans or give guarantees can be delegated to committee, MD, principal officer
- Additional restrictions can be placed in general meeting to impose restrictions and conditions on exercise of any power by the Board.



# Convening GMs

- Can convene on:
  - Anyday that is *not* National Holiday
  - Between 9.00 a.m and 6.00 p.m.
- Content of Explanatory Statement
  - Kept same except that:
    - Promoter, director, manager and KMP's extent of shareholding to be set out if more than 2%
- Quorum

No. of members as on date of meeting	Quorum
>1000	5
<1000 and >5000	15
>5000	30

# Convening meetings

- **Postal ballot**
  - Allowed for listed and unlisted companies
  - Company can opt for postal ballot in every case except removal of auditors or directors
    - Matters requiring postal ballot to laid down by way of rules
    - Minutes of postal ballot to be also prepared
- **Secretarial standards**
  - **Become mandatory**
    - Those regarding board and general meetings
- **Post-AGM report**
  - A new report is required to be filed by all listed public companies within 30 days of the AGM
    - Similar to Cl. 32 of Equity Listing Agreement



# Event-based transitioning

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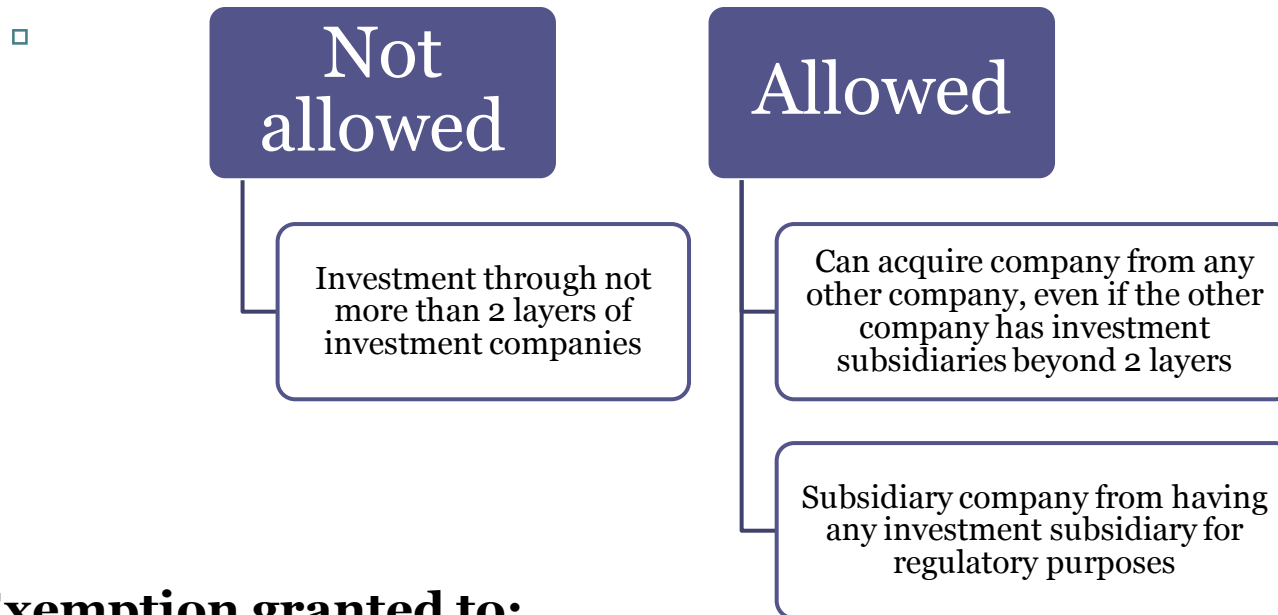
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# Loan and investment by company

Is you company wanting to make loan or investment?

- Loan to *any person*/guarantee in relation to loan of a person now covered



## Exemption granted to:

- NBFCs in investment and lending activities
- Investment companies exempted from limits on acquisition of shares
- Act, 2013 does not deal with loans and investments already done

## RPT - S. 297 equivalent of Act, 1956

- What is meant by Related Party defined
  - The definition is similar to that in AS-18
- Scope of contracts with RPTs extended to:
  - Leasing
  - Availing or rendering of any service
- Associates and fellow subsidiaries also brought within the ambit
- Mere holding of 2% of capital in public companies by a director makes the company a related party
  - In fact S. 166 disqualifies a director if found guilty of any offence relating to RPT during preceding 5 years
- Serious restraints have been put in place
- Board's report to refer to any such contract alongwith proper justification for entering into such contract



# Transitions provisions relating to records, registers, filing





# Registers and Records to be maintained by companies

Clause No	Register
68(9)	Register of Buy back of shares
85	Register of Charges
88(1)	<ul style="list-style-type: none"><li>a. Register of Members indicating separately for each class of equity and preference shares held by each member residing in or outside India;</li><li>b. Register of Debenture-holders; and</li><li>c. Register of any other security holders</li><li>d. Foreign register</li></ul>
118(1)	Minute Books of General meeting , Board meeting, resolution by postal Ballot, meeting of any committee of Board.
128(1)	Books of Account & other relevant books and papers and financial statements



# Registers and Records to be maintained by companies

Clause No.	Register
170	Register of Directors & Key Managerial Personnel & Their Shareholding
186(9)	Register of Inter-corporate loans & Guarantee
187(3)	Register of Investment in any shares or securities not held in companies name
189(1)	Register of Contracts or Arrangements to which subsection (2) of Section 184 or Section 188 applies

- Company to keep registers at registered office
  - Can be kept at any other place in India where more than 1/10<sup>th</sup> of members reside after approval by SR



## Regular and event based filing compliances and time period

Particulars	Report To	Days (within)	Clause No. in the Act, 2013
Intimation of the registered office	RoC	15 days from the date of incorporation	12
Verification of the address of the registered office	RoC	30 days from the date of incorporation	12
Change of registered office	RoC	15 days from the change	12
Jurisdiction of RoC changes due to change in the situation of registered office	RoC	60 days from receiving the consent from RD	12
Alteration in AoA	RoC	15 days from the change	14
Change of name	RoC	15 days from the date of change	16
Issue of red Herring Prospectus	RoC	3 days prior to the opening of the offer or Subscription list	32



## Regular and event based filing compliances and time period

Particulars	Report To	Days (within)	Clause No. in the Act, 2013
Incase of rights, appeal by Dissenting holders	NCLT	21 days from the date of change or date on which the resolution was passed.	48
Order of NCLT to be send by the Company	RoC	30 days of receiving the order	48
Transferee's appeal for Refusal of registration of the transfer by the Company	NCLT	30 days from the date of notice or after 60 day from the date of instrument of transmission	58
Alteration of Capital	RoC	30 days from alteration	64
Reduction of Capital, after the consent of NCLT	RoC	30 days from receiving the order of NCLT	66
Return of Buy Back	RoC, SEBI	30 days from the completion of Buy back	68
Circular for accepting deposits from its members	RoC	30 days prior to the issuance of circular	73



## Regular and event based filing compliances and time period

Particulars	Report To	Days (within)	Clause No. in the Clause No. in the Act, 2013
Creation of charge after receiving public deposits		30 days of acceptance of deposits	76
Creation of Charge	RoC	30 days of creation	77
Satisfaction of Charge	RoC	30 days from satisfaction	82
Intimation by the receiver or manager on his appointment	Company, RoC	30 days from making the order of appointment	84
For change of beneficial interest, beneficial owner and registered	Company	30 days from the change in the beneficial interest.	89
Company's intimation for the above change	RoC	30 days from receiving the above declaration.	89



## Regular and event based filing compliances and time period

Particulars	Report To	Days (within)	Clause No. in the Act, 2013
Notice for closure of register of security holders	SEBI	At least 7 days prior to the date of closure or lesser days	91
Annual return	RoC	For a co. whose AGM has been held- 60 days from the AGM For a co. whose AGM has not been held- 60 days from the date on which AGM was due	92
Change in Promoter's holding or holding of Top ten shareholder's holding in the company	RoC	15 days from change	93
General meeting	People eligible to receive notice of GM	21 days before the meeting	101



## Regular and event based filing compliances and time period

Particulars	Report to	Day (within)	Clause No. in the Act, 2013
Copy of specified resolutions and agreements	RoC	30 days from the date of passing resolution or making agreement	117
(For Listed Companies) Report of AGM	RoC	30 days from AGM	121
Transfer of unpaid dividend amount to unpaid dividend account		7 days from the end of 30 days from declaration of dividend	124
Keeping of books of accounts at a place other than the registered office	RoC	7 days from the decision to keep the books in a different place have been taken.	128



## Regular and event based filing compliances and time period

Particulars	Report to	Day (within)	Clause No. in the Act, 2013
Copies of audited financial statements	All, who are eligible to receive	21 days before the meeting	136
Financial Statements	RoC	30 days from AGM	137
Appointment of auditor	Auditor and RoC	15 days from date of meeting	139
Inability to appoint first auditor	Members	30 days from the incorporation	139
Resignation of auditor	Company, RoC	30 days from resignation	140
Repost of Cost Auditor	Central Government	30 days from the receipt of the report	148





## Regular and event based filing compliances and time period

Particulars	Report To	Days (within)	Clause No. in the Act, 2013
Particulars and documents of the directors and Key Managerial Personnel	RoC	30 days of appointment of each of them and within 30 days from the change	170
Particulars of appointment of Whole time directors, managing directors, manager	RoC	60 days of appointment	196
NCLT's order on compromise and arrangement	RoC	30 days of receiving the order	230
Every company concerned in respect to the order of the NCLT have to file a certified copy of the order in case of merger or amalgamation	RoC	30 days from the receipt of the certified order	232
Tribunal's order of appointment of liquidator	RoC, Official Liquidator/ Provisional Liquidator	7 days of passing the order	277



## Regular and event based filing compliances and time period

Particulars	Report To	Days (within)	Clause No. in the Act, 2013
Any resolution passed in the meeting of creditors in case of voluntary winding up	RoC	10 days of passing the resolution	306
Notice and particulars of appointment or vacancy of Company liquidator	RoC	10 days of appointment or vacancy	312
Quarterly statements prepared by the Company Liquidator	RoC	30 days from the close of the	314
Official Liquidator shall submit a report on liquidation	Central Government	30 days of his appointment	361
Alteration in the documents filed by the foreign company	RoC	30 days from the alteration	380
Aggrieved by the order of the NCLT	NCLAT	45 days from the date of passing the order, if not filed timely then NCLAT may allow another 45 days to file	421



## Regular and event based filing compliances and time period

Particulars	Report To	Days (within)	Clause No. in the Act, 2013
Aggrieved by the order of the NCLAT	Supreme Court	60 days from the date of passing the order, if not filed timely then SC may allow another 60 days to file	423
Aggrieved by the decision of the CLB	High Court	60 days from the date of passing the order, if not filed timely then SC may allow another 60 days to file	434
Compounding of offences	RoC	7 days from the date of compounding	441



# Provisions relating to accounting

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# Changes in relation to accounting and financial statement

- **FY**
  - To be made mandatorily from April to March
  - Existing companies to align within 2 years
- **Accounts can be kept in e-form**
  - Manner to be prescribed
- **General instructions for preparation of B/S and P/L**
  - Similar to existing Schedule VI
  - Financial statements to mean
    - B/s, P/L, cash flow statement, statement of changes in equity
- **Consolidation to be made mandatory for companies with more than 1 subsidiary**
  - CL. 32 of Listing Agreement losses relevance
    - Subsidiary shall also mean associate and JVs
  - Shall come into effect with the commencement of Act



# Changes in relation to accounting and financial statement

- Contents of Directors' Report made extensive
  - No of meetings
  - DRS
  - Declaration by independent directors u/s 149 (6)
    - 149 (6) lays the conditions of independence; the declaration may be under 149 (7)
  - In case of cos covered by sec 178 (nomination and remuneration committee), company's policies on directors' appointment and remuneration
  - Particulars of loans/guarantees covered by sec 186 (intercorporate loans/investments)
  - Contracts/arrangements with related parties – sec 188
  - State of company's affairs
  - Material changes and commitments post balance sheet date
  - Energy technology absorption conservation, etc
  - Development and implementation of a risk management policy
  - CSR policy and initiatives – this seems applicable to all companies
  - In case of listed cos. And other specified companies, evaluation of board performance, committees and independent directors
  - Other matters as may be prescribed

# Changes in relation to accounting and financial statement

- Be ready for:
  - Mandatory internal audit
    - Any employee/ department of the company can also be appointed for this purpose, as apparently no bar
  - Abridged financial statements to be circulated *again*
  - Statement of facts and reasons if AGM not held within the prescribed time
  - Additional points to be incorporated in DRS
  - Change in the method of calculation of depreciation for declaration of dividend
    - From percentage of value of asset, Schedule II now prescribed depreciation to be calculated on useful life of asset



# Auditors



# Auditors

- Be ready to:
  - Appoint auditor *en block* for 5 years
    - Ratify the same every year
  - Listed companies to not appoint individual as auditor for more than 5 consecutive years and audit firm for more than two terms of 5 consecutive years
    - Existing companies to comply within 3 years
      - Not clear if covered for existing appointments also
  - Pass SR, if the retiring auditor is not re-appointed
  - Be reported against by the auditor, if during the course of audit, comes across deleterious observations



# Issue of securities

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# Issue of shares

- Irrespective of whether public or private, company can issue:
  - Equity
    - Can be issued with disproportionate rights, but only in accordance with rules.
    - So private companies are also covered
  - Preference
- The fate of existing shares not specified
- In case your company wants to issue preference shares for more than 20 years,
  - Now allowed for infrastructure projects
- If your company is intending to issue bonus shares:
  - Ensure that it has not defaulted in payment of deposits or payment of debt securities
    - Whether for default under the Companies Act, 1956 or Act, 2013 is not clear

# Private Placements

- In case company wants to issue shares on private placement basis:
  - Ensure not issue to more than 50 investors
    - In such a case becomes a *deemed public offer*
  - No exemption to NBFCs, private companies
- Also ensure that:
  - every private placement is made by way of an offer letter
  - No further issue of securities unless previous securities offer allotted or offer withdrawn or abandoned
    - That is, if there are unallotted applications out of past issues, one cannot invite further applications
  - No applications in cash - cheque, DD or banking channels is the only way for issue of securities



# Miscellaneous

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## Miscellaneous

- Be ready for:
  - Secretarial audit. Presently a *must* for listed companies
    - To be done by PCS
  - Valuation of assets by a Registered Valuer
    - This is a must incase of compromise, arrangement, among other cases

# Transition to NCLT

Transferred  
to NCLT

- Matters, proceedings and cases with CLB
- Proceedings relating to arbitration, compromise, arrangements and reconstruction and winding up pending before HC or District Court
- Appeal to AAFR or reference or inquiry pending before BIFR shall stand abated
  - Reference can be made to NCLT even after such abatement within 180 days of commencement of Act, 2013.



# IT system requirements - an event based need

- In case of all listed companies, changes in shareholding of promoters, and top 10 shareholders, to be filed within 15 days
  - The requirement applies to any change in top 10 shareholders' holdings
  - Therefore, companies will have to track the top 10 holders' holdings on a daily basis, to report any changes
- This is in addition to Insider Trading Regulations

**P.S.:** Such a system to be designed that information from depository reaches the secretarial department immediately on such change.

The question that arises is such changes may happen daily. So how should the system then be designed?



**THANK YOU**