

Changes Specifically affecting Private Limited Companies

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Definition

- No. of members increased from 50 to 200
- Joint shareholders to be treated as one member
- Employees or Ex-employees are not included in the number of members
- Minimum share capital of Rs. 1,00,000

Commencement of Business

- Company not to commence business unless
 - Declaration filed with ROC that every subscriber to the MOA has paid the value of shares agreed to be taken by him
 - A verification of its registered address has been filed with ROC
- If declaration not filed within 182 days from date of incorporation, Registrar would initiate action to remove the name of the company

Further issue of shares

- Pre-emptive right of existing shareholder
- Minimum 15 days and max 30 days for acceptance of offer
- Notice of offer of rights shares can be dispatched through electronic mode
- If not right issue then -
 - To any person, if authorised by Special Resolution
 - At a price to be determined by registered valuer

Bonus shares

- Sec 205 (3) of 1956 Act permitted capitalisation of profits or reserves for issuing bonus shares
- Thus, a company can issue bonus shares by capitalisation of revaluation reserve
 - Supreme court decision in Bhagwati Developers v. Peerless General Finance & Investment Co (2005)
- SEBI (ICDR) Regulations, 2009 prohibits issue of Bonus shares by capitalisation of revaluation reserves
- Now, Companies Act 2013 also prohibits issuing Bonus shares by capitalising reserves created by revaluation of assets

Annual Return

- To be signed by Director and Company Secretary
- If no CS, then by a CS in practice
- If paid up capital > 5 crores AND Turnover > 25 crores
 - To be certified by a CS in practice
 - Stating that the company has complied with all the provisions of this Act
- Penalty on CS for non-compliance
 - Rs. 50,000 to Rs. 5 lacs

Consolidation

- SEBI mandated consolidation
 - Only for Listed companies
 - Subsidiary, Associate and JV
- Companies Act 2013 mandated Consolidation
 - For all companies, private or public
 - Subsidiary (incl. Associate and JV)
- AS 21 was issued in 2001
- Practical exposure to SMP?
- IFRS: Private Companies net worth in excess of Rs. 500 crores

Inter-corporate Loans (Sec 185)

No company shall -

- Advance any loan (or give security or guarantee in relation to any loan)
- Including loan represented by a book debt
- To its director or any other person in whom the director is interested
 - Director of holding company
 - Partner of director
 - Firm in which director or relative is a partner
 - Pvt company in which director is a director or member
 - Any body corporate in which $\geq 25\%$ voting power held by such director
 - Any body corporate BOD is accustomed to act in accordance with directions of BOD of lending company

-5 lacs to 25 lacs
- Imprisonment
upto 6 months

Contd...

- Not applicable to –
 - Loans to MD or WTD
 - Employee loan
 - By special resolution
 - In ordinary course of business, provided interest is charged @ bank rate declared by RBI

Notification

19 Nov 2013

- Sec 372A applicable till Sec 186 is notified

14 Feb 2014

- Sec 372A exempts loans, guarantees, security or investment by holding company to its wholly owned subsidiary
- Sec 185 prohibits guarantee, security by holding company in respect of loan taken by subsidiary company
- Hence, till Sec 186 is notified, Guarantee, security provided by holding to its subsidiary in respect of loans made by banks or financial institutions shall be exempted

Investments (Sec 186)

- Investments to be made through not more than 2 layers of investment companies
- Exemptions
 - Company incorporated outside India
 - For the purpose of meeting the requirements under any law or under any rule or regulation

-25,000 to 5
lacs
- Imprisonment
upto 2 years

Corporate Social Responsibility

- Applicability
 - Net Worth \geq 500 Cr
 - Turnover \geq 1000 Cr
 - Net Profit \geq 5 Cr
- To spend 2% of Avg NP of last 3 years
- 3 Directors (incl. Independent Director)
 - 2 Directors allowed
 - Independent director not required

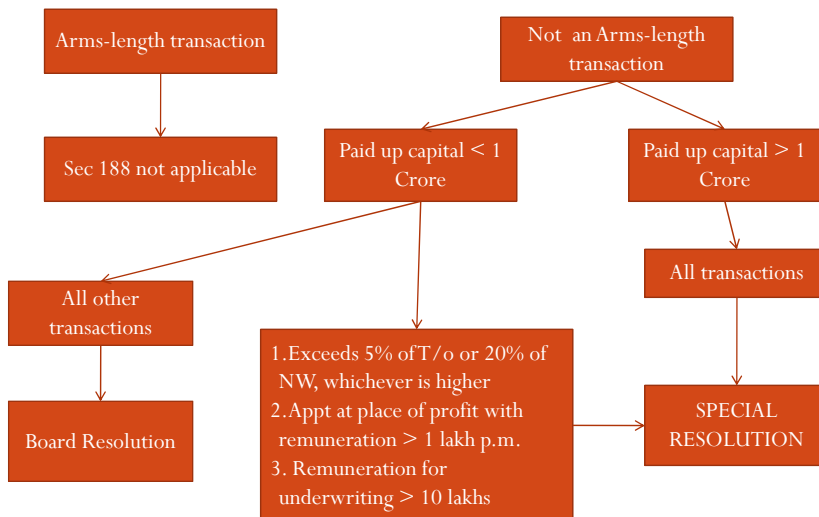
Director

- At least one director to be resident in India for more than 182 days in a calendar year
- Maximum directorships = 20 companies (max 10 public companies)
 - Previously – 15 public companies (Pvt companies excluded)

Disqualification of Director

- Convicted of any offence and sentenced to imprisonment for 7 years or more
- Convicted of any offence and sentenced to imprisonment for not less than 6 months, and 5 yrs has not elapsed since
- Convicted of offence of dealing with related party transactions at any time during the preceding 5 years
- Not obtained Director Identification Number
- Is a director of a company **whether public or private** which (Sec 274 (1) (g) of Companies Act.956)
 - Has not filed annual accounts or returns for any continuing 3 years
 - Has failed to repay on due date its deposit or interest thereon, or redeem its debenture or pay dividend for one year or more

Related Party Transactions (sec 188)



RPT (Sec 188) Issues

25,000 to 5 lacs

- Special resolution (Votes for = 3 * votes against)
- Pvt Company with 2 members who are also directors?
 - Interested directors cannot vote
 - Interested shareholders cannot vote
 - Hence, transaction possible only if it is at arm's length
- RPT definition different from AS 18, as in
 - KMP and directors of holding, subsidiary, associate and their relatives
 - Senior management of holding, subsidiary, associate and their relatives

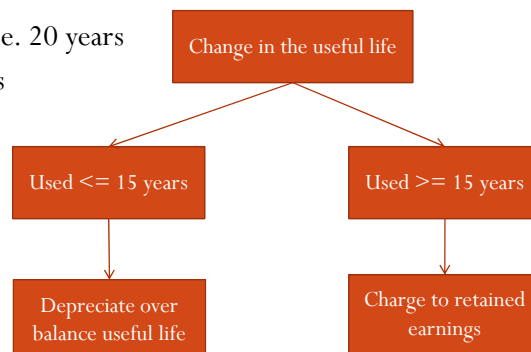
Appointment of KMP

- Paid up share capital ≥ 5 crores
 - MD/ CEO/ Manager/ WTD
 - Whole-time Company Secretary
 - CFO
- Can be a KMP of only one company at the same time, except its subsidiary company
- Chairperson to be different from MD/ CEO, unless exempted by articles of association
- Term of MD = 5 years

1 lac to 5 lacs

Depreciation

- Component Accounting
- Depreciation based on useful life
- Example: P&M
 - Old – 4.75% i.e. 20 years
 - New – 15 years



Rotation of Auditors

- Proprietor = max 5 years
- Firm = max 2 tenors of 5 years each
- Cooling period of 3 years
- Confusion: what if resign in the 9th year?
- Auditor cannot provide other services
- OPC and small company excluded from rotation

Other important points...

- It cannot issue **securities** (eg. debentures) to more than 200 in a year (private placement)
- Form Stakeholders relationship committee if security holders > 1,000
- Institute Vigil Mechanism if borrowings > 50 Crores from banks and financial institutions
- Exemption from appointment of Women Director and Small Shareholder Director

ThanQ?

Contact Us!



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