

# Presentation on Companies Act, 2013

## **Companies Act 2013**



N. Jayendran

# Agenda

- \* Appointment and Qualification of Directors**
- \* Board Meetings & Its Powers**
- \* Acceptance of Deposits**
- \* Related party transactions**
- \* Managerial remuneration**
- \* Declaration & payment of dividend**

# Appointment and Qualification of Directors



# Section 149 – Directors

- **Minimum**

  - Private Company – 2*

  - Public Company – 3*

  - OPCs – 1*

- **Maximum** – 15 (may be increased by special resolution)

- **At least one Resident Director** (who has stayed in India for a total period of not less than 182 days in the previous calendar year)

- **Woman Director** – every listed company or every public company having paid up share capital > 100 crs or turnover > 300 crs (latest audited financial statements)

*Appointment to be done within a period of one year for existing Companies and within six month for new companies.*

# Independent Directors

## **Independent Director –**

- \* 1/3 of total number in case of listed and at least two (higher in case of audit committee or classes of companies specified by any law) in every public company having paid up share capital > 10 crores or turnover > 100 crores or outstanding loans, debentures and deposits > 50 crores (latest audited financial statements) ;*
- \* Independent Director defined and criteria for eligibility specified; The criteria inter-alia includes that he should not be a promoter, no pecuniary interest, did not hold position of KMP in 3 FY before appointment, not be a partner of a firm of auditors of any of the subsidiary, holding or the relevant company , does not hold more than 2% equity stake and Should possess skills, experience and knowledge in specified fields;*

# Independent Directors (Contd..)

- \* *Should give declaration of independence at the first meeting after appointment and thereafter at the first meeting each financial year;*
- \* *Creation and maintenance of data bank of independent directors'*
- \* *Fixed term of five years - eligible for further period of five years. Can be reappointed subsequently subject to three years cooling period;*
- \* *Independent Directors are now not entitled to stock options.*
- \* *Remuneration shall not exceed an amount of Rs. 1 lac per board meeting.*
- \* *They are also entitled to profit related commission.*
- \* *Every Company and Independent Director shall abide by the provisions specified in Schedule IV.*

# Code of Conduct (*Schedule IV*)

- *Guidelines of professional conduct – ethical conduct, act objectively, devote time and exercise responsibilities in bona fide manner*
- *Role and functions – judgment, objectivity in evaluation of performance, safeguard interest of stake holders*
- *Duties – strive to attend meetings, participate constructively, update knowledge and skills, pay sufficient time, report concerns, non-disclosure of confidential information,*
- *Manner of appointment – appointment process, explanatory statement, letter stating terms of appointment*
- *Reappointment – based on report of performance evaluation*
- *Resignation or Removal – replacement in 182 days*
- *Separate meeting – at least once a year without non-independent directors, all Independent directors shall strive to attend this meeting, review performance of non-independent directors at such meeting and assess the quality of flow of information.*
- *Evaluation mechanism – to be done by the entire Board*

# Procedural Aspects

- \* *Application for allotment of DIN – Form DIR – 3*
- \* *Allotment of DIN*
- \* *Prohibition to obtain more than one DIN*
- \* *Director to intimate DIN*
- \* *Company to inform DIN to Registrar*
- \* *Obligation to indicate DIN;*
- \* *Cancellation, surrender OR deactivation of DIN*
- \* *Intimation of changes in particulars specified in DIN application;*



# Small Shareholder's Directors

- \* **Small Shareholder** – holding shares of nominal value of not more than Rs. 20,000/-
- \* **Small Shareholder's Director** – listed company on notice (14 days before meeting) from lower of 1000 small shareholders or 1/10<sup>th</sup> of total number of such shareholders or suo motu (notice not required) can appoint a small shareholder director.
- \* Shall be treated as independent director if they satisfy conditions of S149(6)
- \* They have to satisfy the qualification criteria of S 164.
- \* Cannot be appointed in more than 2 companies as a small shareholder director.
- \* Fixed one term tenure of three years
- \* Shall not for a period of 3 years after cessation have any association with the company;

# Appointment of Directors

- *Every Director shall be appointed by the company in the GM*
- *In absence of any provisions in the AOA the First Directors shall be the subscribers to the memorandum who are individuals;*
- *Person proposed to be appointed shall furnish his DIN and Declaration of Non disqualification as a director.*
- *Person to give consent on or before appointment (DIR-2) and the company to file the same with the Registrar (DIR-12) within 30 days of appointment.*
- *Mandatory retirement by rotation of 1/3<sup>rd</sup> directors except the Independent Directors;*
- *The AOA may confer power on its Board to appoint an additional director (other than a person who fails to get appointed) at any time who shall hold the office till the conclusion of next AGM or on the last day on which such meeting is to be held whichever is earlier;*

# Disqualification of Directors

*A person shall be disqualified if he is of unsound mind, un discharged insolvent, convicted of any offence, etc.*

- *Disqualified by the Tribunal or a Court*
- *Calls unpaid after 6 months from the last date fixed for payment*
- *Convicted of Offence dealing with Related Party (in the last preceding 5 years)*
- *Has been a director of a company which has –*
  - *Not filed Financial Statement or annual returns for consecutive 3 FY*
  - *For a period of one year or more fails to repay deposits or redeem debentures on the due date (including interest thereon), or pay the declared dividend*
- *Such disqualification shall continue for 5 years from date of failure by such company;*
- *A Private company may provide for additional disqualification in its articles.*
- *Has not complied with provisions of S 152(3) of having a DIN*

# Disqualification of Directors— (Contd...)

- \* *Director to intimate disqualification in Form DIR – 8 before appointment or reappointment;*
- \* *Company to intimate Registrar within 30 days in DIR – 9 instances of failure to file FS / AR or payment of deposit, debentures, interest or dividend as specified in 164(2) giving details of Director's name and addresses during the relevant financial year;*
- \* *Application for removal of disqualification of directors - Form DIR-10*

## **MISCELLANEOUS PROVISIONS**

- \* *Register of directors and key managerial personnel*
- \* *Return containing the particulars of appointment or changes therein of directors and the key managerial personnel - Form DIR-12 to be filed within 30 days.*

# Number of Directorships

- *Not more than 20 Companies*
  - *Of which not more than 10 Public Companies*  
*(private companies which are subsidiaries or holding companies of the public companies shall be reckoned as Public Companies)*
  - *Members may by special resolution specify lesser number of Companies;*
- *If the person holds directorship in more than specified number of companies than he shall resign from the companies of his choice, in excess of the specified limit, within one year from the commencement of this Act; resignation to take effect immediately on despatch of intimation to the company;*
- *Intimation of choice to each of the companies in which he chooses to continue and also to the Registrar having jurisdiction in respect of each such company has to be given;*

# Duties of Directors

*For the first time the Act has provided for duties for Directors.*

- *Act in accordance with the Articles of the Company*
- *Act in good faith to:*
  - *promote the objects of the Company; for the benefit of its members; and*
  - *in the best interests of the Company; its employees; the shareholders; the community and for the protection of environment.*
- *Exercise duties with reasonable care, skill and diligence and shall exercise independent judgment;*
- *No direct or indirect conflict of interest*
- *No pecuniary advantage for himself or any of his Relatives – Vide clarification - June 9, 2014 remuneration is not pecuniary interest;*
- *Not to assign his office*

# Vacation of Office by Directors

*Office of director shall become vacant in case -*

- *He incurs any of the disqualification specified in Sec. 164*
- *He absents himself from meeting during a period of 12 months with or without seeking leave of absence.*
- *He contravenes provisions of S.184 (entering into contracts /arrangements in which he is directly or indirectly interested or fails to disclose interest in such contract / arrangement)*
- *He becomes disqualified by an order of court or tribunal*
- *He is convicted of offence involving moral turpitude or otherwise and consequently sentenced to imprisonment for not less than six months irrespective of whether he has filed an appeal against the same or not;*
- *He is removed in pursuance of the provisions of this Act*
- *He having been appointed a director by virtue of his holding any office or employment in its holding or subsidiary company ceases to hold such employment in that company.*
- *A private company may provide for additional grounds for vacation of office of director in its articles.*

# RESIGNATION

- \* *Director to give notice in writing; Board to take note of the same;*
- \* *Fact of resignation to be placed in the report of Director's laid in the immediately following General Meeting;*
- \* *Company to Intimate Registrar within 30 days from the date of receipt of notice of resignation from a director - Form DIR - 12*
- \* *Copy of resignation of director to be forwarded by him along with reasons for resignation in Form DIR – 11 to The Registrar;*
- \* *The effective date of resignation shall be the date of receipt of intimation or the date mentioned in the said intimation whichever is later.*
- \* *The director shall however be responsible for offences during the period before the effective date of resignation.*
- \* *In the event of resignation of all director's the promoter's or in his absence the CG shall appoint the required number of Director's till director's are appointed at AGM.*



# Section 173 – 195 - Board Meetings / Powers



# Meetings of Board of Directors

- \* *First Board Meeting to be held within 30 days of its incorporation*
- \* *Minimum four meetings every year with not more than 120 days gap;*
- \* *Allows participation through video conferencing and other audio visual means;*  
*Notice at least 7 days before in writing, it may be given by electronic means*
- \* *Shorter notice permitted provided at least one independent present at meeting*
- \* *In absence of independent director decision to be circulated and would be final if ratified by at least one independent director;*
  
- \* *OPCs (having more than 1 director) / Small Company/ Dormant Company must hold BM as follows –*
  - ✓ *At least one BM in each half of a calendar year*
  - ✓ *Gap between two meeting not be less than 90 days*

# Quorum for Board Meeting

- \*  $1/3^{\text{rd}}$  of total strength (excluding vacancy) or two whichever is higher;
- \* Participation by video conferencing or other audio visual means shall be counted for the purpose of quorum;
- \* If quorum is not possible on account of vacancy then only business allowed is to increase the number of director's to that fixed for the quorum or summon a general meeting;
- \* Number of interested director's exceeds or is equal to  $2/3^{\text{rd}}$  of total strength, then the number of not interested director's present at the meeting being at least two shall be the quorum;
- \* Meeting to stand adjourned subject to AOA, if quorum not present;

# Audit Committee

- \* *The Board of directors of every listed companies and the following classes of companies shall constitute an Audit Committee and a Nomination and Remuneration Committee of the Board –*
  - *all public companies with a paid up capital of ten crore rupees or more;*
  - *all public companies having turnover of one hundred crore rupees or more;*
  - *all public companies, having in aggregate, outstanding loans or borrowings or debentures or deposits exceeding fifty crore rupees or more.*
- \* *Minimum 3 members with independent directors forming majority;*
- \* *Majority, including chairperson should have ability to read and understand financial statement;*
- \* *Existing committees to reconstitute within one year;*
- \* *Scope of duties laid down in the Act;*
- \* *Board Report to disclose composition of the committee and information on recommendation not accepted with reasons therefor;*
- \* *Oversee vigil mechanism.*

# Vigil Mechanism

- \* *To be established by;*
  - *Listed companies;*
  - *Companies that accept deposits from public;*
  - *Companies that have borrowings from banks and public financial institutions > Rs 50 crs;*
- \* *Mechanism for directors and employees to report genuine concerns;*
- \* *Adequate safeguards against victimisation to be provided ;*
- \* *Access to Chairperson of audit committee;*
- \* *In absence of audit committee, a director to be nominated to oversee the Vigil Mechanism;*
- \* *Repeated frivolous complaints to be dealt with suitably including reprimand;*
- \* *Disclosure on website and Board Report.*

# Nomination & Remuneration Committee

- \* *Minimum 3 Non - Executive Director, with 50% being independent director's.*
- \* *Chairperson of the company can be a member but cannot be the chairperson of this committee;*
- \* *Chairperson or member of committee duly authorised to mandatorily attend General Meetings;*
- \* *To identify persons who are qualified to be Directors of the company and who can be appointed in senior management; (members of core management who are one level below the executive director's including functional heads)*
- \* *To recommend appointment and removal of such persons;*
- \* *Formulate criteria for qualification; attributes and independence of director;*
- \* *To recommend policy relating to remuneration of Directors, KMP and other employees;*
- \* *The policy to be disclosed in Board Report.*

# Power of the Board

- \* *Additional Powers, included in Rules, exercisable only by passing resolution at Board Meeting:*
  - *Appoint or remove KMP and to take note of appointments or removal of one level below KMP;*
  - *Appointment of internal, cost and secretarial auditor;*
  - *Buy, sell investments held by the company > 5% of paid up share capital and free reserves of the investee company; (excluding trade investments)*
  - *Invite, accept, renew public deposits or review or change terms of such deposits;*
  - *To approve quarterly and half yearly financials in addition to annual financial statements or financial results as the case may be;*
  - *To take note of the disclosure of director's interest and shareholding; Form - (MBP 1)*

# Restrictions on Powers of the Board

- \* *The Board shall exercise the following powers only after consent of the Members in General Meeting*
  - *To sell, lease or otherwise dispose of the whole of the undertaking*
  - *To remit or give time for the repayment of any debt due by a director.*
- \* *Applicable to all companies;*
- \* *Requires **special resolution** to exercise such powers;*
- \* *The term ‘undertaking’ – investment exceeds 20% of net worth of the company / total income of the company – (as per audited financials of previous financial year)*
- \* *“substantially the whole of the undertaking” means 20% or more of the value of the undertaking;*



# Declaration & Payment of Dividend



# Dividend

- \* A company failing to comply with provisions of Section 73 (acceptance of deposits) and 74 (repayment of deposits) shall not, as long as such failure continues, declare any dividend on its equity shares.
- \* Transfer to Reserves at such percentages as the company may consider appropriate;
- \* Provision for depreciation in accordance with Schedule II;
- \* Previous year's loss or depreciation (whichever is less) to be set off before declaring dividend - sub-rule 5 of rule 3 of Companies (Declaration and Payment of Dividend Rules), 2014;
- \* Interim Dividend can be declared
- \* Dividend to be deposited in a separate scheduled bank account within five days of declaration;
- \* Payment of Dividend through electronic mode to registered shareholders is expressly allowed

# Declaration of Dividend Out of Reserves

- \* *In case of inadequacy or absence of profits in any financial year a company may declare dividend out of Accumulated profits transferred to free reserves;*
- \* *If dividend declared out of accumulated profits –  
Rate = Average of rates in the three years immediately preceding that year (other than a company, which has not declared any dividend in each of the three preceding financial year);*
- \* *Amount drawn should not exceed 1/10<sup>th</sup> of the sum of its paid up capital + free reserves (as per latest audited financial statements);*
- \* *Amount drawn to be first utilised to set off the losses incurred in the financial year;*
- \* *Balance in reserves after such withdrawal shall not fall below fifteen per cent of its paid up share capital (as per latest audited financial statements)*

# Unpaid Dividend Account

- \* **Section not yet notified;**
- \* *Unpaid / Unclaimed amount within 30 days of declaration to be transferred within seven days of expiry of 30 days to a special account with scheduled bank ;*
- \* *Within 90 days of transfer, details of shareholder's to be hosted on the company's / any other approved website in the prescribed manner;*
- \* *Failure to transfer will attract interest @ 12% to be credited to the respective shareholders in proportion to unpaid amount;*
- \* *Claim for payment to be made to the company;*
- \* *Underlying Shares in respect of unpaid / unclaimed dividend together with the dividend amount to be transferred to Investor Education and Protection Fund after seven years of transfer to Unclaimed Dividend Account together with statement containing prescribed details; **DIV 5** (Form notified)*

# Related Party Transactions



# Related Party

## *Related Party means –*

- *A director or his relative*
- *A KMP or his relative*
- *A firm, in which a director, manager or his relative is a partner;*
- *Pvt co. in which director or manager is a member or director;*
- *Public co in which the director or manager is a director or along with his relatives, more than 2% of the paid up share capital;*
- *Any body corporate whose BOD/ MD/ or Manager is accustomed to act in accordance with the advice or instructions of a director / manager; (not being in professional capacity)*
- *Any person on whose, advice, directions or instructions a director'/ manager of the company is accustomed to act to; (not being in professional capacity)*
- *Holding / subsidiary (including fellow subsidiary) / associate;*
- *Any other as may be prescribed.*

# Related Party Transactions

- \* ***Following Contract or arrangement with consent of Board***
  - ✓ *sale, purchase or supply of any goods or materials;*
  - ✓ *selling or otherwise disposing of, or buying, property of any kind;*
  - ✓ *leasing of property of any kind;*
  - ✓ *availing or rendering of any services;*
  - ✓ *appointment of any agent for purchase or sale of goods, materials, services or property;*
  - ✓ *such related party's appointment to any office or place of profit in the company its subsidiary company or associate company; and*
  - ✓ *underwriting the subscription of any securities or derivatives thereof, of the company;*
- \* *Specific issues laid down in Rule 15(1) – (Meetings of Board and its Powers) to be disclosed in the agenda of the Board Meeting;*
- \* *Interested Director not to be present at the meeting during discussion on the subject matter of such resolution;*

# Related Party Transactions (Contd..)

- \* ***Prior approval of the Company by a special resolution for such transactions would be required in following cases:***
- \* *Company having paid up share capital > Rs. 10.00 crores;*
- \* *In case of following transactions –*
  - *sale , purchase or supply of any goods or materials directly or through agents– 25% of annual turnover;*
  - *sale , purchase or disposal of any property or availing or rendering of any services directly or through agent – 10% of net worth;*
  - *leasing of property of any kind exceeding 10% of net worth or turnover (lower or higher not specified but should presumably be lower);*
  - *For appointment to place of profit if monthly remuneration exceeds Rs 2.50 lacs and ; 1% of net worth for underwriting contracts.*



# Related Party Transactions (Contd....)

- \* *In case of wholly owned subsidiary (WOS), special resolution passed by holding company for transactions between WOS and holding Company would suffice;*
- \* *Specific issues laid down in Rule 15(3) – (Meetings of Board and its Powers) to be disclosed in the explanatory statement annexed to the notice of General Meeting;*
- \* *Arms length transactions are exempt;*
- \* *Reference of such contracts with justification to be made in the Board report;*
- \* *If prior consent of Board / GM is not obtained then such contract should be ratified within three months from the date of contract;*
- \* *OPC – contract, with sole member also being a director, should either be in writing or terms should be contained in a memorandum or recorded in minutes of first meeting after entering into contract; to intimate ROC within fifteen days of Board approval. Contracts in ordinary course of business exempt for OPC.*

# Section 185 - Loan to Directors

- \* Provisions applicable to all companies including Private Companies ;*
- \* These provisions are akin to S295 of the 1956 Act except that transactions between Holding and Subsidiary are not exempt*
- \* However transactions between holding and subsidiary is exempt provided subsidiary utilises the loan for its principal business activity;*
- \* Loans to Managing / Whole time Director is permitted if part of conditions of service extended by the company to all its employees and is pursuant to a scheme approved by the members by a special resolution;*

# Section 186 - Loan and Investment by Company

- \* Investment not to be through more than two layers of investment company subject to exceptions;*
- \* Loans to any person now covered;*
- \* Balance in Securities Premium included to compute maximum limits;*
- \* Disclosure of particulars of loans, investment, security and guarantee to be made in Financial Statements together with proposed utilisation by the recipient;*
- \* Companies registered under Section 12 of SEBI Act and covered under such class or classes of Companies as prescribed are not permitted to take inter corporate loans or deposits exceeding the prescribed limit;*
- \* Mandatory interest – cannot be below prevailing yield of one, three, five or ten year government security closest to the tenor of the loan;*
- \* Transactions of holding company with its wholly owned subsidiary is exempt but compliance with disclosure requirement in financial statement to be done;*

# Appointment & Remuneration of Managerial Personnel



# Appointment and Remuneration of Managerial Personnel

- *Appointment provisions applicable to all companies*
- *Appointment for a maximum tenure of five years. Reappointment should not be earlier than 1 year before the expiry of existing term.*
- *Managerial Personnel Should be between - 21 years and 70 years.*
- *Can be increased by special resolution provided justification for appointment is given;*
- *Return to be filed within sixty days of appointment in Form MR.1*
- *Terms and conditions of appointment and remuneration shall be approved by **BOD** which shall be subject to resolution at **GM**.*
- *Subject to conditions, a company, other than listed or its subsidiary, can in the event of loss or inadequate profits pay beyond ceiling laid down in Section II, Part II of Schedule V without CG approval;*

# Appointment and Remuneration of Managerial Personnel (Contd...)

- *In the event the company's financial statements are restated due to fraud or non – compliance with any requirement under the Act, then remuneration paid in excess of restated amounts shall be recovered from the KMP by the company;*
- *Sitting fees limit increased to Rs 1.0 lac per meeting of Board / Committee;*
- *Amount payable to Independent / Women directors towards sitting fees should be equal to the sum paid to other Director's;*
- *In computing net profit – one important change is that credit / debit will not be allowed for change in carrying amount of an asset or a liability recognised in equity reserves including surplus on measurement of such asset or liability at fair value;*
- *Specified disclosures in Board Report by listed Companies*

# Key Managerial Personnel

- *Listed Companies and Public Companies with paid up capital > 10 crores to have whole time key managerial personnel (KMP);*
- *KMP – MD/ CEO/ WTD; Company Secretary and CFO;*
- *Appointment only by Board resolution specifying terms and conditions;*
- *Vacancy in office to be filled within 6 months at Board meeting;*
- *Not to hold office in more than one company other than its subsidiary or with the permission of The Board be a Director of any Company.*



# Public Deposits





# Definitions

- \* **“Deposit”** includes any receipt of money by way of deposit or loan or in any other form by a company, but does not include such categories of amount as may be prescribed in consultation with the Reserve Bank of India;
- \* **“Eligible company”** means a public company as referred to in sub-section (1) of section 76, having a net worth of not less than one hundred crore rupees or a turnover of not less than five hundred crore rupees and which has obtained the prior consent of the company in general meeting by means of a special resolution and also filed the said resolution with the Registrar of Companies before making any invitation to the Public for acceptance of deposits:

# Exempted Deposits

*In terms of the rules prescribed the certain deposits are considered exempt. The salient departures from the earlier rules having an impact are discussed below.*

- ***Securities Application Money / Advance towards allotment of Securities*** – *If the securities are not allotted within a period of 60 days then from the expiry of 15 days from the end of sixty days the same shall be considered a deposit.*
- ***Advances for supply of goods or provision of services*** – *are considered as an exempted deposit only if the same are to be appropriated within a period of 365 days. If the amount is not appropriated within a period of 365 days then the same shall not be an exempted deposit.*
- ***Advance for property*** - *consideration received in connection with sale of property under an agreement or arrangement provided the amount is adjusted against property in terms of the agreement or arrangement is an exempted deposit.*

# Exempted Deposits (Contd...)

- \* **Advance received under long term projects** for supply of capital goods against other than property is an exempted deposit;
- \* **Issue of secured bonds / debentures** – secured by first charge or ranking parri passu with first charge on tangible assets (Schedule III) provided the market value of security, as assessed by registered valuer, is more than the value of bonds / debentures;
- \* **Compulsorily convertible debentures** – to be converted into shares within five years only is exempted deposit; (impacts OFCDs issued and outstanding)
- \* Deposits from shareholders in a private company and deposits from relatives of directors in a private company are no more an exempted deposit. These were earlier part of exempted list of deposits.

# Acceptance of Deposits

## **Eligible Companies -**

- ✓ *net worth of not less than one hundred crore rupees;*
- ✓ *a turnover of not less than five hundred crore rupees;*
- \* *Prior consent by special resolution;*
- \* *Filed resolution with the Registrar;*
- \* *Depositor can approach Tribunal in case of default by the Company;*
- \* *Annual Return in Form DPT – 3 duly audited by auditor if the company;*

## **Procedure and Conditions-**

- \* *Circular disclosing prescribed details to be filed with the Registrar 30 days before circulation amongst members / public; **Form DPT 1**. To be also uploaded on website; valid till six months from closure of financial year in which issued or date of AGM whichever is earlier; published in English / vernacular newspaper in case of invitation to public or delivered in specified manner to members if invitation to members ;*
- \* *Credit rating at the time of invitation for deposit and each financial year during the tenure of deposit;*

# Deposit - Terms

- \* *Deposit Repayment Reserve to be maintained;*
- \* *Deposit insurance – 30 days prior to issue of circular; deposit contract amount to deemed to include principal and interest; contract shall provide for 100% payment till Rs 20,000/- and upto Rs 20,000/- where contract is in excess of that sum; premium to be borne by company;*
- \* *Certifying that no default under previous and new enactment relating to repayment of deposit and interest;*
- \* *Deposit cannot be for < 6 months or > 36 months from date of acceptance; shorter period deposits can be accepted subject to conditions;*
- \* *Maximum limits that a company can borrow from its members / public ;*

# Deposit – Terms (Contd...)

- \* Rate of interest and brokerage not to exceed rate prescribed by RBI for NBFC;*
- \* Brokerage only to person authorised by the Company in writing;*
- \* Company cannot reserve itself any right post issue of circular / advertisement and acceptance of deposit to alter terms prejudicial or to the disadvantage of depositor;*
- \* In case of premature repayment of deposits at the request of the depositor after a period of 6 months from the date of deposit, the rate of interest payable on such deposits shall be reduced by 1% from the contracted rate at which the deposit was placed.*
- \* In case of any overdue period of deposit, the company shall pay a penal rate of interest at 18% per annum whether secured or unsecured in respect of matured and claimed but remaining unpaid.*

# Limits of Deposits

- \* *No Company (irrespective of its eligibility) shall accept or renew from its members - > 25% of paid up capital and free reserves – S73(2)*
- \* *No eligible company shall accept or renew from its members - > 10% of paid up capital and free reserves;*
- \* *No eligible company shall accept or renew from other than its members - > 25% of paid up capital and free reserves (excluding from members)*
- \* *Government Company - > 35% of paid up capital and free reserves*

# Secured Deposits

- \* *Secured deposits – optional - within 30 days of acceptance of deposit; for differential sum remaining unsecured by deposit insurance; such sum should not be more than the underlying security charged; valued by registered valuer; in favour of trustee for depositors; charge on assets referred to in Schedule III excluding intangibles;*
- \* *Appointment of trustees mandatory for secured deposit before inviting such deposits; trust deed in Form DPT-2 to be executed 7 days before issuing circular;*
- \* *Terms of appointment of trustees and their duties have been specified;*
- \* *Trustees to call for meeting of depositors – on requisition by 1/10<sup>th</sup> of outstanding depositors or on event that either constitutes a default or affect the interests of depositors;*



# Existing Deposits as on Commencement of the Act

- \* *Return of Deposits accepted by the company before commencement of this Act to be filed with Registrar in **Form DPT-4** within 3 months from such commencement or from the date the same became due;*
- \* *Repay within one year from such commencement or date on which such payments are due whichever is earlier; Tribunal may allow further time on an application made by the Company;*
- \* *If fails to comply with repayment provisions then company is liable to fine between Rs 1.00 crore to Rs 10.00 crores and every officer in default with a fine between Rs 25.00 lacs to Rs 2.00 crores or imprisonment upto two years. – (Section not yet notified).*

# Provisions not applicable for Private Company based on Draft Notification for Public Comments till 1<sup>st</sup> July, 2014

<u>Section</u>	<u>Nature</u>	<u>Exceptions / Modifications</u>
43	Share Capital	Whole section
47	Voting Rights	Whole section
62(1)(a)	Period for acceptance of offer on further Issue of Share Capital	The period fifteen and thirty days shall be substituted with seven and fifteen days .
62(1)(b)	Issue of Capital to employees under ESOP	Ordinary resolution instead of special resolution
73(2)	Acceptance of deposits from members	Companies having 50 or less members if they accepts deposits not exceeding 25 % of aggregate of paid up capital + free reserves or 100% of paid up capital, whichever is more and information to registrar are not required to comply with provision of S73(2)
101-107 & 109	Conduct of General Meeting & Demand for Poll	Apply not only if Section or Article specifically provides

<u>Section</u>	<u>Nature</u>	<u>Exceptions / Modifications</u>
141(3)(g)	Disqualification to a specified person as auditor	Not Applicable. This would mean that the limits of audit is not applicable to private companies.
160	Rights of a person other than Retiring Director to stand for Directorship	Not Applicable
162	Appointment of Directors to be voted individually	Not Applicable
180	Restrictions on Power of Board	Shall not apply to Companies having 50 or less members
185	Loans to Directors	Shall not apply to Companies having borrowing from Banks/ FI/ Bodies Corporate not more than twice of Paid up Share Capital or Rs. 50 Crore whichever is lower & in whose share Capital no other Body corporate has invested money
188	Related Party Transactions	Not Applicable
196(4) & 196(5)	Approval for Appointment & Remuneration of MD/ WTD / Manager by BD/GM/CG	Not Applicable
203(3)	Restriction on not Holding Office in more than one company by KMP	Not Applicable



***Thank you....***