

Walker Chandniok & Co LLP

The Companies Act, 2013

The dawn of a new era

Towards Better Governance

ICAI –Seminar on Companies Act, 2013

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Presented by:

Bharat K. Shetty

Director

Walker Chandniok & Co LLP



Companies Act, 2013

The dawn of a new era...



Relevant Provisions on Directors/Board – Agenda

- Introduction
- Salient features
- Board Composition, Directors, etc
- Board Meeting and General Meeting
- Board Committees
- Board's Report
- Corporate Governance Survey results

Companies Act, 2013 – Introduction

- **Replaces** around 60 year old Companies Act, 1956 and becomes the **Companies Act, 2013**;
- **fine print** to be defined by **Rules**
- **simple yet complex** - sections reduced from 650+ to 470, however, **over 300 places** in the Companies Act, 2013 where it mentions of **rules**;
- expected to be **implemented in phases** - provides flexibility by different effective dates for different sections;
- **(98+1+183 = 282) sections already notified**
- Rules notified for around 18 Chapters

Companies Act, 2013 – Salient features

The new legislation with 29 Chapters, 470 Clauses and 7 Schedules aims at:

- enhancing **transparency**;
- enhancing **protection measures** for investor community and minority shareholders;
- having stringent **Corporate Governance** measures;
- **CSR** initiatives introduced;
- **greater responsibility** on auditors;
- having **business friendly** corporate regulations;
- bringing in **e-governance** measures;
- **improving accountability** in India's corporate sector.

Board Composition

Mandatory to have

One Resident director for all companies

Stayed in India for not < 182 days in previous calendar year



One Woman director for prescribed class of companies

Listed companies or Public companies having paid up share capital of Rs.100 crore or more/turnover of Rs.300 crore or more based on latest audited FS

Clause 49 compliance wef 1 October 2014 but Companies Act,2013 compliance by 1 April 2015

Board Composition

Transition period of 1 year from 1 April 2014 for compliance



In **listed companies**, 1/3rd of BOD should be independent



Minimum **2 independent directors** for companies meeting criteria given below



Public companies having (based on last audited FS)
paid up share capital of Rs.10 crore or more
turnover of Rs.100 crore or more
outstanding loans/debentures/deposits exceeding Rs.50 crore

Board Composition

Independent Directors (ID)

- Prohibits **any direct** and material (**INR 5 mn**) indirect pecuniary relationships with the Company and its subsidiaries (including their relatives). No stock options also
- Fixed tenure – **two terms of 5 years** and no periodic retirement by rotation; cooling off period of 3 years
- Insulated from **liability** - liable only in respect of such acts of omission/ commission which had occurred **with their knowledge** and **with their consent** or **connivance**
- **Prospective application** for tenure computation

Directors and Directorships

- Maximum no. of directors **increased to 15** from 12
- Any further increase subject to **shareholders' approval** through special resolution
- **No CG approval** needed for increase
- Maximum no. of directorships **increased to 20 from 15** (including alternate directorship and not more than 10 public companies)
- Transition period of 1 year from 1 April 2014

Directors and Directorships

Revised Clause 49

- **more restrictive** on the limit on number of directorships for Independent Directors, i.e. **maximum 7** listed companies
- the **tenure already served** by an ID in the past too shall be considered. Thus, an ID who has already served for five years or more in a company shall be eligible for reappointment for **only one more term of up to five years**
- to be complied with effect from **1 October 2014**

KMP/Directors

- **Whole-time KMP** mandatory for
 - Listed companies
 - Public companies having paid up share capital of Rs.10 crores or more
- **Whole-time KMP** defined as:
 - MD or CEO or Manager or Whole time Director and
 - Company Secretary
 - Chief Financial Officer
- Director to inform ROC of **detailed reasons** for his/her **resignation**
- **Majority of members of** audit committee including **its Chairperson** should have ability to read and understand FS

Disqualification of Directors - additional grounds provided

- Person convicted of an offence dealing **with related party transactions** at any time during the preceding 5 years;
- Director to vacate office if he **remains absent** from all the board meetings held during 12 months
- **Directorship in private co.** too under ambit of disqualification on ground of:
 - non-filing of FS or annual return for any continuous 3 years; or
 - failure to repay deposits or redeem debentures; or
 - failure to pay interest due or pay dividend declared and such failure continues for 1 year or more

General Meeting and Board meeting

- **First AGM to be held within 9 months** from closure of first FY, instead of 18 months from the date of incorporation
- A report on AGM to be prepared and **filed with ROC within 30 days** of conclusion of AGM
- **7 days prior notice** to every director for board meeting
- **4 board meetings a year** and gap between two meetings not to exceed 120 days
- **Meeting through video conferencing or other audio visual means allowed, provided**
 - such participation is capable of **recording and recognizing**
 - Approval of annual FS, Board's report, prospectus, ACM for consideration of accounts, approval of matters relating to business combination to be done only at **physically convened meetings**

Audit Committee (AC)

- **AC mandatory for** (based on last audited FS)
 - **listed** companies
 - public companies with paid up capital of Rs.10 crore or more
 - public companies having turnover of Rs.100 crore or more
 - public companies having outstanding loans or borrowings or debentures or deposits of Rs.50 crore or more
- AC should consist of **minimum 3 directors with IDs forming majority**
- The chairperson and the majority of the members of the AC should have the **ability to read and understand financial statements**

Audit Committee (cont'd)

- Roles and responsibilities include:
 - recommendation for **appointment, remuneration and terms** of appointment of auditors of the company,
 - review and monitor the **auditor's independence and performance**, and **effectiveness of audit process**,
 - examination of the **financial statements** and the **auditors' report** thereon,
 - **approval or any subsequent modification** of transactions of the company with related parties

Audit Committee (cont'd)

- Roles and responsibilities include (Contd):
 - scrutiny of **inter-corporate loans and investments**,
 - valuation of undertakings or assets** of the company, wherever necessary,
 - evaluation of **internal financial controls and risk management systems**,
 - monitoring the end use of funds** raised through public offers and related matters
- The AC shall have **authority to investigate into any matter specified above or matter referred to it by the Board**

Nomination and Remuneration committee

- **Mandatory for** (based on last audited FS)
 - **listed** companies
 - public companies with paid up capital of Rs.10 crore or more
 - public companies having turnover of Rs.100 crore or more
 - public companies having outstanding loans or borrowings or debentures or deposits of Rs.50 crore or more
- Composition of the committee would include **three or more non-executive directors** of which **at least one-half shall be IDs.**
- Shall **formulate the criteria** for determining qualifications, positive attributes and independence for a director and shall also identify potential directors or potential senior management
- Shall **recommend to the Board a policy, relating to the remuneration** for the directors, key managerial personnel and other employees

Stakeholders Relationship Committee

- Mandatory if the number of shareholders, deposit holders, debenture holders and other security holders **exceed 1000** at any time during a FY;
- Chairperson shall be Non Executive Director; other members as determined by the **Board**
- Shall resolve concerns and grievances of security holders

Corporate Social Responsibility (CSR) Committee

- The companies meeting the criteria given below during any financial year **should constitute a CSR committee** of the Board, consisting of **minimum three directors**
 - Turnover of Rs.1000 crore or more
 - Net worth of Rs.500 crore or more
 - Net profit of Rs.5 crore or more
- CSR committee should consist of **minimum one ID**
- The CSR committee to **formulate and monitor CSR policies** and the same will be discussed in Board's report

Board's Report (Extensive disclosures prescribed including the following)

- Extracts of the **annual return**;
- Recommendations of the **audit committee not accepted** by the Board with reasons;
- Compliance declaration by the IDs on their **compliance**;
- **CSR Policy** developed and implemented;
- Statement indicating the manner in which **annual evaluation** has been made by the Board of its **performance, its committee's performance** and performance of **individual directors** (listed entities);

Board's Report (Extensive disclosures prescribed including the following)

- Development / implementation of **risk management policy**;
- Policy on **director's appointment and remuneration, ratio of remuneration** to each director to the median employee's remuneration;
- **Material changes and commitments**, affecting company's financial position subsequent to the year end; to which the financial statements relate and upto the date of the report;
- Related party transactions **not in the ordinary course of business** and not at arm's length basis

Directors responsibility statement

- The 2013 Act has included the following additional matters in the Directors' responsibility statement:
 - In case of listed company, the directors had laid down **internal financial controls** to be followed by the company and that they are **adequate and operating effectively**;
 - The directors have **devised proper systems to ensure compliance** with all applicable laws and such systems are adequate and operating effectively

Other miscellaneous provisions

- **Duties** of directors defined for the first time
- **Significant penalties** laid down for directors for defaults. The instances for levying penalties have increased substantially.
- New clause has been introduced with respect to **prohibition of insider trading** of securities under the 2013 Act (S195).
- The definition of **price sensitive information** is also included (S195).
- **No person** including any director or KMP of a company **shall enter into insider trading** (communication required in the ordinary course of business or profession or employment not covered)

What CEOs Feel – CG Survey by Grant Thornton

Nomination Committee to **lead appointment** of Independent Directors – *(now a law)*

Clearly a ‘one size fits all’ approach would not work in any country

Adoption of CG is **more in form and less in spirit** - *(a reality)*

Formal and tailored program for induction of directors

Quality of Audit Committee meetings needs improvement
(improvement seen in many listed cos)

No policy for rotation of the Audit Committee members

What CEOs Feel - Going Ahead - CG Survey by Grant Thornton

Need for **stronger regulatory review** and enforcement

Oversight and monitoring of compliances need improvement

Skill sets of the Audit Committee members to match with
Company's requirements

Risk Management practices can be more robust

Internal Audit be more effectively used as a monitoring tool

Advantages of a well developed CG Framework

Increased confidence of investors - especially foreign investors, as we now have one of the **best developed** mandatory Corporate Governance Codes.

Streamlining of financial / risk management / legal compliance reporting frameworks, resulting in efficiencies of operation.

Greater transparency of corporate proceedings and an internal check through a **whistle blowers policy** - has been adopted by the larger corporations and is now mandatory for listed companies and other prescribed companies

Increased **shareholder value**

Issues & Challenges in INDIA for compliance in CG

Competency and awareness of TCG to review adequacy of compliance with legal requirements and risk management framework;

Lack of comfort and confidence in ensuring and certifying adequacy of internal control systems

Degree of financial literacy – purely subjective

Adequacy of remuneration of IDs considering their efforts, time spent and risks involved in being on the Boards.

Proximity with promoters / management – independence issues

Age factor for certain Independent Directors

Independent Directors' **willingness and ability** to speak their mind out

Lack of availability of **skilled and reputed IDs**, post certain past events;

Form and substance – always a challenge and distant from realities

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Any more questions?

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*Thanks for a patient
listening*