

Provisions of Companies Act, 2013 and Rules notified wef 01.04.2014

Application on a Private Limited Company

The new Companies Act, 2013 can be hailed as a major forward looking reform of the UPA-II. The new Act has been divided into 29 Chapters comprising of 470 sections & 7 Schedules as against the existing Companies Act, 1956 comprising of 658 Sections & 15 Schedules. On one hand the new Act takes away some of the outdated procedures not relevant today such as the requirement to obtain a commencement of business certificate; provisions relating to the sole agents; requirement of qualification shares to be held by the Directors etc. At the same time it brings in various new contemporary provisions keeping in mind the need of the hour and the experience of last 50 years such as concept of One Person Company, Woman Director, Corporate Social Responsibility, Rotation of Auditors, preparation of consolidated financial statement, cash flow statement, ban on raising unsecured public deposits, strict penalty in case of corporate fraud, Board meetings through video conferencing, notices through electronic mails, maintenance of books of accounts in electronic mode etc. The Companies Act, 2013 also seeks to continue to increase the general momentum towards self-regulation as it has dispensed with the prior approval of Central Government on most of the matters.

However a lot of provisions grabbing the highlights of discussion on the New Companies Act, do not impact a private limited company. At the same time there are a lot of subtleties hidden in sub-sections, definitions & new rules that impact the corporate management & compliance of a private limited company. The article seeks to discuss the provisions of the Companies Act, 2013 along with Rules notified thus far applicable with respect to a private limited company in a comprehensive manner.

General Provisions

1. **Maximum Number of Members**

The same has been increased from 50 to 200 in case of a private limited company. Further the new Act has increased the limit on number of partners from 20 to 50 in a partnership. Minimum share capital required is Rs 1 lacs (Rs 5 lacs for a public company).

2. **Certificate of Commencement of business [Sec 11(1)]:**

There is no requirement of obtaining such a Certificate now. However, every company shall file the declaration in Form No.**INC-21** & the contents of the form to be verified by a CA/CS/CMA in practice.

3. **Affixing name, registered office address etc. [Sec 12(3)]:**

Every company shall paint or affix its name & the address of its registered office, on the outside of every business place. Also it shall get its name, address of its registered office & the Corporate Identity number along with telephone number, fax number, e-mail & website address, if any printed in all its business letters, bill-heads, letter papers and in all its notices and other official publications. Further if the company has changed its name in the last 2 years, it shall paint/affix/print the former name along with new name.

4. Subsidiary company not to hold shares in its holding company. [Sec 19]:

No company allowed to hold any shares in its holding company.

5. Service of Documents allowed by electronic means [Sec 20]:

A document may be served on a company or an officer thereof by sending it to the registered office of the company by registered post or by courier or by speed post or by hand delivery or through fax/e-mail which the company or the officer has provided from time to time for sending communications to the company or the officer respectively.

6. ALLOTMENT OF SECURITIES (Section 42, 62)

Now a Private Company has to offer share to its existing shareholders before allotting shares to outsiders. Further if the company wants to allot shares directly to persons other than its existing shareholders then it has to pass a Special Resolution and has to comply with the provisions of Private Placement (Section 42), according to which various compliances are to be some of them are listed below:-

☒ Giving offer letter

☒ Maintenance of records pertaining to offer letter

☒ Filing of offer letter to ROC in case of issue through private placement in form PAS-4

☒ Minimum investment to be made by a person is 20,000/-

☒ Justification of price including premium, in the explanatory statement of Special Resolution.

☒ Return of allotment to be filed in form PAS-3.

☒ In case Company is not able to allot securities within 60 days of receipt of application money, it shall be repaid within 15 days from the date of completion of 60 days otherwise pay 12% interest per annum.

NOTE: if the securities for which application money or advance for such securities was received cannot be allotted within sixty days from the date of receipt of the application money or advance for such securities and such application money or advance is not refunded to the subscribers within fifteen days from the date of completion of sixty days, such amount shall be treated as a deposit under these rules

PENALTY: - If the company makes violation of section 42, i.e. in making private placement then the company, promoters and directors shall be liable to a penalty which may extend to amount of Offer or Rs. 2 Crore whichever is higher. Further the company shall return the money within 30 days of order imposing the penalty.

7. Publication of authorized, subscribed & paid-up capital. [Sec 60]:

Where the company indicates its authorized capital in any notice/advertisement/letter, it shall also include in the same font & style the subscribed capital & paid-up capital.

Default penalty: Rs 10,000 on company & Rs 5,000 on officer in default.

8. Acceptance of Deposits [Sec 73]:

A private limited company may invite, accept or renew deposits / loan (includes securities application money if corresponding securities are not allotted within 60 days) only in following cases: -

- From any other company,
- Any amount received in the ordinary course of business such as advance against supply of goods provided the same is adjusted within 12 months etc.
- Amount from Govt, PFI, bank, CP, secured debentures etc.
- From director provided director furnishes a declaration to the company that the amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others. (*Note: directorship is required only at the time of receipt of loan*)
- From promoters or their relatives provided the same is in pursuance of stipulation of any lending FI.
- From its members by issuing circular to members (Form No. **DPT-1**), filing the circular with ROC within 30 days, passing of resolution in general meeting; loan should not be repayable on demand; aggregate of deposits not to exceed 25% of share capital & free reserves; ROI not to exceed that prescribed by RBI for NBFCs.
- Any non-interest bearing amount received or held in trust

The above provisions are not applicable on a banking / NBFC company.

As per Sec 74, any in-eligible deposits outstanding as on 01.04.2014 would need to be repaid by 31.03.2015 and a return giving details of them shall be filed in Form No. **DPT-4** by 30th Aug 2014.

9. Duty to register charges [Sec 77]:

It shall be the duty of every company, creating or modifying a charge on any of its assets, to register the particulars of the charge within 30 days with the Registrar in Form No. **CGH-1**, along with fee. ROC shall issue a certificate of registration of charge in Form No. **CGH-2** & that of modification of charge in Form No. **CGH-3**.

Similarly a company shall within a period of 30 days from the date of the payment or satisfaction in full of any charge give intimation of the same to the ROC in Form No. **CGH-4** along with fee. ROC shall issue a certificate of registration of satisfaction of charge in Form No. **CGH-5**.

10. Company's register of charges [Sec 85]:

Every company shall keep at its registered office a register of charges in Form No. **CGH-7**, stating prescribed particulars along with a copy of the instrument creating / modifying / satisfying the charge at the registered office of the company. The register shall be authenticated by a Director or any other person authorized by the Board for the purpose. The register & the documents shall be preserved for a period of 8 years.

11. Punishment for contravention of Sec 77 & Sec 85 [Sec 86]:

On company - Rs 1 lacs - Rs 10 lacs; on officer in default: Rs 25,000 – Rs 1 lacs or 6 months imprisonment or both

12. Register of members [Sec 88]:

Every company shall keep & maintain a register of members at its registered office in Form No **MGT-1** (to be complied by Sep 30, 2014). The register shall be authenticated by a Director or any other person authorized by the Board for the purpose.

Penalty for contravention: Rs 50,000 - Rs 300,000.

13. Beneficial interest in any share [Sec 89]:

A person whose name is entered in the register of members of a company as the holder of shares in that company but who does not hold the beneficial interest in such shares shall file with the company, a declaration to that effect in Form No. **MGT-4** within 30 days. Similarly the beneficial owner shall make a declaration to the company in Form No. **MGT-5** within 30 days. The company shall on receipt of MGT-4/MGT-5 shall make a note of such declaration in the register of members and file within 30 days a return in Form No. **MGT-6** with the ROC with fee.

Penalty for contravention on person in default: upto Rs 50,000 & further upto Rs 1,000 per day in case of continuation of default.

14. Annual Return [Sec 92]:

Every company shall prepare an annual return in Form No. **MGT-7** to be signed by a director and to be filed with the registrar within 60 days of AGM. Further the same should be certified by a Company Secretary in practice in Form No. **MGT-8** in case of a listed company or a company having paid up share capital of \geq Rs 5 cr or turnover of \geq Rs 50 cr. Copy of annual return to be kept at registered office. The extract of the annual return to be attached with the Board's Report shall be in Form No. **MGT-9**. Copy of annual return shall be preserved for a period of 8 years.

Penalty for contravention: Rs 50,000 - Rs 500,000; on officer in default: Rs 50,000 - Rs 500,000 or 6 months imprisonment or both.

Meetings of Members

1. Annual General Meeting [Sec 96]:

Every company shall hold an AGM every year within 6 months of closing of financial year and within before 15 months from last AGM. Further AGM shall be held between 9 AM and 6 pm on any day that is not a National Holiday.

Every AGM shall be called in the city where registered office of the company is situated.

2. Extra-ordinary general Meeting [Sec 100]:

The Board may whenever it deems fit, call an extra-ordinary general meeting of the company.

Unlike director meeting, shareholder meeting cannot be held through video conferencing though voting can be through postal ballot.

3. Notice of meeting & explanatory statement [Sec 101 & 102]:

A general meeting of a company may be called by giving a notice of clear 21 days. In case of special business: an explanatory statement setting forth all information / facts and details of interest of any director / KMP in such business shall be annexed to such notice. All business shall be deemed to be special in an AGM except for following: consideration of financial statements, declaration of dividend, appointment of directors in place of those retiring, appointment of auditors. In the case of any other meeting, all business shall be deemed to be special.

4. Filing of Resolutions [Sec 117]:

A copy of following resolution together with copy of agreement and/or explanatory statement, if any should be filed in Form No. **MGT-14** with the Registrar within 30 days: (i) special resolutions, (ii) the powers that board of directors can exercise only by means of a resolution u/s 179 (3), (iii) specified resolutions.

Penalty for contravention: Rs 500,000 - Rs 25,00,000; on officer in default: Rs 100,000 - Rs 500,000

5. Minutes of proceedings [Sec 118]:

Every company shall keep a register containing minutes of every general meeting and every meeting of its Board of Directors. Each page of every such book shall be signed & last page of the record of proceedings of each meeting by the Chairman thereof.

Every company has to follow the Secretarial Standards while preparing the minutes of board & general meeting.

Penalty for contravention: Rs 25,000; on officer in default: Rs 5,000.

Corporate Social Responsibility

Sec 135: CSR is applicable on any corporate with net-worth of Rs 5 billion or more, gross revenues of Rs 10 billion or more, or net income of Rs 50 million or more during any of the preceding three financial years. Other key features are as follows.

1. Requires 2% of the profit before tax (average of last 3 years) as per annual audited accounts to be spent on CSR. If the company fails to spend such amount, Board shall specify the reasons
2. Applicable from the financial year 2014-15.
3. Company to constitute an internal committee consisting of three or more directors (if there are only 2 directors then both shall constitute CSR committee). The said committee shall take decision on selection, implementation and monitoring of CSR projects. Board shall approve CSR policy basis CSR committee recommendations.
4. Company to report annually on its CSR Activities as per **Annexure** in the Board's report. CSR policy shall be displayed on the company's website.
5. Following shall not count as CSR activity: - i) activities which are exclusively for the benefit of employees of the company or their family members; ii) activities undertaken in pursuance of its normal course of business; iii) one time activities like organization of race etc.
6. Companies can also carry CSR through trusts / societies (NGOs) etc provided such entities have an established track record of 3 years.

Audit & Accounts

1. Tenor of Auditor [Sec 139(1)]:

Auditor shall hold office from the conclusion of that meeting (counted as first meeting) till the conclusion of its **sixth** AGM.

Though an annual ratification is required, it is implied that there must be genuine reasons for not ratifying the same egs. undue hike in audit fee, undue delay in finalization of audit etc.

Notice of appointment of auditor shall be filed with ROC within 15 days of the meeting in Form No. **ADT-1**.

2. Rotation of Auditor [Sec 139(2)]:

All private limited companies having paid up share capital of Rs 20 crores or more or borrowings of Rs 50 crores or more, shall rotate an individual auditor in 5 years and a firm of auditors in two 5 year terms with different partners in each term.

3. New Auditor [Sec 139(9)]:

A retiring auditor may be re-appointed at an AGM, unless a special resolution has not been passed at that meeting appointing some other auditor.

4. Re-appointment of Auditor [Sec 139(10)]:

Where at any AGM, no auditor is appointed or re-appointed, the existing auditor shall continue to be the auditor of the company (i.e. it shall be automatic).

5. Removal of Auditor [Sec 140(1)]:

The auditor appointed u/s 139 may be removed from his office before the expiry of his term only by a special resolution of the company, after obtaining the previous approval of the Central Government in that behalf in the prescribed manner.

Form **ADT-2** to be sent to Govt. which specifically wants following information: grounds for seeking removal of auditor; whether accounts have been qualified during last 3 years (if yes, give details); details of opportunity given to auditor concerned for being heard.

6. Limit on number of auditee companies [Sec 141(3)]:

The limit prescribed is 20 including private limited companies.

7. Auditing Standards [Sec 143(9)]:

Every auditor shall comply with the auditing standards.

8. Penalty for company [Sec 147]:

If any of the provisions of Sec 139 to 146 is contravened, the company shall be punishable with fine ranging from Rs 25,000 to Rs 0.5 million & every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to one year or with fine ranging from Rs 10,000 to Rs 0.1 million or both.

Similarly fine & punishment specified for auditor in case of contravention of provisions.

9. Joint liability of auditors

If a partner of an audit firm has or have acted in a fraudulent manner or abetted or colluded in any fraud, the liability whether civil or criminal (as provided in this act or any other law for the time being in force), for such act shall be of the partners & of the firm jointly & severally.

10. New Inclusions in Auditor report

Rule 11 specifically wants auditor to include in their report, their views & comments on the following matters: (i) whether the company has disclosed the impact, if any, of pending litigations on its financial position in its financial statements. (ii) Whether the company has made provision for material foreseeable losses on long term contracts including derivative contracts.

11. Auditor Responsibility to report Fraud to Central Govt.

Rule 13: If the auditor has knowledge of any fraud in the company, he has been cast with the responsibility to report the matter to the Central Government in Form No. **ADT 4** within 60 days of his knowledge.

12. Internal Auditor

Every private company having turnover of Rs 200 crores or more during the preceding financial year shall be required to appoint an internal auditor or a firm of internal auditors. The Board shall, in consultation with the Internal Auditor, formulate the scope, functioning, periodicity and methodology for conducting the internal audit. Note: Internal auditor must necessarily be appointed only by a Board resolution.

13. Cost Auditor

New rules have taken out textiles, automobiles, engineering and electronics out of Cost audit and added companies involved in health, education and construction. Such companies are required to keep cost records if their turnover is Rs 25 crores or more & also do cost audit if their turnover is Rs 100 crores or more. Cost records to be maintained in Form **CRA-1** and in such manner as to facilitate calculation of per unit cost of production or cost of operations, cost of sales and margin for each of its products and activities for every financial year on monthly or quarterly or half-yearly or annual basis.

14. Declaration of Dividend [Sec 123]:

No dividend can be declared unless carried over previous & current year losses as well as depreciation are provided for.

There is no compulsion to transfer surplus profits to reserves. But once transferred the same cannot be used for declaring dividends unless following conditions are satisfied: -

- i) Rate of dividend declared shall not exceed the average of the rates at which dividend was declared by it in the 3 years immediately preceding that year. However this condition shall not apply where no dividend has been declared in each of the three preceding FY.

- ii) Amount to be withdrawn from reserves not to exceed 10% of paid up capital & free reserves.
- iii) Balance of reserves after withdrawal shall not fall below 15% of paid up capital.

The amount of dividend shall be deposited in a scheduled bank in a separate account within 5 days from the date of declaration of such dividend.

15. Books of accounts to be kept at registered office [Sec 128]:

If Board of Directors decides to keep books of account at any place in India other than the registered office, the company shall within 7 days thereof, file with Registrar a notice in writing. Further all books of account together with all corresponding vouchers shall be kept for 8 years. If books of accounts are maintained in electronic mode, a backup of the same shall be kept in servers physically located in India on a periodic basis.

16. Financial Statements [Sec 129]:

Law provides for uniform financial year (April-March) for all companies. Further there is no provision for extension of Financial Year.

The financial statements shall give a true & fair view of the state of affairs of the company and comply with prescribed accounting standards and prepared in form Specified in **Schedule III**. It has now become compulsory to make consolidated financial statements of all subsidiaries, associate companies & joint venture companies along with the company. Further preparation of cash flow statement & statement of changes in equity has now become compulsory under the new Act.

17. Depreciation

Maximum useful life of various assets is specified in Schedule II. Residual value of an asset cannot be more than 5% of the cost of asset. Provided that where a company uses a useful life or residual value of the asset which is different from the above limits, justification for the difference shall be disclosed in its financial statements.

18. Contents of report by Board of Directors [Sec 134]:

Board of Directors to provide a report along with annual financial statements containing following particulars: extract of annual return u/s 92; Director's Responsibility Statement (which shall include a statement on compliance of all applicable laws); comments on adverse remarks by auditors, if any; number of meetings of the Board; state of company affairs; details on adequacy of internal financial controls in case of a listed company; particulars of related party transactions in Form No. **AOC-2**; risk management policy; corporate social responsibility; steps taken for conservation of energy; details of imported technology & efforts put in to absorb the same; expenditure incurred on R&D; foreign exchange earnings & outgo. Penalty for contravention: Rs 50,000 - Rs 25,00,000; an officer in default: Rs 50,000 - Rs 500,000 or 3 years imprisonment or both.

19. Copy of Financial Statement to be filed with registrar [Sec 137]:

A copy of financial statements along with auditor report & director's report, duly adopted at AGM shall be filed with Registrar together with Form **AOC-4** within 30 days. The class of companies as may be notified by the CG, shall mandatorily file their financial statement in XBRL format.

Penalty for contravention: Rs 1,000 per day, max upto Rs 10 lakhs; an officer in default: Rs 100,000 - Rs 500,000 or 6 months imprisonment or both.

20. Audit Committee: A Private limited company is neither required to constitute an Audit Committee nor an appointment & remuneration committee.

Directors & Board

1. Board of Directors [Sec 149]:

Every private limited company to have a minimum of 2 directors & maximum of 15 directors; of which at least one must be one who has stayed in India for a total period of 182 days in the previous calendar year. Moreover, any company may appoint more than 15 directors after passing a special resolution (i.e. there is no requirement of CG approval).

No requirement of independent directors or woman directors or small shareholder's directors in the case of a private limited company. The provision of retirement of Directors by rotation is not applicable to a private limited company.

2. Maximum Number of Directors

No person, after the commencement of this Act, shall hold office as a director, in more than 20 companies at the same time. The exemptions granted earlier to alternate directorships and directorships in Private company have been removed. Moreover, the maximum number of public companies in which a person can be appointed as a director shall not exceed 10. Further a person can be a whole time director in a maximum of 3 companies. A person can be an independent director in a maximum of 7 companies.

3. Appointment of directors [Sec 152]:

Every director shall be appointed by the company in general meeting. Proposed director to provide DIN & a declaration that he is not disqualified to become a director under the Companies Act. Further a person appointed as a director shall not act as a director unless he gives his consent to hold the office as director in Form No. **DIR-2**, and such consent has been filed with the Registrar in Form No. **DIR-12** within 30 days of his appointment.

4. Importance of DIN [Sec 157 & 158]:

Every company shall furnish the DIN of all its directors to the Registrar. Further every person or company, while furnishing any return, information or particulars as are required to be furnished under this Act, shall mention DIN in such return, information or particulars in case it relates to the director or contain any reference to the director.

Every individual who has been appointed a DIN shall, in the event of any change in his particulars, intimate to the Central Govt. within a period of 30 days in Form No. **DIR-6** together with declaration in Form No. **DIR-7**.

5. Appointment of directors to be voted individually [Sec 162]:

At a general meeting of a company, a motion for the appointment of two or more persons as directors of the company by a single resolution shall not be moved unless a proposal to move such a motion has first been agreed to at the meeting without any vote being cast against it.

6. Resignation of Director [Sec 168]:

A director may resign from his office by giving a notice in writing to the company and the Board shall on receipt of such notice take note of the same, intimate ROC & place the fact of such resignation in the report of Directors. The Director shall also forward a copy of his resignation along with detailed reasons to the ROC within 30 days in Form No. **DIR-11**.

7. Register of directors [Sec 170]:

Every company shall keep at its registered office, a register containing prescribed particulars of its directors & key management personnel. Further a return in Form No. **DIR-12** shall be filed with the Registrar within 30 days from the appointment of every director & KMP.

Penalty for contravention: Rs 50,000 - 5 lacs; an officer in default: Rs 50,000 - 5 lacs.

8. Meetings of Board [Sec 173]:

Every company shall hold a minimum number of 4 meetings of its board of directors every year in such a manner that no more than 120 days shall intervene between two consecutive meetings of the board. First meeting of the Board of Directors shall be called within 30 days of the date of incorporation. The participation of directors in a meeting of the Board may be either in person or through video conferencing, which is capable of recording & recognizing the participation of the directors & of recording & storing the proceedings of such meetings along with date & time. A meeting of the Board shall be called by giving notice of not less than 7 days to every director either by post, or hand delivery or by electronic means. Provided that a meeting of the Board may be called at shorter notice to transact urgent business.

9. Quorum for meetings of Board [Sec 174]:

Quorum shall be 1/3 of total strength or two directors, whichever is higher. Where at any time the number of interested directors exceeds or is equal to 2/3 of the total strength of the Board of Directors, the number of directors who are non-interested directors and present at the meeting, being not less than two, shall be the quorum during such time.

10. Power of Board [Sec 179]:

They are empowered to do all such acts as a company is authorized and do subject to the provisions of the Act, Memorandum & Articles. No regulation made by the company in general meeting shall invalidate any prior act of the Board which would have been valid if that regulation had not been made. The following powers shall be exercised by means of a Board resolution: -

- i) To issue securities, including debentures
- ii) To borrow monies
- iii) To invest the funds of the company

- iv) To approve financial statement and the Board's report
 - v) To appoint internal auditors and secretarial auditor
 - vi) To appoint or remove KMP
 - vii) To take note of the disclosure of director's interest and shareholding etc. (MBP-1 is not to be filed; BR has to just say that Board has taken note of the same as submitted by directors)
- As per Sec 117, any resolution u/s 179 shall be filed with ROC in Form No. **MGT-14**.

11. Restrictions on powers of Board [Sec 180]:

The Board of Directors shall exercise the following powers only with the consent of the company by a special resolution: -

- i) To sell, lease or otherwise dispose of the whole or substantially the whole of the undertaking of the company.
- ii) To borrow money, where the money to be borrowed, together with the money already borrowed by the company will exceed aggregate of its paid up share capital & free reserves.

12. Disclosure of interest by Director [Sec 184]:

Sec 184(1): Every director shall at the first meeting of the board in which he participates as a director and thereafter at the first meeting of the Board in every FY or whenever there is any change in the disclosures, already made, then at the first Board meeting held after such change, disclose his concern or interest in any entity in Form No. **MBP- 1**.

Sec 184(2): Every director of a company who is any way, whether directly or indirectly, concerned or interested in a contract or arrangement (i) with a body corporate in which such director in association with any other director, holds more than 2% shareholding of that body corporate, or is a promoter, manager or CEO of that body corporate; (ii) with a firm or other entity in which, such director is a partner, owner or member shall disclose the nature of his concern or interest at the meeting of the Board in which the contract or arrangement is discussed and shall not participate in such meeting.

Note: 184(2) include indirect interest as well. For instance firm in which director's wife is a partner. However MBP-1 is not applicable on 184(2). It has to provide details only with respect to director's direct interest.

Penalty for contravention on officer in default: Rs 50,000 - Rs 100,000 or 1 year imprisonment or both.

13. Loan to Directors [Sec 185]:

No company shall directly or indirectly advance any loan, including any loan represented by a book debt, to any of its directors or to any other person in whom the director is interested or give any guarantee or provide any security in connection with any loan taken by him or such other person. However this will not include (i) any loan extended to MD/WTD as part of the conditions of service extended to all employees of the company; (ii) any loan extended to MD/WTD pursuant to any scheme approved by the members by a special resolution; or (iii) by a company which in the ordinary course of its business provides loans etc. (iv) to a WOS.

Any other person in whom the director is interested: relative/partner of director, relative/partner of holding company director, any firm in which such director/relative is a partner, any private company of which any such director is a director or member etc.

Penalty for contravention: Rs 500,000 - Rs 25,00,000; on director in default: Rs 500,000 - Rs 25,00,000 or 6 months imprisonment or both.

Section 185 was notified on 12th Sep 2013 and was applicable from that day itself. Therefore loan etc to director or any person on whom director is interested, outstanding as on 12.09.13 will not be hit by the provisions of sec 185. However they can't be renewed and are to be repaid on the end of their term. If it is a loan repayable on demand then still it is suggested to make a formal agreement with tenure specified in it.

14. Loan & investment by company [Sec 186]:

- a. No company shall directly or indirectly give any loan to any person or any other body corporate; give any guarantee or provide security in connection with a loan to any person or any other body corporate or; and acquire the securities of any other body corporate unless the resolution sanctioning it is passed at a meeting of the Board with the consent of all the directors present & prior approval of a public financial institution, in case of default in loan, is taken.
- b. Further no investment shall be made or loan or guarantee or security given exceeding 60% of its paid up share capital, free reserves & securities premium or 100% of its free reserves & securities premium, whichever is more without prior consent by means of a special resolution passed at a general meeting & prior approval of a public financial institution concerned where any term loan is subsisting + Board resolution with the consent of all the directors present. No loan shall be given under this section at a rate of interest lower than the prevailing yield of one year, 3 years, 5 year or 10 year Govt. security closest to the tenor of the loan. Provided in case of a transaction with WOS or JV, condition for approval from members shall not apply.

The company shall disclose to its members in the financial statements the full particulars of such loans, guarantee or investment & their purpose. Further shall keep a register in Form No. **MBP-2**. Penalty for contravention: Rs 25,000 - Rs 500,000; on officer in default: Rs 25,000 - Rs 100,000 or 2 years imprisonment or both.

Note: If as on 01.04.2014 the company has given loan or guarantee in excess of limits specified then it has to file a Special resolution for this by 31.03.2015. Further genuine trade advances to be adjusted against supply of goods / services will not be considered as loans.

15. Related party transactions [Sec 188]:

- a. No company shall enter into a contract or arrangement with a related party except with the consent of the Board of Directors given by a resolution at a meeting of the Board. Where any director is interested in any contract or arrangement with a related party, such director shall not be present at the meeting during discussions on the subject matter of the resolution relating to such contract or arrangement.
- b. Prior approval of the company by a special resolution required in following cases:
 - i) If the company entering into the contract is having a paid up share capital of Rs 10 cr or more; or

- ii) Sale, purchase or supply of goods > 25% of annual turnover
- iii) Buying, selling or leasing property or taking any service > 10% of net-worth
- iv) Appointment to any office or place of profit in the company, its subsidiary or associate at a monthly remuneration of > Rs 2.5 lacs.

However none of above shall apply to transactions entered into in the ordinary course of business and at arm's length.

Related party = (i) a director/KMP or his relative; (ii) a firm in which any of (i) is a partner; (iii) a pvt company in which any of (i) is a director or member; (iv) a public company in which any of (i) is a director or holds more than 2% of paid up capital; holding/subsidiary/associate/fellow subsidiary company;

Relative = spouse, parents, siblings, son, daughter, son-in law, daughter-in law.

Penalty for officer in default: Rs 25,000 - 500,000.

16. Register of contracts in which directors are interested [Sec 189]:

Every company shall keep a register in Form No. **MBP-4**, giving details of all contracts referred to in Sec 184 & Sec 185 & such register shall be placed before the next meeting of the Board signed by all the directors present at the meeting.

Penalty for contravention on director in default: Rs 50,000.

Every director shall disclose his concern or interest in any entity by giving a notice in writing in Form No. **MBP-1**. Such notice shall be disclosed at the meeting and kept for 8 years.

17. Appointment of MD/CEO/Company Secretary/CFO + Secretarial Audit

A private limited company is not compulsorily required to appoint key managerial personnel (KMP) viz. MD/CEO/CFO/Company Secretary.

A private limited company is also not required to get a secretarial audit done.

18. Sitting Fee & Remuneration to Directors

A company may pay a sitting fee to a director for attending meetings of the Board or committees thereof, such sum as may be decided by the Board of directors thereof which shall not exceed Rs 100,000 per meeting + incidental expenses. No upper limit on payment of managerial remuneration in the case of a private limited company.

19. Fee & General limit on time for filing with ROC [Sec 403]:

Any document, fact or information may be submitted, filed, registered or recorded, after the time specified in relevant provision within a period of 270 days from the prescribed date with additional prescribed fee.

20. Punishment where no specific penalty/punishment is provided [Sec 450]:

If a company or any person contravenes any provision of this Act or the rules made there under, for which no penalty/punishment is provided elsewhere in this Act - fine upto Rs 10,000 on company and officer in default & in case of continuous contravention with further fine upto Rs 1,000 per day.

21. Establishment of vigil Mechanism

Every company which has borrowings in excess of Rs 50 crores shall establish a vigil mechanism for their directors and employees to report their genuine concerns or grievances. For this the Board shall appoint a director to whom other directors or employees may report their concerns. The vigil mechanism shall provide for adequate safeguards against victimization of employees and directors who avail of the vigil mechanism.

On the whole the above law needs to be hailed for its focus and understanding on the contemporary realities. What is heartening is that the Government adopted a very participative approach. The exercise of revamping the Companies Act, 1956 was first started in Aug 2004, when a concept paper was placed on the MCA website to elicit views and comments. Thereafter the Ministry adopted a Committee under the chairmanship of Dr. JJ Irani and the Committee's recommendations were considered in seminars held all over the country. We hope that the Government shall continue to work in the spirit of such consultation and shall look seriously upon various recommendations made by ICAI and industry on some of the new provisions.