



Amita Desai & Co.

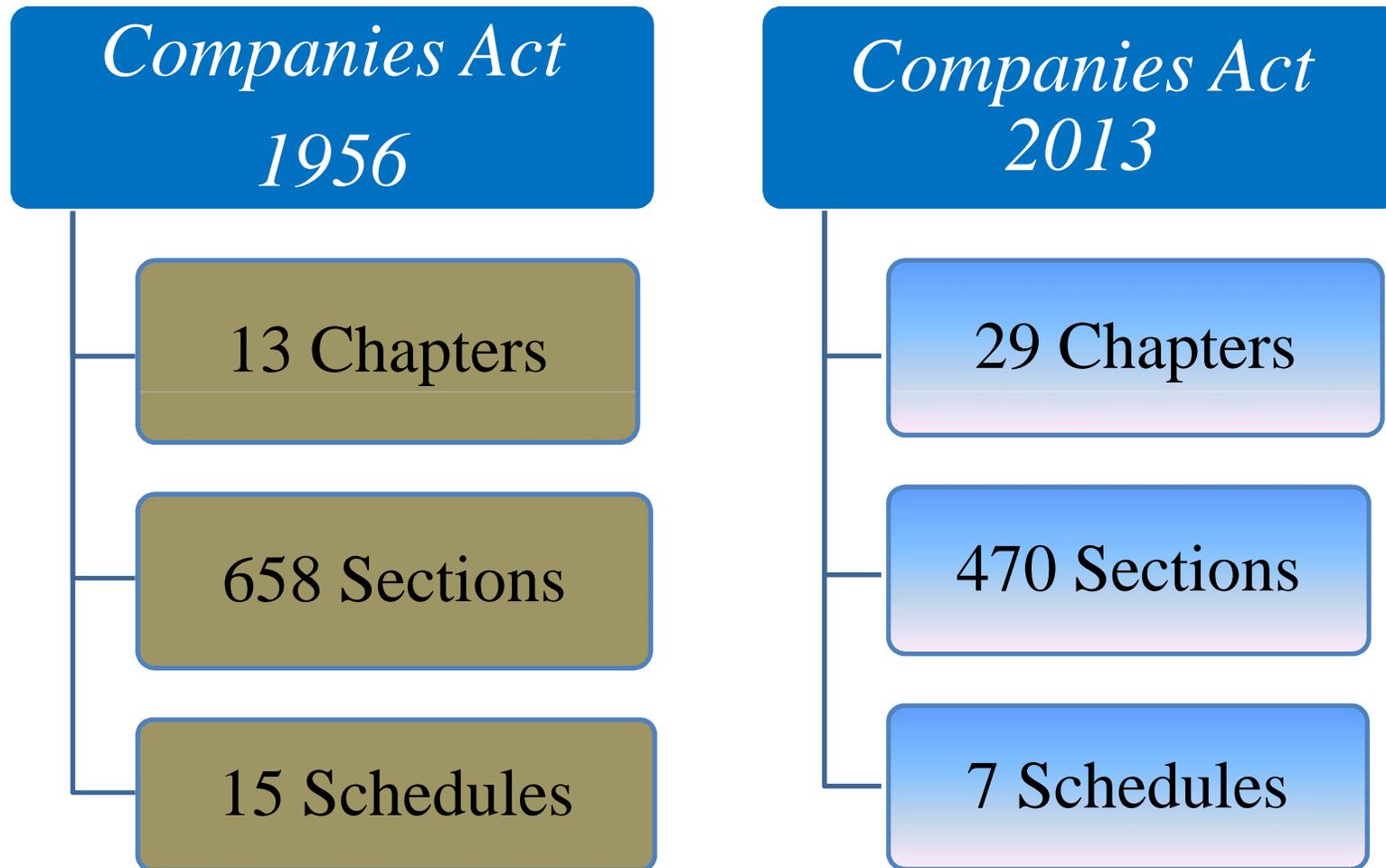
Need of new Act

THE COMPANIES ACT 2013

This important legislation, for which the efforts of change started off in year 2004 by the then government due to

- changing economic and business environment ;
- Make corporate governance transparent, simple and globally acceptable and
- Increasing accountability and more of management by professional

THE COMPANIES ACT, 2013



THE COMPANIES ACT, 2013

HIGHLIGHTS

- Class Action Suit
- OPC and Small Company
- Women and Resident Director
- Private Placement and Right Issue
- Rotation of Auditor made mandatory.
- NCLT
- NFRA
- Shares cannot be issued at a discount except sweat equity shares.
- Time gap between 2 buy-backs shall be minimum one(1) year

THE COMPANIES ACT, 2013

HIGHLIGHTS

- Indian company can be merged with a foreign company subject to RBI approvals.
- Fast Track merger for small companies and holding-WOS introduced.
- E- Communications and Board Meetings with Video Conference facility is approved
- Independent Director (ID) is not liable to retire by rotation

THE COMPANIES ACT, 2013

HIGHLIGHTS

- For infrastructural projects, preference shares can be issued for a period exceeding 20 years.
- Maximum number of members in a private company increased from 50 to 200.
- CG approval not required for Loan to Directors, Remuneration to MD (except in certain cases) and for RPT

The Companies Act 2013

Major changes

- Accounts- FY, Cash Flow , electronic book keeping
- Auditors
- Board – KMP- Board Report
- Corporate Governance
- CSR
- Fraud Reporting
- Loan and Investment
- Mergers
- Related Party Transactions

The Companies Act 2013

ACCOUNTING AND FINANCIAL REPORTING

- Uniform Financial Year
- NFRA (National Financial Reporting Authority)
- Board Report in detail
- Directors responsibility statement
- CFS (Consolidated Financial Statement) for non listed and private company also (associate and JVC also)
- Subsidiary definition is different in AS 21 and under CA 2013 (Funded with Debt is not a subsidiary company)

The Companies Act 2013

ACCOUNTING AND FINANCIAL REPORTING

Subsidiary company in relation to any other company means a company in which the holding company:

- Controls the composition of the BOD , or
- Exercises or controls more than 50% of the total share capital either on its own or together with one or more of its subsidiary companies.”
- **Total Share Capital means Equity and convertible Pref Share Capital**

The Companies Act 2013

ACCOUNTING AND FINANCIAL REPORTING

Associate Company in relation to another company, means a company in which that other company has a **significant influence**, but which is not a subsidiary and includes a joint venture company.

“significant influence” means control of at least **20% of total share capital**, or of **business decisions under an agreement**;

The Companies Act 2013

ACCOUNTING AND FINANCIAL REPORTING

Depreciation --Change in regulation for providing of Depreciation

➤ **Useful life concept**

Useful life may be considered as a period over which an asset is available for use or as the number of production or similar units expected to be obtained from the asset by the entity.

The Companies Act 2013

Internal Audit

Internal Audit is now mandatory for :

- (i) all listed companies; and
- (ii) other public limited companies with **turnover in excess of INR 200 Crore**
loans/deposits in excess of INR 100 crores
paid up capital in excess of INR 50 crores
Deposit in excess of INR 25 Crore
- (iii) Private company having turnover of **INR 200 Crore** and loan of **INR 100 Cr**

The Companies Act 2013

Statutory Auditors

- Five year Term and rotation each year
- Removal – CG approval
- Rotation of Auditors (5 year cooling period)
- If Firm 2 consecutive term and individual for 5 years (one term)
- Companies need to be compliant with the provisions relating to rotation within 3 years from the date of the commencement of the Act.

The Companies Act 2013

Statutory Auditors continue

Prohibition-- non-audit services

- accounting and book keeping services,
- internal audit,
- design and implementation of any financial information system,
- investment advisory services,
- investment banking services, and management services etc.

THE COMPANIES ACT, 2013

DUTIES OF DIRECTORS UNDER THE COMPANIES ACT 2013

- Act as per AOA
- Act in the best interests of the company, its employees, the shareholders, the community and for the protection of environment
- Not only attending the meeting but participating
- Review all minutes and record his assent or dissent

THE COMPANIES ACT, 2013

DUTIES OF DIRECTORS UNDER THE COMPANIES ACT 2013

- Act with **due and reasonable care**, skill and diligence
- **Not to attempt to achieve any undue gain**
- **ID** will have additional duties as a member of Audit Committee
- Disclose their **interest** in other entities

The Companies Act 2013

CFO

CFO would be liable, besides other specified persons, for contravention of provisions relating to maintenance of **books of account, financial statements, filing of financial statements with Registrar of Companies,** etc.

CFO would also be a **‘related party’** of the company.

Statutory recognition of CFO is a significant step.

THE COMPANIES ACT, 2013

CSR :

- Applicable to Company having :
 - ✓ **Net Worth of INR 500 cr Or**
 - ✓ **Turnover – INR 1000 cr Orr**
 - ✓ **Net Profit – INR 5 cr**
- Company to spend 2 % of its average net profits made during the 3 preceding financial years for CSR activities .
- Board's Report to disclose composition of CSR Committee and CSR spent during the year and reason if not spent .

The Companies Act 2013

Fraud Reporting

- Reporting by Auditors if any fraud which involves or is expected to involve individually an amount of **Rs. 1 Crore or above**, is being or has been committed against the company by its officers or employees, the auditor shall report the matter to the **Central Government**
- **Less than Rs.1 Crore**, he will report to **Board and Audit Committee.**

SIMPLIFIED MERGER AND ACQUISITION PROCESS



The Companies Act 2013

Merger and Restructuring

Investment (section 186) for restructuring

A company cannot make investment through **more than 2 layers** of investment companies except to comply with law and in case of acquisition of a foreign company.

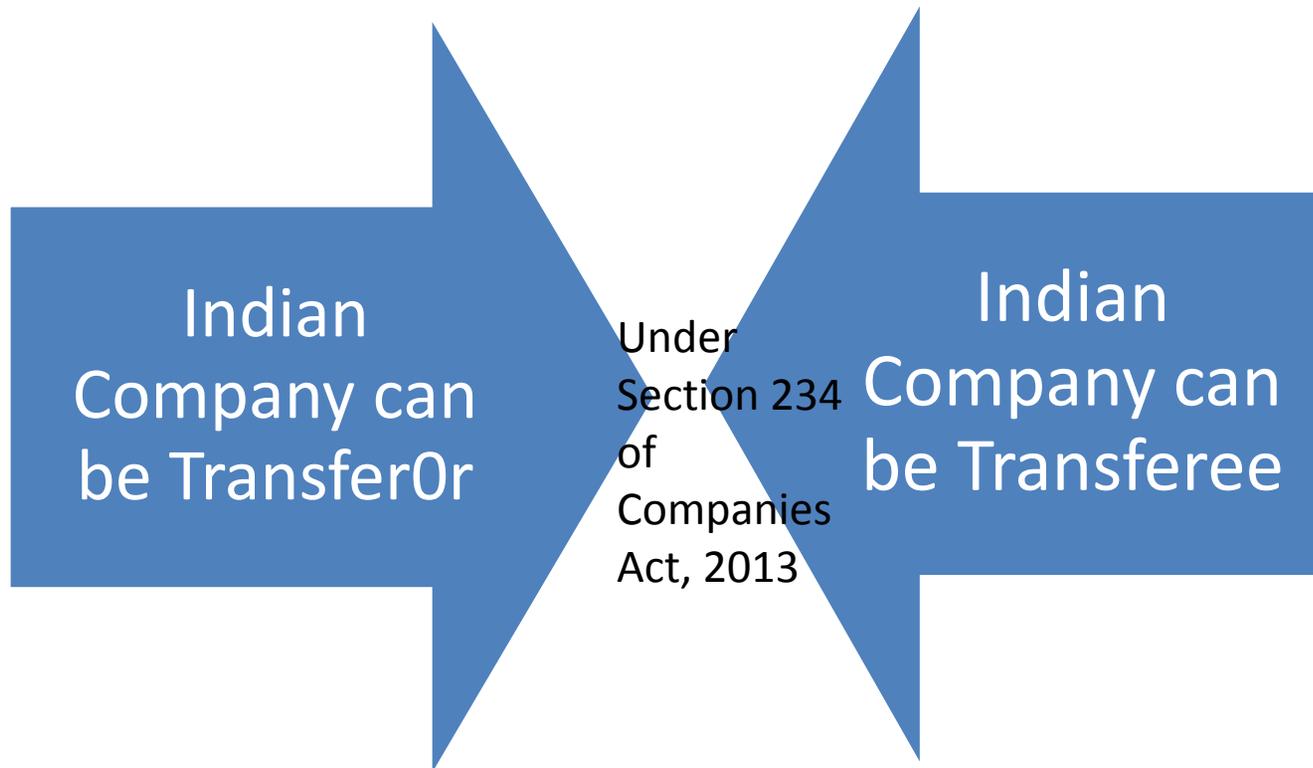
(Reason is transparency of the real owner)

The Companies Act 2013

Merger and Restructuring

- **Buy Back** ---- A cooling off period of **one year** between two buy-backs has been prescribed, even in the case of shareholder-approved buybacks, limiting the number of buy -backs for a company.

CROSS BORDER MERGER



The Companies Act 2013

Merger and Restructuring

- **Cross border** (Inbound and Outbound merger) is allowed subject to the approval of RBI.
- **Entrenchment** provisions are allowed- ROFR, Anti Dilution, Tag and Drag Along, Veto Right, Inter-se transfer etc--- Better enforcement
- **AS** Scheme should have mention that accounting treatment will be in compliance with the AS

The Companies Act 2013

Merger and Restructuring

- **No treasury shares** allowed by the Transferee [section 233 (10)]
- Merger of **listed company into unlisted company** do not automatically result in listing of the transferee company
- **Slump sale** is treated as sale of undertaking as per section 180 (which is 20% of N/w or 20% of T/o or 20% of the enterprise value)

The Companies Act 2013

Merger and Restructuring

- Sanction of buy-back, variation of rights etc. being part of the Scheme can be sanctioned
- The New Act has introduced new provisions relating to Buy-back out of minority shareholding under certain circumstances. (90% shareholders)
- This will provide greater flexibility to the promoters/ acquirer in realigning the control and management of company as unnecessary interference from minority shareholders is removed.

The Companies Act 2013

Merger and Restructuring

- The minimum thresholds of 10% and 5% for shareholders and creditors objections, respectively, are expected to eliminate the frivolous objections of small shareholders who oppose deals under the guise of shareholder activism
- There is an exit opportunity to the dissenting shareholders, which may reduce litigation & frivolous complaint
- Representation of Income Tax Department, Sectoral Regulators and other authorities is required which would safeguard their interest, though at the cost of prolonged process

The Companies Act 2013

Merger and Restructuring

➤ **Fast Track merger** is merger between two or more small companies and between holding and its WOS (90% shareholders approval is required) and Benefits are :

- (i) Approval of NCLT is not required
- (ii) Notice is not required to be given to various authorities
- (iii) Shorter timeline
- (iv) Auditor's certificate of compliance with applicable accounting standards is not required

The Companies Act 2013

RAISING OF FUND

The Companies Act 2013

Further Issue of Shares

1. Right Issue
2. Private Placement/ Preferential Issue
3. CCDs or NCDs
CCD can be unsecured and max 5 years conversion
NCD has to be secured on tangible assets and assets to be more than value of NCD

The Companies Act 2013

Borrowings

- Borrowings from Directors and their relatives for Pvt Ltd company subject to getting declaration
- Borrowing from Directors for Public Company
- Borrowing from Shareholders of Pvt Ltd Company allowed upto 100 % of paid up shares capital and FR

The Companies Act 2013

Private Placement of shares / securities

- “private placement” has been defined to mean any **offer of securities or an invitation to subscribe** to the securities of a **select group of persons** by a company through issue of a private placement offer letter
- Fresh offer only after completing the previous offer or withdrawal of the same
- Allotment to complete in 60 days
- Application money to receive in separate bank account

The Companies Act 2013

Differential Voting Right(DVR)

- Max DVR shares can be not more than 25% of its share capital,
- only if it has been profitable for 3 years preceding the year in which it has decided to issue DVR shares,
- It has not defaulted in filing its annual accounts and returns for the period.
- The AoA should authorize or with shareholders' approval in a general meeting by passing a special resolution (by postal ballot in the case of listed companies) for issue of such shares.

The Companies Act 2013

Related Party Transaction (RPT)

- At arms' length (AL)
- Ordinary Course of Business (OCB)
- Def. of Related parties and related party transactions
- If RPT is not at AL and OCB and exceeds the specified amount, the company requires the consent of its **AC , BOD and Shareholders**
- **Director's Report** of a company has to disclose each related party transaction and justification

The Companies Act 2013

Related Party Transaction (RPT)

- At arms' length (AL)
- Ordinary Course of Business (OCB)
- Def. of Related parties and related party transactions
- If RPT is not at AL and OCB and exceeds the specified amount, the company requires the consent of its **AC , BOD and Shareholders**
- **Director's Report** of a company has to disclose each related party transaction and justification

The Companies Act 2013

Related Party Transaction (RPT)

- At arms' length (AL)
- Ordinary Course of Business (OCB)
- Def. of Related parties and related party transactions
- If RPT is not at AL and OCB and exceeds the specified amount, the company requires the consent of its **AC , BOD and Shareholders**
- **Director's Report** of a company has to disclose each related party transaction and justification

The Companies Act 2013

Related Party Transaction (RPT) : Following are types of such transactions:

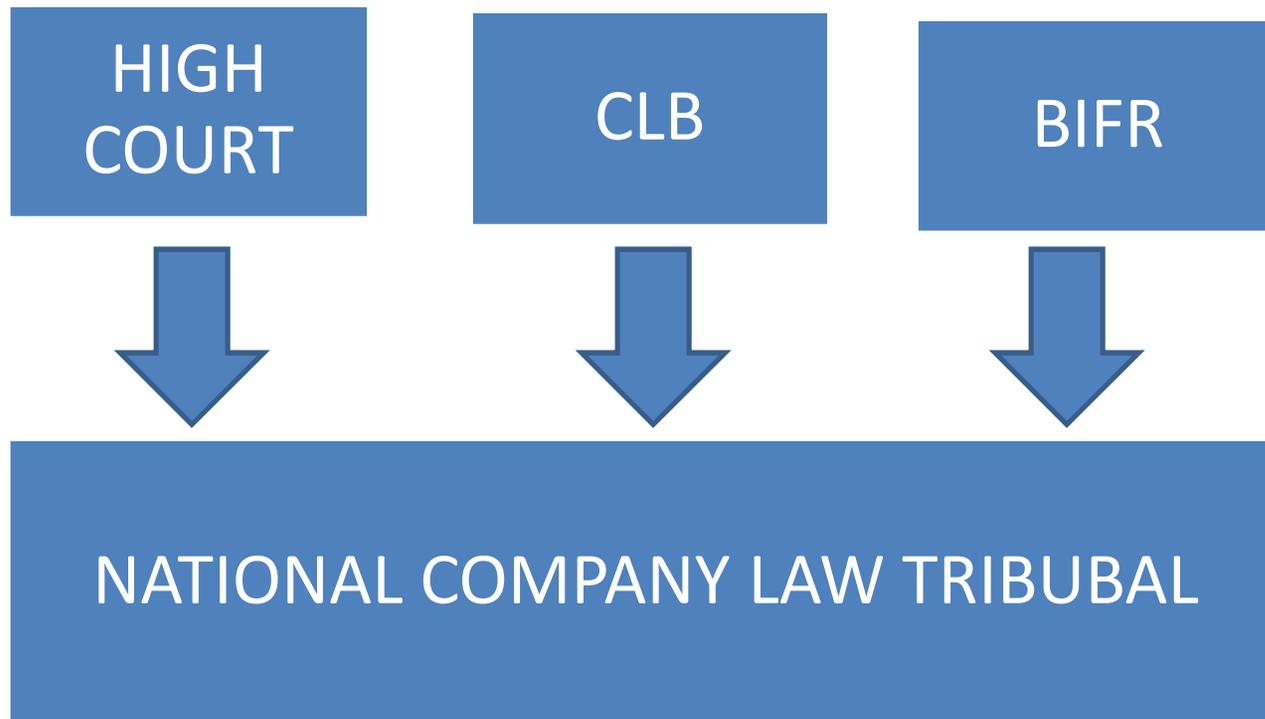
- Sale, purchase or supply of any goods or materials
- Selling or otherwise disposing of, or buying, property of any kind
- Leasing of property of any kind
- Availing or rendering of any services
- Appointment of any agents for purchase or sale of goods, materials, services or property
- Related party's 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 of the company.

NATIONAL COMPANY LAW TRIBUNAL

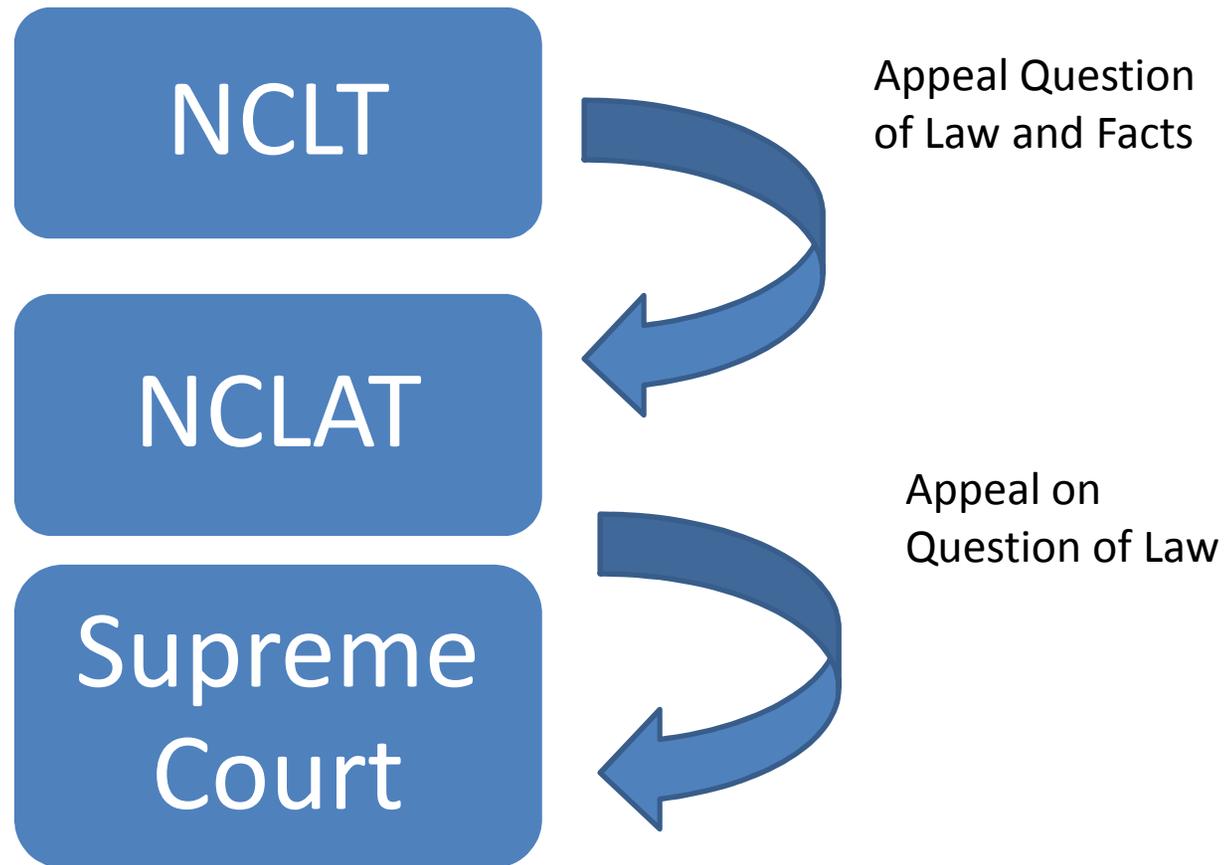


SINGLE WINDOW CLEARANCE FOR CORPORATE REQUIREMENTS

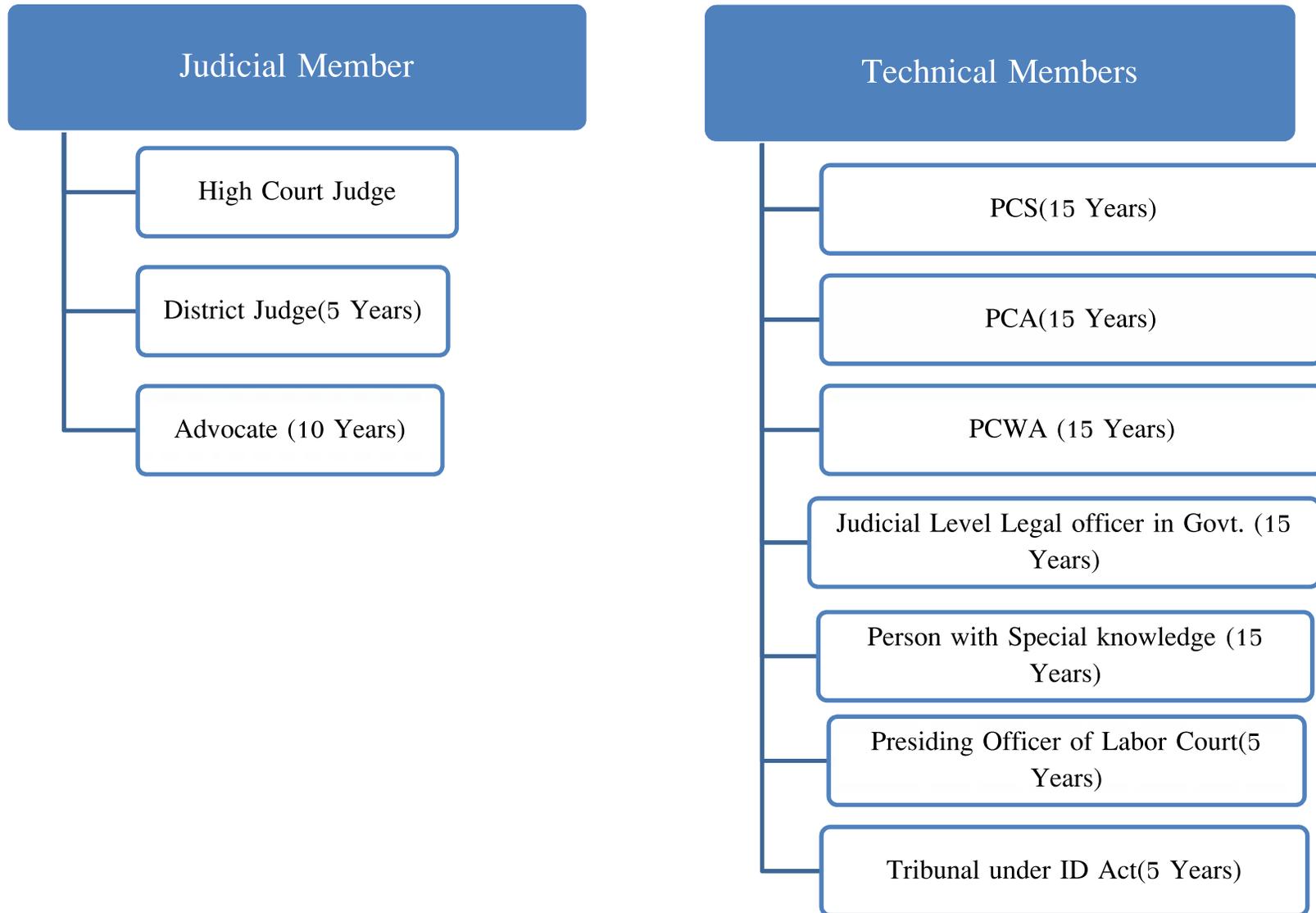
INTRODUCTION OF NCLT



QUASI JUDICIAL STRUCTURE



MEMBERS OF TRIBUNAL



The Companies Act 2013

NCLT (National Company Law Tribunal) : NCLT assumes jurisdiction of the High Court as sanctioning authority in relation to :

- Restructuring
- Mergers and Amalgamation
- Reduction of Capital
- Compromise and Arrangement with Crs and Members
- Extension of Financial Year
- CDR
- Oppression and Mismanagement
- Class Action Suit
- Removal of Statutory Auditors

The Companies Act 2013

NCLT

Sick Industrial concern :

Criteria for sickness : Inability to pay 50% of the outstanding secured debt” within 30 days of service of notice by secured lenders.

Application to NCLT : By any secured creditor or a company may suo moto file an application with the NCLT for being declared a sick organization.

The Companies Act 2013

Revival and rehabilitation of sick companies

- Sick Industrial Companies Act, 1985 (SICA) is limited to industrial companies, while the New Cos Act covers the revival and rehabilitation of all companies, irrespective of their sectors.
- The criterion for erosion of 50% of a company's net worth for declaring it sick and approaching BIFR has been dispensed with, in the New Cos Act instead the revised criterion is **“inability to pay 50% of the outstanding secured debt”** within 30 days of service of notice by secured lenders.

The Companies Act 2013

Loan to Directors or any other Person in whom the Directors are interested (Section 185 and 186)

- Exemption : Loan to MD as part of service for all employees or scheme approved by members by a special resolution
- Loan or guarantee given by holding company to its WOS (not subsidiary) for its principal business activities only
- Providing of guarantee or security by a company in respect of loan given by Bank to its subsidiary for its principal business activities only
- **Giving of loan to LLP is not covered**

The Companies Act 2013

Loan to Directors or any other Person in whom the Directors are interested (Section 185 and 186)

- Any loan or investment given should not be more than 60% of paid up share capital and free reserves (including share premium) or 100% of free reserves including share premium
- Exceeding this limit requires **prior approval** of shareholders by way of special resolution
- The loans/guarantee/security provided by private companies or holding company to/on behalf of its **WOS** are also governed under this and this create hardships for many subsidiary companies.

THE COMPANIES ACT, 2013

AMENDMENT ACT, 2015 dt 29th May 2015

- Requirement of minimum paid up capital deleted
- No requirement of common seal
- Penalty for contravention in respect of deposit accepted from public
- Loan, guarantee or security given to WOS exempted
- Sec. 188 Requirement of special resolution changed as **ordinary resolution for related parties**

THE COMPANIES ACT, 2013

EXEMPTIONS TO PRIVATE COMPANIES (05.06.15)

- Transaction between **Holding and Subsidiary** is not a related party for the purpose of Sec. 188
- Shares with **DVR** can be issued if Moa and AoA Provides for it
- **Rights issue Offer Period** and dispatch period can be lesser days if 90% members give consent
- Ordinary Resolution for **ESOP's**
- Company can **purchase its own share** or give loan to purchase of its own shares if conditions satisfied

THE COMPANIES ACT, 2013

EXEMPTIONS TO PRIVATE COMPANIES

- Acceptance of **Deposits from members** not exceeding 100 % of paid up capital and free reserves
- No requirement of filing certain resolutions of Board with RoC in **Form MGT-14**
- **Section 160** No requirement of deposit of Rs. 1 Lac for candidature of any Director
- **Section 180** The Board has right for decision on Investment, borrowings and sale of undertaking
- **Section 184** Interested Director can vote in BM after disclosure

THE COMPANIES ACT, 2013

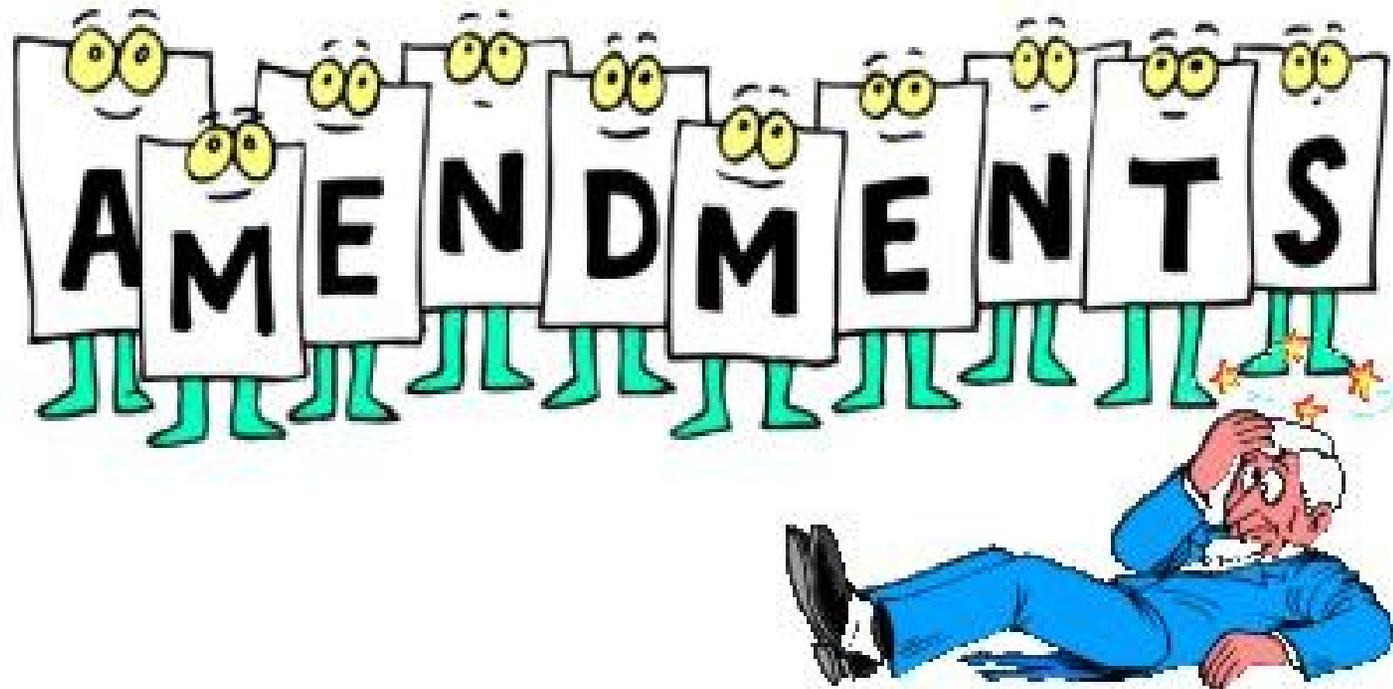
EXEMPTIONS TO PRIVATE COMPANIES

- Pvt Ltd company can **give loan to its Directors**
 - (i) No body corporate is its shareholder
 - (ii) Company has no borrowing from Bank and FI more than 2 times of its Paid up share cap or 50 Cr , whichever is lower and
 - (iii) company is a defaulter
- **Section 188** Interested Shareholder can vote for his resolution
- **Section 196** MD/WTD can be appointed by the Board without approval of members and no requirement of SCH V compliance

THE COMPANIES ACT, 2013

COMPANIES AMMENDMENT BILL,

2016 (The Bill proposed now)



THE COMPANIES ACT, 2013 HIGHLIGHTS

- Nearly **100 amendments** for the ease of doing business.
- Most of the **amendments proposed** in the Bill are to implement the **recommendations of the Company Law Committee (CLC)**
- The Bill is expected to address the difficulties in **implementation** owing to stringency of compliance requirements and **rectify omissions and inconsistencies in the Act.**

COMPANIES AMMENDMENT **BILL, 2016 (The Bill proposed now)**

➤ **Definitions to be revised to remove the ambiguities**

Associate Company, Debentures,
Financial year, Holding Company,
KMP , Net worth, Related Party,
Small Company, Subsidiary Company

COMPANIES AMMENDMENT BILL, 2016 (The Bill proposed now)

- ID definition, the words “pecuniary interest” is proposed to be substituted by “**pecuniary relationship**”, other than remuneration as such director or having transaction **not exceeding 10%** of his total income or such amount as may be prescribed.

COMPANIES AMMENDMENT **BILL, 2016 (The Bill proposed now)**

- Simplify formation of the Company
- No requirement to file MGT 10
- Simplify PVT Placement process
- Removal of restrictions on layers of subsidiaries and investment companies

COMPANIES AMMENDMENT

BILL, 2016 (The Bill proposed now)

- **Auditor** : Annual ratification not required
- **ID** pre-deposit money in case of appointment of independent directors to be waived off
- **Loan to Group Co** : Granting of loans to entities in which directors are interested after passing special resolution and adhering to disclosure requirement

The Companies Act 2013

Documents and Codes require as per CA 2013

- Framing Vigil Mechanism Policy----u/s 177
- CSR Policy----- u/s 135
- Risk Management policy u/s 177
- Remuneration Policy u/s 178
- Policy on Related Party Transaction u/s 188
- Code and Conduct for Independent Director – u/s 149 and 166 read with Schedule VII
- Policy on performance evaluation of Independent Director u/s 149
- Appointment Letter of Independent Director u/s 149

The Companies Act 2013

Documents and Codes require as per CA 2013

- Policy on selection criteria of Independent Director as required to be formulated by Nomination and Remuneration Committee u/s 149
- Contract and Appointment of MD/WTD/KMP
- Internal control in terms of Director's Responsibility Statement- policies and procedure u/s 134
- Free Work Place Policy under The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

The Companies Act 2013

Conclusion

- A step in the right direction for India Inc. and investors,
- Regulator to take care in notify the Rules and issuing clarifications.
- Align with other laws such as Income Tax and Exchange Control

