



Key Changes – Private Limited Companies Companies Act, 2013

Contents

- ❖ Changes drawing Immediate Attention
- ❖ Directors
- ❖ Loans to Directors and related parties
- ❖ Inter-corporate loans and advances
- ❖ Financial Statements
- ❖ Corporate Social Responsibility
- ❖ Internal Audit
- ❖ Other Important Changes

Immediate Effect

- Print new Business letters, bills, letter heads etc with Corporate Identification Number (CIN).
- Identify related parties.
- Work out CSR policy & spending, if applicable.
- To have at least 1 Resident Director on the Board.
- Appointment of Whole time KMP, if applicable.
- Cash Flow Statement compulsory part of financial statement except in case of OPCs (One Person Company), Dormant & Small Companies.



Details to be printed on Letter head

Going forward, from 1st April, 2014, Companies are required to print the following in all its business letters, bills, letter-heads and in all its notices and other official publications:-

Requirements:

- Name , Address of its registered office,
- **Corporate Identity Number** (Please check this might not be in your business stationery),
- Telephone number, Fax number, if any,
- Email Address, Website addresses, if any,
- Former names if any, so changed in the last two years

Penalty:



- The Company and every officer who is in default shall be liable to a penalty of INR 1,000/- for every day during which the default continues but not exceeding INR 1,00,000/-



**Directors, Loans to Directors and related parties
and Inter-corporate loans**

Directors

Resident Director [Section 149 (3)]

- Every company shall have at least one director who has stayed in India for a total period of not less than 182 days in the previous calendar year.

Appointment of KMP (Key Managerial Person) [Section 203]

- All companies, including private companies, having paid up capital of INR 10 Crores or more are required to have the following whole time KMP:
 - MD/CEO/Manager/WTD;
 - Company Secretary; and
 - CFO

Directorship (Section 165)

- A person can act as director in a maximum of 20 companies at any given point of time out of which not more than 10 should be public companies.



Loan to Directors & Related Parties (Section 185)

No company (Public and Private) shall advance any loan or give any guarantee or provide any security to any of its directors or to any other person in whom the director is interested.

- **Exception:**

- a) The giving of any loan to a managing or whole-time director as a part of the conditions of service extended by the company to all its employees or pursuant to any scheme approved by the members by a special resolution; or
- b) A company which in the ordinary course of its business provides loans or gives guarantees or securities for the due repayment of any loan

Penalty



- **Company:** INR 5,00,000/- to INR 25,00,000/-
- **Director or the other person under this section:** Imprisonment up to 6 months or fine amounting to INR 5,00,000/- to INR 25,00,000/- or both.



Inter corporate loan/Investment (Section 186):

❑ A company (Public and Private) shall make investment through not more than two layers of investment companies.

✓ **Exception:**

- A company can acquire any other company incorporated in a country outside India if such other company has investment subsidiaries beyond two layers as per the laws of such country.
- A subsidiary company can have Investment Subsidiary for the purposes of meeting the requirements under any law.
- Holding company can make loan, give guarantee or provide security to its wholly owned subsidiary in respect of any loan made to its wholly owned subsidiary[Rule 10(1)].
- Holding company can give guarantee or provide security to its wholly owned subsidiary in respect of loans made by a bank or financial institution to its wholly owned subsidiary[Rule 10(2)].



Inter corporate loan/Investment (Continued...)

- ❑ No company (Public and Private) shall directly or indirectly:
 - give any loan to any person or other body corporate;
 - give any guarantee or provide security in connection with a loan to any other body corporate or person; and
 - acquire by way of subscription, purchase or otherwise, the securities of any other body corporate, exceeding sixty per cent (60%) of its paid-up share capital, free reserves and securities premium account **or** one hundred per cent of its free reserves and securities premium account, **whichever is more**.

- ❑ If loan given or guarantee or security provided exceeds the limits - Prior approval is necessary by means of a special resolution passed at a general meeting.

- ❑ **Rate of Interest for Loan:**
 - Interest rate should not be Less than prevailing yield of one year, three year, five year or ten year Government Security closest to the tenor of the loan.



Inter corporate loan/Investment (Continued...)

Penalty:



- **For Company** : INR 25,000/- to INR 5,00,000/-
- **For Every officer:**
 - Imprisonment which can be extended to two years **and**
 - Fine amounting to INR 25,000/- to INR 1,00,000/-

Financial Statements

❑ Financial Statements [Section 2(40)]

- New definition of Financial Statements include Cash Flow Statement and Statement of change in Equity along with Balance sheet and Profit and loss account .

❑ Consolidated Financial Statements [Section 149 (3)]

- The 2013 Act now mandates CFS for any company having a subsidiary, associate or a joint venture.

❑ Financial Year [Section 2(41)]

- The 2013 Act requires companies/body corporate to adopt 1st April to 31st March as Financial year.
- Existing company shall align its financial year as above with in 2 years.



Financial Statements (Continued...)

- ❑ **Authentication of Financial Statements [Section 134(1)]:**
 - Chairperson, if he is authorized by board OR 2 Directors out of which one shall be Managing Director
AND
 - The CEO , if he is a Director of the company, The CFO and the CS of the company, wherever they are appointed.

- ❑ **Signatories to Director' Report [Section 134(6)]:**
 - Chairperson, if he is authorized by board or 2 Directors out of which one shall be Managing Director or by the Director where there is one Director

- ❑ **Signatories to Annual Return:**
 - Annual Return to be certified by Practising Company Secretary [PCS] in case of Companies having paid up share capital of Rs. 10 Crores or more **OR** Turnover of Rs. 50 Crores or more.

 - In case of other companies, Annual Return to be signed by Director and company secretary, or where there is no company secretary, by a PCS except in case of OPC & Small Company.



Corporate Social Responsibility and Internal Audit

Corporate Social Responsibility (CSR)

CSR Applicability

- CSR provisions will be applicable with effect from 1st April, 2014 i.e. for the financial year beginning on or after 1st April, 2014.
- All companies including a holding or subsidiary company in India and branch or project offices of foreign companies in India are required to comply with the CSR provisions if they meet any one of the following criteria:
 - net worth of INR 500 Crores or more; or
 - turnover of INR 1000 Crores or more; or
 - net profit of INR INR 5 Crores or more

CSR Spend : 2% of its average net profits made during the 3 immediately preceding Financial Years.

CSR Reporting

- To include an annual report on CSR containing specified particulars in its Board's Report.
- In case of a foreign company, the balance sheet filed with the Registrar of Companies must contain specified particulars of a report on CSR.



Internal Audit

Applicability:

- ✓ Every listed company.

- ✓ Every unlisted public company having-
 - paid up share capital of INR 50 crores rupees or more during the preceding FY; or
 - turnover of INR 200 crores rupees or more during the preceding FY; or
 - outstanding loans or borrowings from banks or public financial institutions exceeding INR 100 crores rupees or more at any point of time during the preceding FY; or
 - outstanding deposits of INR 25 crores rupees or more at any point of time during the preceding financial year.

- ✓ Every private company having-
 - turnover of INR 200 crores rupees or more during the preceding FY; or
 - outstanding loans or borrowings from banks or public financial institutions exceeding INR 100 crore rupees or more at any point of time during the preceding FY.



Other Important Changes

Other Important Changes

❑ Restriction on Power of Board [Section 180]

- ✓ Consent of the Company by Special resolution is required;
- to sell, lease or otherwise dispose of the whole or substantially the whole of the undertaking;
- to invest otherwise in trust securities the amount of compensation received by it as a result of any merger or amalgamation;
- **to borrow money exceeding paid up capital and free reserve.**

❑ Commencement of Business [Section 11]

- Company cannot commence its business or make any borrowings unless it files with ROC a statement that the subscription money and minimum paid up capital has been brought in.
- If company fails to file such statement within 180 days, then Registrar of Companies may initiate actions for removal of name of the company.



Definitions:

❑ Small Company:

- Small company cannot be a public company, including a private company which is a subsidiary of a public company.
- Its **paid up capital** shall not exceed **Rs 50 lakh** or such higher amounts as may be prescribed which shall not be **more than Rs 5 crore**.
- Its **turnover** does not exceed **two crore** or such higher amount as may be prescribed which shall not be more than **twenty crore rupees**.
- A holding company, a subsidiary company, a company registered with charitable objects and a company, governed by any Special Act **not to be considered as small company**.

❑ Related Party includes;

- Holding Company/Subsidiary Company
- Sister Subsidiary
- Associate Company
- Directors, Key Management Personnel (including relatives)
- Firms / companies where directors/relatives are interested and
- Senior management i.e. members of core management team one level below executive directors including functional heads.



Thank You

Khandhar Mehta and Shah
3rd Floor, Devpath Complex
Behind Lal Bungalow
Off C G Road
Ahmedabad – 380 009
Tel: 079-2646 1526
Email: kms@kmsindia.in