

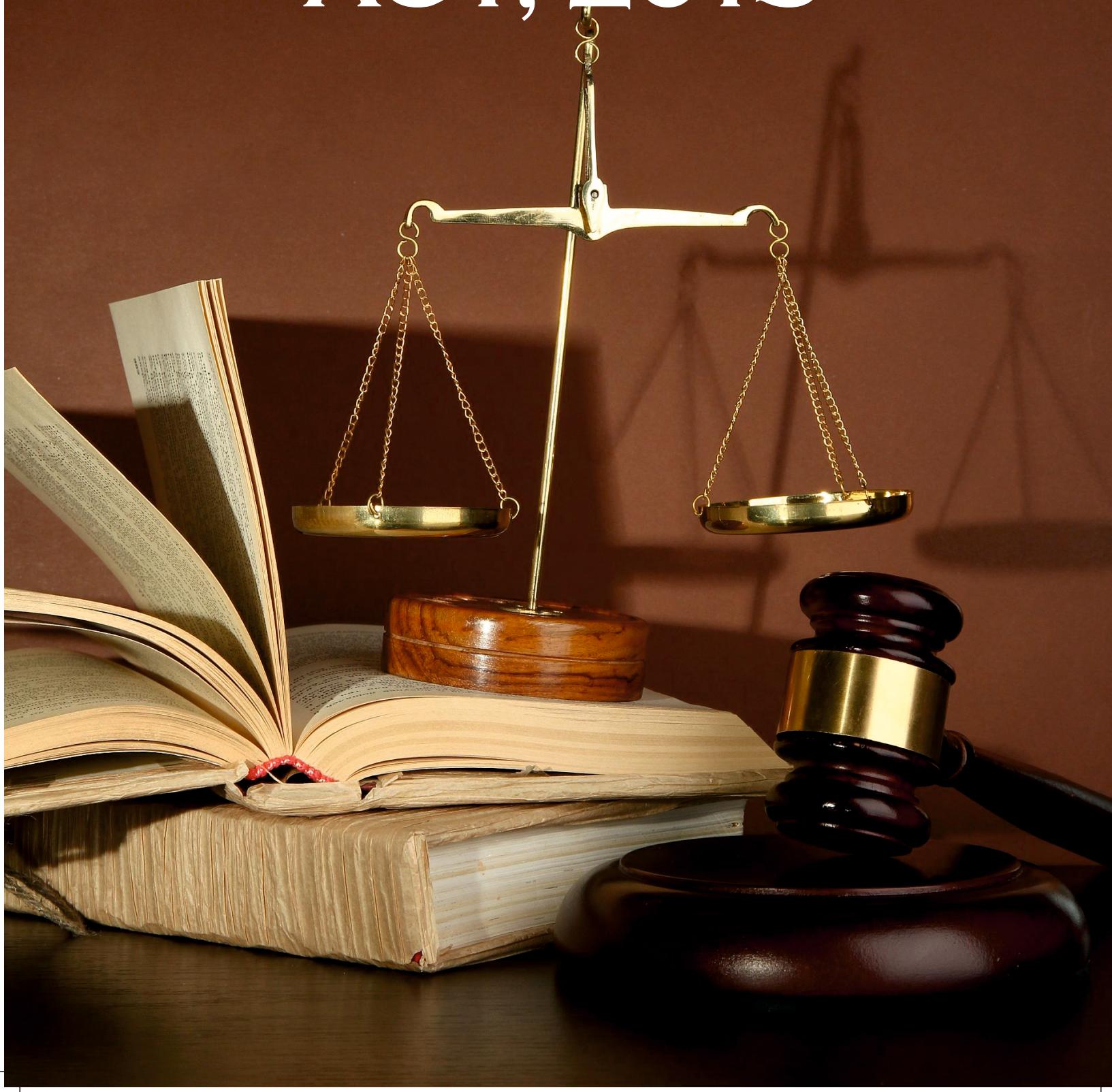


Indian Institute of  
Corporate Affairs

*Partners in Knowledge. Governance. Transformation.*



*An Introduction to*  
**COMPANIES  
ACT, 2013**



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## FOREWORD BY DG & CEO

The Companies Act, 2013, is a much awaited and desired step to bring the Indian corporate legal framework in line with global standards. It incorporates several far reaching changes in terms of new and enlarged definitions, new classes of companies, mandatory CSR, streamlined M & A procedure and enhanced corporate governance norms.

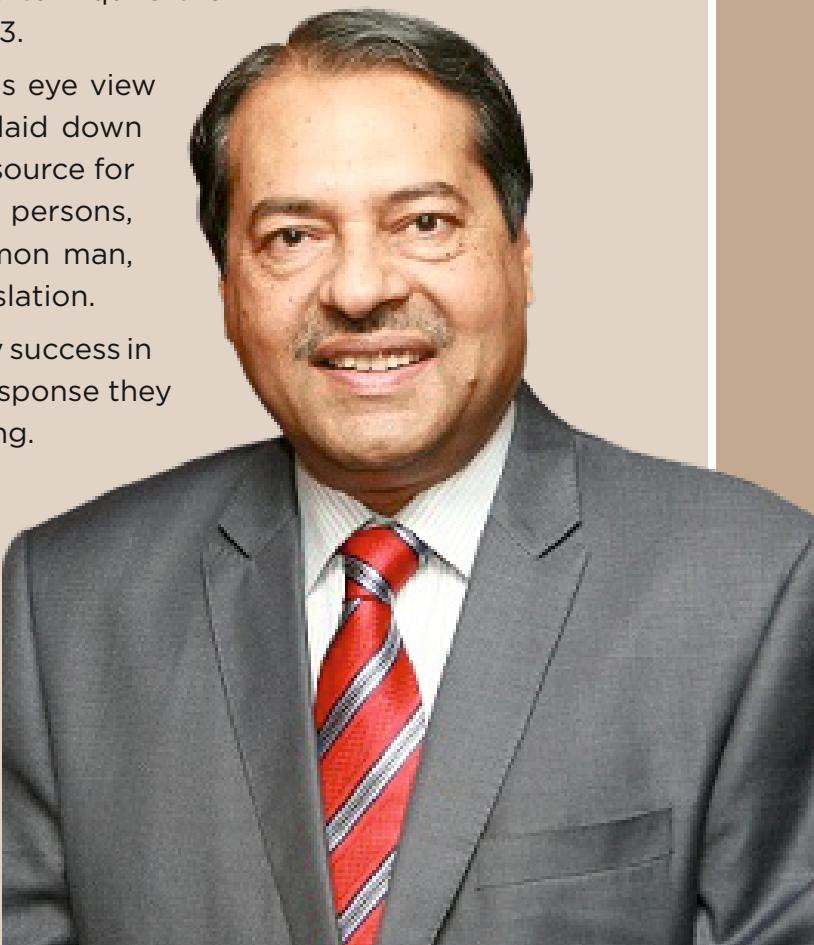
At IICA it has been our endeavour to facilitate the dissemination and create opportunities for the discussion and assimilation of the implications and the changing role of stakeholders in this context. The School of Corporate Law has been instrumental in capacity building of stakeholders as well as policy research, through the programmes that it conducts with partners in order to strengthen both knowledge and skills. In continuation of this effort, it has engaged in the preparation of a primer that is aimed at clarifying for those who care to inquire the contours of the New Companies' Act 2013.

This primer provides a systematic bird's eye view of the key provisions and procedures laid down under the new Act. It will be a useful resource for professionals, academicians, business persons, research students as well as the common man, interested in learning about the new legislation.

I wish the School of Corporate Law every success in this venture and am positive that the response they receive to it will be immense and satisfying.

Dr. Bhaskar Chatterjee,  
DG & CEO, IICA

Indian Institute of Corporate Affairs,  
Plot Nos. 6, 7 & 8, Sector - 5,  
Industrial Model Township,  
Manesar, Haryana - 122050



## BENEFITS OF FORMING A COMPANY:

- Legal personality
- Body corporate by the name of the Company with perpetual succession
- Limited liability
- Power to acquire, hold or dispose property
- Power to enter into contracts and sue as well as be sued

## HIGHLIGHTS

**One Person Company (OPC):** New corporate entity which may be formed with a single person as member

**Independent Directors:** New directors mandated for public companies with detailed provisions as to qualifications, role and liabilities

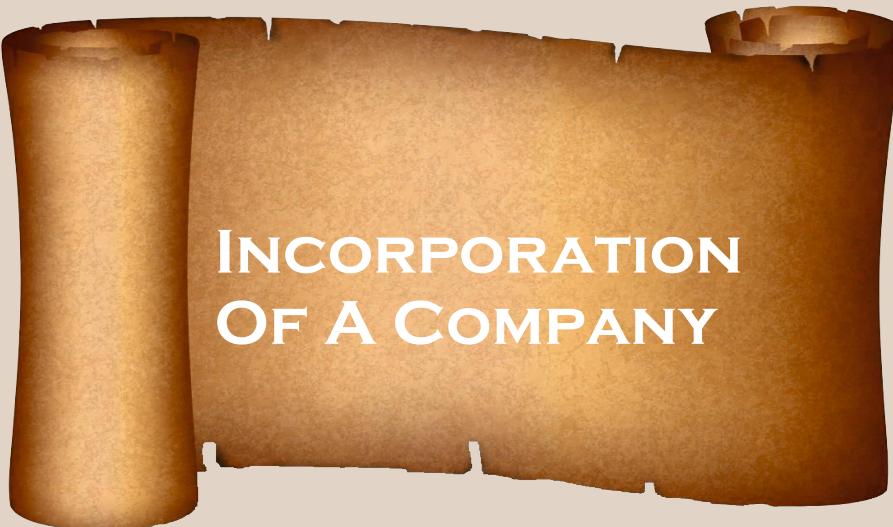
**Corporate Fraud:** Fraud by companies punishable with imposition of fine on company and imprisonment of its officers, directors or employees and/or with fine

**National Company Law Tribunal (NCLT):** Tribunal to undertake some of the functions of the High Court under the Companies Act of 1956 and to have jurisdiction in case of mergers, amalgamations, winding up, etc

**Corporate Social Responsibility (CSR):** Companies crossing a specified financial threshold must undertake CSR activities such as poverty eradication, promotion of education, gender equality, sustainability, etc

**Shareholder Activism:** The Companies Act, 2013, encourages shareholder activism by incorporating provisions such as class action suits and approval of related party transactions by all shareholders, who are not related parties to the transaction.





# INCORPORATION OF A COMPANY

## Private Company

- ◆ Minimum 2 persons
- ◆ Maximum 200 persons
- ◆ Minimum paid-up share capital of Rs. 1 Lakh
- ◆ Prohibition on subscription of shares by public

## Public Company

- ◆ Minimum 7 persons
- ◆ No restriction on maximum number of persons
- ◆ Not a private company
- ◆ Minimum paid-up share capital of Rs. 5 Lakh

## One Person Company

- ◆ Only 1 natural person
- ◆ Resident of India for atleast 182 days in a year
- ◆ Private company
- ◆ Must have a nominee i.e. person who, in the event of the member's death or incapacity becomes the member
- ◆ Must convert in to a private or public company if it's capital or turnover exceeds prescribed limit

## Small Company

- ◆ Not a public company
- ◆ Maximum paid-up share capital of Rs. 50 Lakh or Maximum turnover of Rs 2 Crore

## Producer Company

- ◆ Carried forward from Companies Act, 1956
- ◆ Producer is a person engaged in any activity related to primary produce
- ◆ Such activities include production, harvesting, procurement, grading, pooling, processing, handling, marketing, selling, export etc

## Foreign Company

- ◆ Company incorporated outside India
- ◆ Has a place of business in India by itself or through agent, physically or through electronic mode
- ◆ Conducts a business activity in India

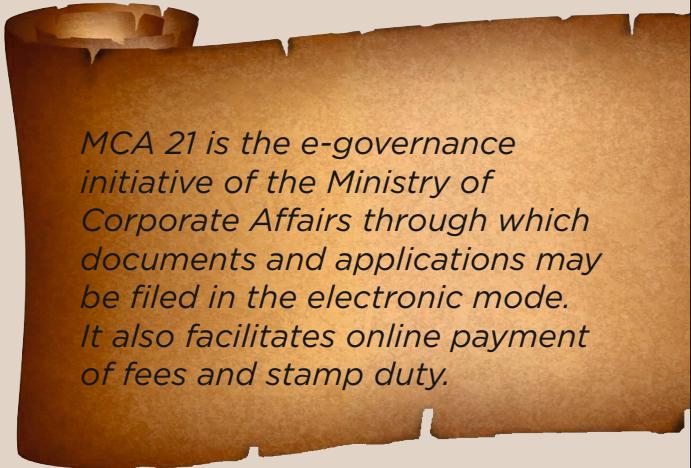
## Government Company

- ◆ Company in which at least 51% of paid-up share capital is held by Central or State Government
- ◆ Includes a subsidiary of a Government Company

*The Companies Act, 2013, prohibits the association or partnership of more than the prescribed number of persons for carrying on business*

## PROCEDURE OF INCORPORATION

- ◆ **Step 1:** DIN and DSC - Obtain Director Identification Number (DIN) and Digital Signature Certificate (DSC) for proposed directors of the company
- ◆ **Step 2:** Reservation of name of the company with RoC - name must not be undesirable, identical with the name of an existing company or give the impression of being connected to the Government
- ◆ **Step 3:** File application for incorporation of company, along with requisite documents and prescribed fee, with RoC within whose jurisdiction the registered office is proposed to be situated



*MCA 21 is the e-governance initiative of the Ministry of Corporate Affairs through which documents and applications may be filed in the electronic mode. It also facilitates online payment of fees and stamp duty.*

### Memorandum of Association (MoA)

- ◆ Basic document of the company
- ◆ Should be in Tables A to E of Schedule I
- ◆ Objects of company
- ◆ Members' liability
- ◆ Share capital
- ◆ Particulars, with proof, of subscribers and first directors

### Articles of Association (AoA)

- ◆ Regulations for management of the company
- ◆ Should be in Tables F to J of Schedule I
- ◆ Company may have some entrenchment provisions whereby it can restrict certain procedures and conditions

- ◆ **Step 4:** Declaration of compliance with the Companies Act 2013 and its relevant rules, filed by an advocate, a chartered accountant, cost accountant or company secretary engaged in formation of the company and by a proposed director, manager or secretary of the company
- ◆ **Step 5:** Company is registered by RoC in the Register of Companies.
- ◆ **Step 6:** Certificate of Incorporation and a Corporate Identity Number, a distinct identity for the company, is issued by RoC
- ◆ **Step 7:** A company having share capital may commence business or exercise borrowing powers after its files with the RoC a director's declaration regarding subscription of the prescribed share capital and verification of the company's registered office within 30 days of incorporation



# MANAGEMENT AND ADMINISTRATION

## KEY MANAGERIAL PERSONNEL (KMP)

<b>CEO/ MANAGING DIRECTOR/ MANAGER</b>	<b>COMPANY SECRETARY</b>	<b>WHOLE TIME DIRECTOR</b>	<b>CHIEF FINANCIAL OFFICER</b>	<b>As MAY BE PRESCRIBED</b>
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## APPOINTMENT

<b>DIRECTORS</b>	<b>KMP</b>
<ul style="list-style-type: none"><li>♦ In case of no provision for appointment of first directors in the AoA, subscribers to the MoA are deemed as first directors till directors are duly appointed</li><li>♦ Directors are appointed in general meeting of company</li><li>♦ Must give consent to act as director intimation of such consent to the RoC within 30 days of appointment</li><li>♦ Must obtain DIN before appointment</li><li>♦ Declaration of non-disqualification under the Companies Act, 2013</li><li>♦ Retirement by rotation of at least one - third of the directors at every annual general meeting</li></ul>	<ul style="list-style-type: none"><li>♦ Either a managing director or a manager may be appointed at a time</li><li>♦ Mandatory appointment of KMP in listed companies and public companies with a minimum paid up share capital of Rs. 10 crore to have whole-time KMP</li><li>♦ Whole time KMP to be appointed by Board of Directors</li><li>♦ Except for a subsidiary company, whole time KMP are barred from holding office in another company</li></ul>

## BOARD OF DIRECTORS

### Composition

- Every company must have a Board of Directors consisting of individuals

	Minimum no. of Directors	Maximum no. of Directors
Public Company	3	15
Private Company	2	15
OPC	1	15

- On passing of a special resolution by the company, more than 15 directors may be appointed
- At least **1 woman director** on the Board of every listed company and every other public company having:
  - paid up share capital of Rs.100 crore or more or
  - turnover of Rs. 300 crore or more
- At least **1 resident director** i.e. director who stays in India for a total of at least 182 days in the previous calendar year, in every company
- At least one-third of the directors of listed public companies must be **independent directors**
- At least 2 independent directors in public companies having:
  - paid up share capital of Rs. 10 Crores or more or
  - turn over of Rs.100 crore or more or
  - in aggregate, outstanding loans, debentures and deposits, exceeding Rs. 50 crore



### TYPES OF DIRECTORS

- Whole time director
- Additional director
- Alternate director for a director who is out of India for at least 3 months
- Person nominated by any financial institution, by the Government or any other person to represent its interests, as a nominee director
- Independent director

## INDEPENDENT DIRECTOR

- ◆ A director, other than managing director, whole-time director or nominee director, and who, in the opinion of the Board is a person of integrity possessing relevant expertise and experience
- ◆ He or his relatives must not be related to or have / had a pecuniary relationship of a prescribed limit, in the immediately preceding 2 financial years, with the directors or promoters of the company or its holding, subsidiary or associate company
- ◆ He or his relatives must not be / have been, in the 3 immediately preceding financial years, a KMP or employee in the company or its holding, subsidiary or associate company or connected with them in a professional capacity or transacted with them above a prescribed pecuniary limit
- ◆ He and his relatives must not hold a combined 2 % or more of the total voting power of the company
- ◆ Selected from a data bank of persons, created and maintained by a Government authorised agency
- ◆ Must declare his independence, as per given criteria, in his first Board Meeting, first Board Meeting of each year and in case of a change in circumstances likely to affect his status as independent director st abide by the Code under Schedule IV containing guidelines for professional conduct, roles, duties etc
- ◆ Maximum tenure of 2 terms of up to 5 years each
- ◆ Provision of retirement by rotation not applicable to independent directors

### MEETINGS

- ◆ First meeting must take place within 30 days of incorporation of the company after which at least 4 meetings must take place in a year
- ◆ No 2 meetings must be separated by a gap of more than 120 days
- ◆ Quorum for meeting is one-third of the total number of directors or 2 directors, whichever is higher

### DUTIES

- ◆ To act in accordance with AoA
- ◆ To act in good faith to promote the objects of the company, the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community and for the protection of environment
- ◆ To exercise duties with due and reasonable care, skill and diligence and with independent judgment
- ◆ To avoid conflict of interest with the company
- ◆ Not to achieve any undue gain or advantage, to himself or to his relatives, partners, or associates
- ◆ Must not assign his office

### POWERS

- ◆ All such powers as the company is authorised to exercise
- ◆ Power to make calls for money unpaid on shares, authorise buy-back of securities, issue securities in or outside India, borrow monies, invest funds, grant loans , approve financial statement and the Board's report, diversify the business of the company, approve amalgamation, merger or reconstruction and take over a company or acquire a controlling or substantial stake in another company

## COMMITTEES

	<b>Audit Committee</b>	<b>Nomination and Remuneration Committee</b>	<b>Stakeholder's Relationship Committee</b>	<b>CSR Committee</b>
<b>Applicability</b>	<p>Listed companies and all public companies with:</p> <p>Minimum paid up capital of Rs. 10 crore</p> <p>Turnover of Rs. 100 crore in aggregate, outstanding loans or borrowings or debentures or deposits, exceeding Rs. 50 crore</p>	<p>Listed companies and all public companies with:</p> <p>Minimum paid up capital of Rs. 10 crore</p> <p>Turnover of Rs. 100 crore in aggregate, outstanding loans or borrowings or debentures or deposits, exceeding Rs. 50 crore</p>	<p>Companies having more than 1000 shareholders, debenture holders</p>	<p>Companies with:</p> <p>Net worth of Rs. 500 Crore or more, or</p> <p>Turnover of Rs. 1000 Crore or more, or</p> <p>Net profit of Rs. 5 Crore or more during the 3 immediately preceding financial years</p>
<b>Composition</b>	<p>At least 3 directors with independent directors forming a majority</p>	<p>At least 3 directors out of which at least half are independent directors</p>	<p>Non-executive director as chairperson and other members decided by the Board</p>	<p>3 or more directors with at least one independent director</p>
<b>Functions</b>	<p>Recommend, appointment and terms of appointment of auditors</p> <p>Review and monitor auditors independence and performance, examine financial statements and auditors' report</p> <p>Scrutiny of inter-corporate loans and investments, monitoring end use of funds raised through public offers and investigation into the same if necessary.</p> <p>Approve related party transactions</p>	<p>Identify and recommend persons qualified to act as directors, prescribe directors' eligibility criteria, recommend remuneration policy for directors, KMP and other senior management personnel</p>	<p>Consider and resolve grievances of security holders of the company</p>	<p>Formulate, recommend and monitor CSR Policy and expenditure</p>



# CONFLICT OF INTEREST

## Disclosure of Interest by Directors

- Every director must disclose interest or concern, including shareholding, in any company/ companies, bodies corporate, firms or other associations of individuals
- Such disclosure must be made at his first Board meeting as a director, at the first Board meeting in every financial year or if there is a change in the disclosures already made, in the first Board meeting after such change
- Every director must disclose the nature of his concern or interest at the Board meeting where a contract or arrangement is being discussed in which he is directly or indirectly concerned or interested, such contract or arrangement being:
  - with a body corporate in which he or he along with another director, holds more than 2 % shareholding or is its promoter, manager or Chief Executive Officer
  - with a firm or other entity in which he is the partner, owner or member

## Cap on Maximum Number of Directorships

- Including alternate directorship, maximum of 20 companies at a time
- Maximum number of public company (including its holding and subsidiary company) directorships permitted is 10

## Restrictions on Board's Powers

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

- Sell, lease or otherwise dispose of the whole or substantially the whole of the undertaking of the company
- Invest otherwise in trust securities the amount of compensation received by it as a result of any merger or amalgamation
- 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 and free reserves, apart from

temporary loans obtained from the company's bankers in the ordinary course of business

## Loans to Directors

- Prohibition on advancement of loan, directly or indirectly, by company to any of its directors or any person in whom the director is interested, or giving of any guarantee or security in connection with such a loan
- Such loan excludes a loan to managing or whole time director as part of his service conditions or pursuant to any scheme approved by members' special resolution

## Related Party Transactions

- Prohibition on company to enter into a transaction with a related party except with consent of the Board of Directors or the consent of company
- Such contract or arrangement may relate to sale, purchase or supply of any goods or materials, selling or otherwise disposing of, or buying, property, leasing of property, 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
- Related party means (i) a director or his relative (ii) a KMP or his relative (iii) a firm, in which a director, manager or his relative is a partner (iv) a private company in which a director or manager is a member or director (v) a public company in which a director or manager is a director or holds along with his relatives, more than 2 % of its paid-up share capital (vi) any body corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager (vii) any person on whose advice, directions or instructions a director or manager is accustomed to act

## LIABILITIES

Company though a legal entity cannot act by itself, it can act only through its Directors. They are expected to exercise their power on behalf of the company with utmost care, skill and diligence.

The liability of an independent director and a non-executive director not being promoter or KMP, is only in respect of acts of omission or commission by a company which occurred with his knowledge, attributable through Board processes and with his consent or connivance or where he had not acted diligently.

### Civil Liability

- Liability to pay compensation in case subscription of securities based on any misleading statement in prospectus results in a loss to the subscriber
- Penalties prescribed for default under several sections of the Companies Act, 2013

Public companies who are legally obliged to list their securities are deemed to accept the continuing obligations, by virtue of their application, prospectus and the subsequent maintenance of listing on a recognized stock exchange. Disclosure is the rule, there is no exception. Misleading public is a serious crime, which may attract civil and criminal liability. Listing of securities depends not upon one's volition, but on statutory mandate.

### Criminal Liability

- Liability for punishment for fraud in case of issue, circulation or distribution of a prospectus which includes an untrue or misleading statement, in form or in context or where any inclusion or omission is likely to mislead
- Liability for punishment for fraud, imprisonment and / or fine prescribed for default under several sections of the Companies Act, 2013



... the obligations of the Directors in listed companies are particularly onerous especially when the Board of Directors makes itself accountable for the performance of the company to share holders and also for the production of its accounts and financial statements especially when the company is a listed company."

*Justice K. S. Radhakrishnan in N. Narayanan vs. Adjudicating Officer, SEBI*



## RAISING OF CAPITAL

### KINDS OF CAPITAL

SHARE CAPITAL		DEBT CAPITAL	
<p><b>EQUITY</b> It may be:</p> <ul style="list-style-type: none"><li>◆ With voting rights <i>or</i> ◆ With differential rights as to dividend, voting or otherwise</li></ul>	<p><b>PREFERENCE</b> Part of the issued share capital which carries a preferential right to:</p> <ul style="list-style-type: none"><li>◆ Payment of dividend and</li><li>◆ Repayment in case of winding up or repayment of capital</li></ul>	<p><b>DEBENTURES</b></p> <ul style="list-style-type: none"><li>◆ Do not carry voting rights <i>and</i> ◆ May be converted into shares at time of redemption</li></ul>	<p><b>DEPOSITS</b></p> <ul style="list-style-type: none"><li>◆ Companies can accept deposits only from their members</li><li>◆ Only Banking companies, NBFCs and specified public companies may accept public deposits</li></ul>

### VOTING RIGHTS

- ◆ Equity shareholders have the right to vote on every resolution placed before the company and such right is proportional to the share in the paid-up equity share capital
- ◆ Preference shareholders have the right to vote only on resolutions directly affecting their rights attached to the preference shares held by them and on resolutions for winding up of the company or repayment or reduction of the company's equity or preference share capital
- ◆ In case dividend on preference share capital has not been paid for 2 or more years, preference shareholders also have the right to vote on all resolutions

	<b>PUBLIC COMPANY</b>	<b>PRIVATE COMPANY</b>
Public Offer	✓	✗
Private Placement	✓	✓
Rights Issue or Bonus Issue	✓	✓

## PUBLIC OFFER

- Issue of securities through a public offer includes an initial public offer or further public offer of securities to the public by the company or the offer for sale of securities to the public by an existing shareholder through issue of **prospectus**
- Company must comply with the Companies Act 2013, Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act 1992 and the rules and regulations made thereunder
- Securities must be allotted only if the minimum amount stated in the prospectus has been subscribed or the sums payable on application for the minimum amount have been received
- Amount payable on application on every security must be at least 5 % of the nominal amount of the security
- If the minimum amount is not subscribed and the sum payable on the application for securities is not received within 30 days of the issue of prospectus, the amount received must be returned within 15 days



## PROSPECTUS AND ITS CONTENTS

A prospectus is a document issued by the company inviting offers from the public for the subscription or purchase of its securities. It must contain the following particulars:

- names and addresses of the registered office, company secretary, chief financial officer, auditors, legal advisors, bankers, trustees, underwriters etc
- opening and closing dates of the issue
- minimum subscription and premium payable
- details of underwriting
- procedure and time schedule for allotment and issue of securities
- auditor's report
- company's capital structure
- objects and terms of issue
- objects and present business of the company, its location, schedule of project implementation
- management perception of risk factors, gestation period, the progress report, deadlines for completion of project
- details of any litigation proceedings, pending or taken by government department or statutory body against the company or promoters in preceding 5 years

Securities are defined under Section 2(h) of the Securities Contracts (Regulation) Act, 1956, as

“securities” include –

(i) shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate

(ia) derivative

(ib) units or any other instrument issued by any collective investment scheme to the investors in such schemes

(ic) security receipt as defined in clause (zg) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(id) units or any other such instrument issued to the investors under any mutual fund scheme

(ii) Government securities

(iia) such other instruments as may be declared by the Central Government to be securities and

(iii) rights or interest in securities

## PRIVATE PLACEMENT

- ◆ Offer of securities to a select group of maximum of 50 persons through issue of a private placement offer letter
- ◆ Offer to be made only to persons whose names are recorded by the company prior to the offer
- ◆ If offer, agreement or allotment is made to more than 50 persons, by a company, whether listed or unlisted, it is deemed as a public offer and is governed by all provisions applicable to a public offer
- ◆ No fresh offer or invitation may be made during pendency of a previous offer
- ◆ Securities must be allotted within 60 days of the date of receipt of application money failing which the amount must be refunded in 15 days
- ◆ Default in refunding the money results in liability to repay the amount with interest
- ◆ Complete record of offers to be submitted to the RoC within 30 days of circulation of the private placement offer letter
- ◆ Return of allotment must also be filed with ROC

## RIGHTS ISSUE AND BONUS ISSUE

- ◆ A rights issue is the issue of shares to existing shareholders of the company
- ◆ Fully paid up bonus shares may be issued out of the company's free reserves or the securities premium account or capital redemption reserve account
- ◆ May be issued by capitalizing profits or reserves only if authorised by AoA, on the recommendation of the Board in a general meeting and if there is no default in payment of interest or principal for any fixed deposits, debt securities and statutory dues of employees and the partly paid up shares (if any outstanding) on the allotment date are fully paid up
- ◆ Cannot be issued by capitalizing reserves created by revaluation of assets



## MAINTENANCE OF CAPITAL

### DIVIDENDS

- ◆ Paid on issued share capital by a company for a financial year out of its profits
- ◆ May be accumulated if not paid in previous year/s
- ◆ Payable in only in cash, through cheque or in electronic mode

### ISSUE OF SWEAT EQUITY

#### SHARES

- ◆ Issue of shares, other than sweat equity shares, at a discount is void
- ◆ Sweat equity shares are equity shares issued by a company to its directors or employees at a discount or for consideration, other than cash, for providing their know-how or of intellectual property rights or value additions, by whatever name called
- ◆ Sweat equity shares may be issued by company by passing a special resolution after one year from the date of commencement of business
- ◆ Resolution must specify the number of shares, current market price, consideration (if any) and the classes of persons or directors to whom the shares are issued
- ◆ The rights, restrictions and limitations are the same as those of equity shares

### BUYBACK OF SECURITIES

- ◆ A company does not have the power to buy its own shares unless consequent reduction of share capital is initiated
- ◆ Shares or securities cannot be bought back out of the proceeds of earlier issue of the same kinds of shares and other securities
- ◆ Company may buy back its own shares or other securities out of its free reserves, securities premium account or proceeds of the issue of securities
- ◆ Buyback may be initiated subject to the following conditions:
  - Authorisation by AoA and in a special resolution passed by company in general meeting
  - Buyback to be 25 % or less of the aggregate of paid up capital and free reserves Special resolution not required if buyback is 10 % or less of the total paid up equity capital and free reserves and authorised by the resolution of the Board
  - Ratio of aggregate of secured and unsecured debts owed by company after buyback must not be more than twice the paid up capital and its free reserves
  - Shares and securities bought back must be fully paid up
  - Compliance with SEBI (Buy back of Securities) Regulations, 1998, in dealing with listed securities
  - A gap of at least one year between the date of closure of a preceding offer of buy back
- ◆ The shares or securities can be bought back from existing shareholders or security holders or from the open

- market or by purchasing the securities issued under a scheme of Employees Stock Option (ESOP) or sweat equity
- Company to file a declaration of solvency with RoC (and in case of listed companies, with SEBI)
- Bought back shares and securities must be physically destroyed within 7 days
- Company is prohibited from issuing the same kinds of shares and securities within 6 months but it may make such an issue by way of bonus issue or discharge of subsisting obligations such as conversion of warrants, stock option schemes, sweat equity or conversion of preference shares or debentures into equity shares
- Company is prohibited from buying back its shares or securities through any subsidiary company including its own and through any investment company or group of investment companies

## **REDUCTION OF SHARE CAPITAL**

- Company may reduce its share capital with confirmation of the NCLT
- It may extinguish or reduce the liability on any share capital not paid up and may also cancel paid up share capital lost or unrepresented by available assets or pay off paid -up share capital which is in excess of its needs
- MoA must be altered accordingly
- In case of any arrears remaining by the company on the deposits accepted, it cannot reduce its share capital
- In this regard NCLT to serve notice to Central Government, RoC, SEBI (in case of listed company) and the creditors of the company and receive any objections within 60 days

- NCLT to confirm the reduction only on satisfaction that the consent of all persons concerned is obtained, accounts of the company comply with the accounting standards and certificate of auditor regarding the accurate account status confirming this is obtained
- Minutes approved by the NCLT stating amount of share capital, division of shares, amount of each share, amount to be paid on registration along with order of the NCLT must be delivered to RoC within 30 days and the latter will register it and issue a certificate

## **REMUNERATION PAYABLE TO DIRECTORS AND MANAGERS:**

- Remuneration payable is determined by the Nomination and Remuneration Committee of the Board ensuring that there is a balance between fixed and incentive pay reflecting short and long-term performance objectives appropriate to the working of the company and its goals
- Total managerial remuneration payable by a public company, to its directors, including managing director and whole-time director, and its manager for any financial year must not exceed 11 % of the net profits of the company for that financial year
- Subject to Schedule V, managerial remuneration may, exceed the above limit if the company in its general meeting, with approval of the Central Government, so authorizes
- Except with approval of the company in its general meeting, the remuneration of any one managing director or whole-time director or manager cannot exceed 5 % of the net profits of the company; if there is more than one such

director, remuneration cannot exceed 10 % of the net profits to all such directors and manager taken together

- Except with approval of the company in its general meeting, the remuneration of directors who are neither managing directors nor whole-time directors cannot exceed:
  - 1 % of the net profits if there is a managing or whole-time director or manager
  - 3 % of the net profits in any case
- Directors may also receive additional remuneration by way of fee for attending meetings of the Board or its Committee or for any other purpose as may be decided by the Board

## POLITICAL CONTRIBUTIONS

- Any company, except a Government company and a company in existence for less than 3 financial years, may make contributions to any political party not exceeding 7 ½ % of the average net profits during the 3 immediately preceding financial years
- Contribution may only be made after the Board's resolution authorising the same
- Company must disclose details of the contribution and name of the political party in its profit and loss account

## Corporate Social Responsibility

- 2 % of average net profits during the 3 immediately preceding financial years to be spent on CSR in a financial year by companies having:
  - a net worth of Rs. 500 crore or more, or
  - a turnover of Rs. 1000 crore or more, or
  - a net profit of Rs. 5 crore or more.
- Suggestive list of CSR activities under Schedule VII such as poverty eradication, promoting education, gender equality, sustainability etc
- Company's CSR policy to include list of proposed CSR projects, modalities, implementation schedules and a monitoring mechanism
- Inclusion of annual CSR report indicating compliance or explaining the reason for non-compliance in the report of the Board of Directors



## APPOINTMENT OF AUDITORS

- ◆ Every company must appoint an auditor at its first annual general meeting
- ◆ Only a qualified Chartered Accountant or a firm with majority of partners practising as Chartered Accountants in India may be appointed as auditor
- ◆ Auditor has a five year tenure and may be re-appointed after a five year cooling off period
- ◆ Mandatory rotation of auditors, upon expiry of their term, in listed companies, unlisted public companies having paid up share capital of at least Rs. 10 Crore and private limited companies having paid up share capital of at least Rs. 20 Crore

## ROLE AND POWERS OF AUDITORS

- ◆ Auditor must make a report on accounts and financial statements, giving a true and fair view of the state of the affairs at the end of the financial year before the company in the general meeting and other prescribed matters
- ◆ Auditor has the right of access to the books of account and vouchers of company
- ◆ Auditor may inquire and ask for any information and explanation such as details of loans, advances and transactions made by the company

## CONFLICT OF INTEREST

- ◆ Auditor is prohibited from rendering, directly or indirectly, certain services to the company such as accounting and book keeping service, internal audit, design and implementation of any financial information system, actuarial

services, investment advisory services, investment banking services, rendering of outsourced financial services, management services and any other kind of consultancy services

## SECRETARIAL AUDIT

- ◆ Mandatory for all listed companies and public companies with paid up share capital of at least Rs. 50 crore or a turnover of at least Rs. 250 crore.
- ◆ Must be conducted by a Company Secretary in practice
- ◆ Audit should certify that the company has complied with provisions of the prescribed legislations and rules there under, such as Companies Act, 2013, Securities Contracts Regulation Act, 1956, Depositories Act, 1996, SEBI Act, 1992, Foreign Exchange Management Act, 1999

## INTERNAL AUDIT

- ◆ Mandatory for every listed company and every unlisted company having paid up share capital of 50 crore rupees or turnover of 200 crore or outstanding loans or borrowing of 100 crore or outstanding deposits of 25 crore and for every private company with turnover of 200 crore or more or outstanding loans or borrowings of 100 crores or more

### Secretarial Standards

(Issued by ICSI and approved by Central Government)

SS-1: On Meeting of the Board

SS-2: On General Meeting



## ACCOUNTS AND AUDITS

- ◆ Uniform Financial Year ending on the 31st day of March of every year, for all companies
- ◆ Include balance sheet, profit and loss account / income and expenditure account, cash flow statement for the financial year and statement of changes in equity, if applicable
- ◆ Must give a true and fair view of the state of affairs of the company and comply with the accounting standards notified by Central Government
- ◆ Must be laid before the company by the Board of Directors at every annual general meeting
- ◆ Company with a subsidiary must also prepare a consolidated financial statement (subsidiary includes associate company and JV)
- ◆ Financial statements to be approved by the Board of Directors and then signed by the chairperson of the company, where he is so authorised, or by two directors of which one shall be managing director and Chief Executive Officer, if he is a director in the company
- ◆ Must also be signed by the Chief Financial Officer and the company secretary of the company, wherever they are appointed
- ◆ In OPC, must be signed only by one director and submitted to the auditor for his report thereon
- ◆ Auditor's report must be attached to every financial statement
- ◆ Board of Directors' report must be attached and should include extract of the annual return, number of Board meetings, Directors' Responsibility Statement, a statement on declaration of independence given by independent directors, particulars of loans, guarantees or investments, particulars of Related Party Transactions, state of the company's affairs, CSR Policy etc
- ◆ Director's Responsibility Statement must state that annual accounts have been prepared as per accounting standards, sufficient care has been taken to maintain accounting records, proper and efficient systems devised to ensure compliance with all applicable laws, etc
- ◆ Copy of financial statements to be filed with RoC within 30 days of annual general meeting

## NATIONAL FINANCIAL REPORTING AUTHORITY (NFRA)

- ◆ Central Government to constitute a National Financial Reporting Authority to provide for matters relating to accounting and auditing standards such as recommendations on accounting and auditing standards and policies
- ◆ The NFRA shall monitor and regulate the activities of both auditors and companies to enforce compliance of accounting and auditing standards.

# INQUIRY, INSPECTION AND INVESTIGATION

- ♦ RoC has the power to call for an explanation on any document or information relating to a company
- ♦ If a company is carrying on business in a fraudulent or unlawful manner, failing to comply with the provisions of the Companies Act, 2013 or failing to address investor grievances, the RoC may carry out an **inquiry**, after giving the company a reasonable opportunity of being heard
- ♦ An **inspection** of books and papers of a company may be carried out by an inspector appointed by the Central Government

- ♦ The RoC and the inspector have powers of a civil court for inspection, discovery and production of books and documents and summoning and examination of persons on oath
- ♦ The Central Government may order **investigation** into the affairs of the company in public interest, on receipt of a report by the RoC or inspector, on intimation of special resolution by company stating that an investigation be conducted and on order of a court or the NCLT
- ♦ A **Serious Fraud Investigation Office** (SFIO) has been given statutory recognition by the Central Government under the Companies Act, 2013, to investigate corporate frauds. It will be headed by a Director and have experts in fields such as banking, taxation, law etc. The Central Government may order the SFIO to investigate in public interest, on receipt of a report by the RoC or inspector, on intimation of special resolution by company stating that an investigation be conducted and on request from any Government Department.





## CORPORATE RESTRUCTURING

A Company may undertake restructuring by way of a compromise, arrangement, merger, amalgamation or acquisition. Restructuring may also be done by way of buy back of securities, reduction of share capital and issue of sweat equity shares.

### COMPROMISE OR ARRANGEMENT

- ♦ In case of a compromise or arrangement proposed between the company and its creditors or members or any class of either of them, NCLT, on application, may order a meeting to be held
- ♦ Application to be submitted along with affidavit disclosing all material facts such as company's financial position, auditor's report, reduction of share capital and scheme of corporate debt restructuring, agreed to by at least 75% of secured creditors
- ♦ Notice of meeting to be sent to all creditors, members and debenture holders
- ♦ Notice to regulators such as Reserve Bank of India, SEBI and Competition Commission
- ♦ Voting possible by creditors and members in person, through proxy and through postal ballot
- ♦ Objection to compromise or arrangement may be made only by persons holding at least 10%

shareholdings or having at least 5% of the total outstanding debts of the company

- ♦ If in the meeting, three-fourths of the value of creditors or members or any class of either of them, agree to the compromise or arrangement and the same is sanctioned by the NCLT's order, it becomes binding on the company, creditors and members or any class of either of them
- ♦ In case of a company being wound up, the NCLT's order is binding on the liquidator and the contributories of the company
- ♦ Meeting may be dispensed with if 90% of creditors or members or any class of either of them, agree by way of affidavit
- ♦ NCLT's sanctioning order may provide for conversion of preference into equity shares, creditors' protection, exit offer to dissenting shareholders etc

### MERGER AND AMALGAMATION

- ♦ It is a compromise or arrangement proposed for reconstruction of a company or companies involving merger or amalgamation of two or more companies and whole or part of the undertaking, property or liabilities of the transferor company is to be transferred to the transferee company or is proposed to be divided between and transferred to two or more companies
- ♦ With regard to sending notice of meeting to creditors, members and debenture holders, notice to regulators and voting, the procedure is similar to that of a compromise or arrangement
- ♦ Notice calling the meeting must also include documents such as the draft of the scheme, confirmation that a copy of the draft scheme has been filed with the RoC, report of directors of the merging

companies explaining the effect of compromise on each class of shareholders, KMP, promoters and non-promoter shareholders laying out in particular the share exchange ratio, specifying any special valuation difficulties, valuation report etc

- ♦ NCLT on being satisfied that the procedure has been complied with, may sanction the scheme
- ♦ NCLT may also pass a subsequent order providing for transfer of the undertaking, property or liabilities to the transferee company, allotment of shares by the transferee company, continuation of pending legal proceedings, provisions for dissenting members, transfer of employees, etc
- ♦ Where NCLT orders transfer of any property or liabilities, then, by virtue of the order, that property shall be transferred to the transferee company and the liabilities shall be transferred to and become the liabilities of the transferee company and any property may, if the order so directs, be freed from any charge which shall by virtue of the compromise or arrangement, cease to have effect
- ♦ Company to file certified copy of NCLT's order with RoC within 30 days

### **FAST TRACK MERGER**

- ♦ Merger or amalgamation between two or more small companies or between a holding company and its wholly-owned subsidiary company
- ♦ Notice of scheme inviting objections / suggestions, to be sent to RoC and Official Liquidators by the transferor and the transferee company
- ♦ Scheme to be approved by at least 90 % of the respective members or any class of members of the transferor and the transferee company

- ♦ Scheme to be approved by majority representing nine tenths in value of the respective creditors or any class of creditors of the transferor and the transferee company
- ♦ Transferee company to file a copy of the approved scheme with the Central Government, RoC and Official Liquidator after which Central Government will register the scheme and issue confirmation to the companies

### **MERGER OR AMALGAMATION WITH FOREIGN COMPANY**

- ♦ An Indian company may merge with a foreign company and vice versa
- ♦ Prior approval of the Reserve Bank of India required
- ♦ Same procedure as applicable to domestic companies

### **ACQUIRING SHARES FROM DISSENTING SHAREHOLDERS**

- ♦ In case of a scheme of transfer of shares from transferor to transferee company approved within 4 months of the offer, by holders of at least nine-tenths in value of the shares being transferred (other than shares already held at the date of the offer by, or by a nominee of the transferee company or its subsidiary companies), transferee company may within 2 months after the expiry of the said 4 months, give notice to any dissenting shareholder that it desires to acquire his shares
- ♦ Within 1 month of the notice of acquisition of shares from the dissenting shareholder and unless such shareholder has applied to the NCLT and the latter has ordered otherwise, the transferee company is entitled and bound to acquire such shares
- ♦ Transferee company to send along with notice, an instrument of transfer for the shares it is entitled to acquire

## ACQUIRING MINORITY SHAREHOLDING

- ◆ An acquirer or person acting in concert with such acquirer or any person or group of persons acquiring or holding 90 % or more of the issued equity share capital of a company, may notify the company of their intention to purchase the remaining equity shares
- ◆ Such acquirer or person/s must offer to buy the equity shares held by the minority shareholders. Alternately, the minority shareholders may offer the majority shareholders to purchase the minority equity shareholding of the company

## SEBI (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 2011 [TAKEOVER CODE]

### Objective of the Code (P.N. Bhagwati Committee)

- ◆ The confidence of retail investors in the capital market is a crucial factor for its development. Therefore, their interest needs to be protected.
- ◆ An exit opportunity shall be given to the investors if they do not want to continue with the new management.
- ◆ Full and truthful disclosure shall be made of all material information relating to the open offer so as to take an informed decision.
- ◆ The acquirer shall ensure the sufficiency of financial resources for the payment of acquisition price to the investors.
- ◆ The process of acquisition and mergers shall be completed in a time bound manner.
- ◆ Disclosures shall be made of all material transactions at earliest opportunity.

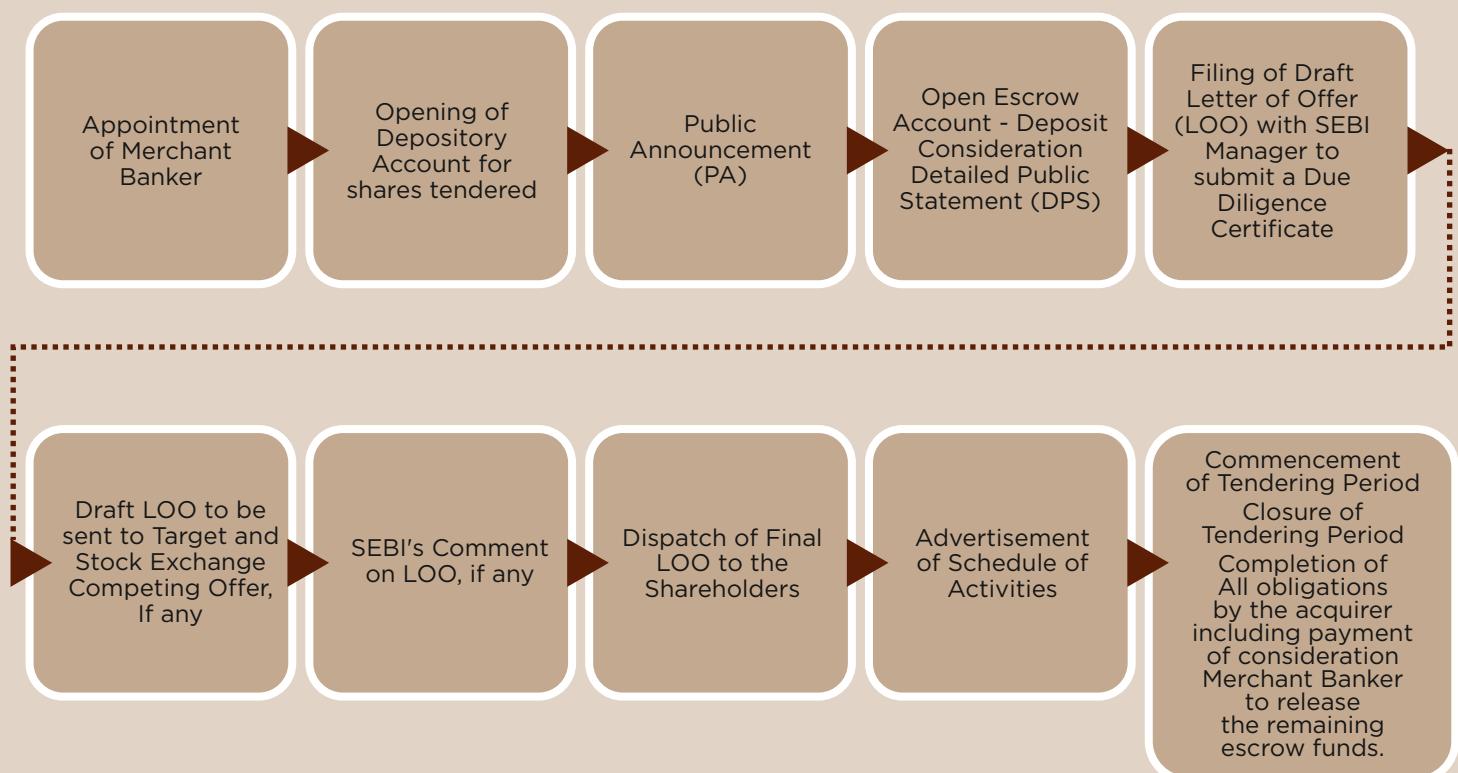
### Key Features:

- ◆ Applicable only to listed companies
- ◆ A 'substantial acquisition of shares' is the acquisition of shares or voting rights in a target company beyond the threshold prescribed
- ◆ Definition of 'Control' includes:
  - the right to appoint majority of the directors, or
    - to control the management, or
    - policy decisions
  - exercisable by
    - a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner
- ◆ 'Acquirer' is a person acquiring /agreeing to acquire, directly or indirectly, by himself or with Persons Acting in Concert (PAC):
  - shares,
  - voting rights or
  - control of a target company
- ◆ 'Target Company' means the listed company whose shares, voting rights or control are subject of acquisition.
- ◆ 'Acquisition' is acquiring / agreeing to acquire, directly or indirectly, the shares, voting rights or control of a target company.
- ◆ PAC means persons who, pursuant to an agreement or understanding, have a common objective of acquiring shares, voting rights or control of a target company.

## SCHEME OF THE TAKEOVER CODE



## PROCESS OF ACQUISITION OF SHARES





## PREVENTION OF OPPRESSION AND MISMANAGEMENT

- Members of a company may, by way of an application, complain to the NCLT that the affairs of the company have or are being conducted in a manner prejudicial to public interest or oppressive to members

- The NCLT may order for regulation of conduct of the company in future, restrict the transfer or allotment of shares, removal of the managing director, manager or any other director etc.

### CLASS ACTION SUITS

- Prescribed number of members, depositors or any class of either of them, may file a class action before the NCLT, if they are of the opinion that the management or affairs of the company are being conducted in a manner prejudicial to their interests or the interests of the company



## WINDING UP

### WINDING UP BY NATIONAL COMPANY LAW TRIBUNAL

#### CIRCUMSTANCES FOR PRESENTING PETITION

- Company is sick, unable to pay its debts or suspected of fraud
- Company has, by special resolution, resolved that it should be wound up by the NCLT
- Company has acted against the interests of India, friendly relations with foreign States, public order, decency or morality

- Company has made a default in filing financial statements or annual returns with RoC for immediately preceding 5 consecutive financial years

#### WHO MAY PRESENT A PETITION

- The company itself
- Creditors and/ or contributories
- RoC
- Central Government or State Government
- Any person authorised by Central Government

#### PROCEDURE

- If a winding up petition is filed by a person other than the company, the NCLT on satisfaction, that there is a *prima facie* case for winding up, must order the company to file, within 30 days, its objections along with a statement of its affairs

- ◆ Failure to file statement of affairs results in forfeiture of the company's right to oppose the petition
- ◆ The liquidator is appointed by the NCLT while passing the winding up order
- ◆ Liquidator must, within 7 days of appointment, disclose any conflict of interest
- ◆ The company must, within 30 days of passing of the winding up order, submit its complete and audited books of account to the liquidator
- ◆ RoC must enter in his records the appointment of Liquidator or winding up order and notify the same in the Official Gazette. In case of a listed company, RoC must intimate the stock exchange concerned
- ◆ Within 3 weeks of passing of winding up order, liquidator must make an application to the NCLT for constitution of a winding up committee to assist and monitor the liquidation proceedings
- ◆ Liquidator must place report and minutes of meetings of the committee before NCLT on a monthly basis
- ◆ A final report, containing details of the assets and liabilities, amount of capital issued, subscribed and paid-up, debts due, holding and subsidiary companies, legal cases, etc must also be submitted to the NCLT within 60 days of the winding up order or appointment of liquidator
- ◆ NCLT must fix time limit for completion of proceedings and dissolution of company
- ◆ On complete winding up of the company's affairs, the liquidator must apply to the NCLT for dissolution of such company
- ◆ NCLT must then pass an order that the company be dissolved from the date of the order and the company shall be dissolved accordingly.
- ◆ Within 30 days of the order, a copy thereof must be forwarded by the liquidator to the RoC

## **POWERS AND DUTIES OF LIQUIDATOR**

- ◆ Carry on the business of the company as may be necessary for beneficial winding up
- ◆ Do all acts and to execute, in the name and on behalf of the company, all deeds, receipts and other documents
- ◆ Sell immovable and movable property and actionable claims of the company
- ◆ Sell the whole of the undertaking of the company as a going concern and to raise any money required on the security of the assets of the company
- ◆ Institute or defend any legal proceeding, for or against the company
- ◆ Settle claims of creditors, employees etc and distribute sale proceeds

## **VOLUNTARY WINDING UP**

### **CIRCUMSTANCES FOR VOLUNTARY WINDING UP**

- ♦ If the company in its general meeting passes a resolution of voluntarily winding up due to expiry of the period for its duration, if any, fixed by its AoA or on the occurrence of any event in respect of which the AoA provide that the company should be dissolved, or
- ♦ If a company passes a special resolution for voluntarily winding up

### **DECLARATION OF SOLVENCY OF COMPANY**

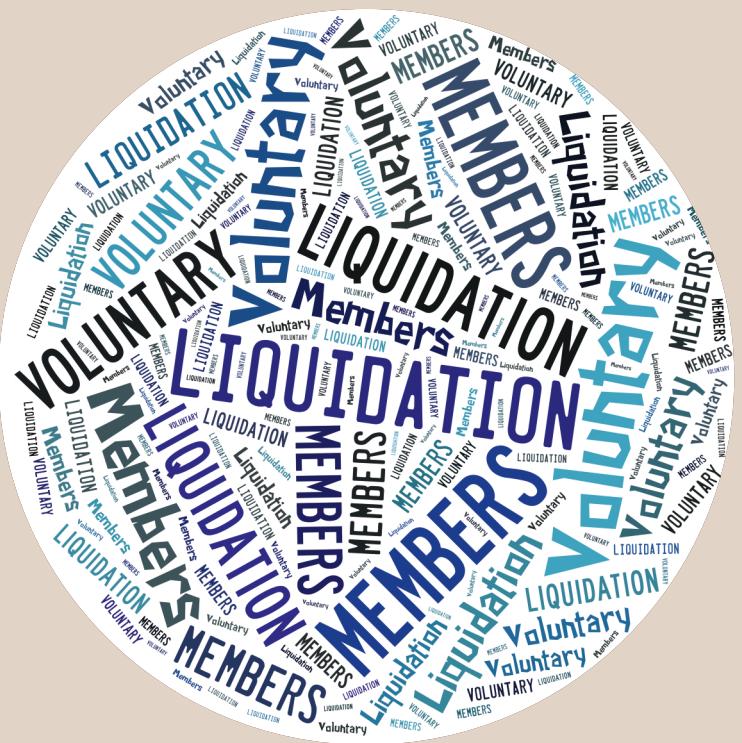
- ♦ Declaration of solvency of company by majority of the company's directors on a verified affidavit stating that the directors have made a full inquiry into the affairs of the company and are of the opinion that the company has no debts or whether it will be able to pay debts in full from proceeds of the sale of the company's assets
- ♦ Such declaration must be made within 5 weeks immediately preceding the date of passing of the winding up resolution and delivered to the RoC for registration
- ♦ Must also declare that the company is not being wound up to defraud any person/s
- ♦ Must be accompanied by a copy of the latest auditor's report and the balance sheet
- ♦ Must be accompanied by a valuation report of the assets of the company
- ♦ Any director making a declaration without having reasonable grounds for the opinion that the company will be

able to pay its debts in full from the proceeds of assets sold, is liable to be punished with imprisonment, fine or both

### **PROCEDURE**

- ♦ Meeting of creditors of the company who must be apprised of full statement of affairs of the company, list of creditors, copy of solvency declaration and estimated amount of claims
- ♦ If two – thirds of the value of creditors are of the opinion that:
  - it is in the interest of all parties to wind up the company, the company shall be wound up voluntarily or
  - it may not be possible to pay debts in full from the proceeds of sale of the company's assets and pass a resolution that it will be in the interest of all parties if the company is wound up by the NCLT, company must, within 14 days, file an application for winding up before the NCLT
- ♦ Notice of resolution of creditors' meeting to be given to RoC within 10 days of passing of resolution
- ♦ Company in its general meeting in which the winding up resolution is passed must appoint a liquidator
- ♦ Appointment of liquidator is effective only with approval by majority of value of creditors
- ♦ A winding up committee to assist the liquidator may be formed by the creditors or by the company if there are no creditors
- ♦ On appointment of the Liquidator, all powers of the Board of Directors and managing or whole-time directors and manager, if any, cease

- Resolution of voluntary winding up to be published in Official Gazette and in a newspaper in the district in which the registered or principal office is situated
- Winding up is deemed to commence on the date of passing of resolution and the company must immediately cease to carry on its business except if required for beneficial winding up
- Liquidator must call a meeting of the members and creditors and place before them a progress report on a quarterly basis
- After affairs of the company are fully wound up, the liquidator must prepare a report of winding up and call a general meeting of the company for the purpose of laying the final accounts before it
- If the majority of the members of the company after considering the report of the Company Liquidator are satisfied that the company shall be wound up, they may pass a resolution for its dissolution
- Liquidator must, within 2 weeks of the meeting, send to the RoC a copy of the final winding up accounts of the company and copies of the resolutions passed in the meetings
- Liquidator must, within 2 weeks of the meeting, file an application along with the winding up report and books and papers of the company, with the NCLT for passing an order of dissolution of the company
- If the NCLT is satisfied, after considering the report of the Company Liquidator that the process of winding up has been just and fair, the NCLT shall pass an order dissolving the company within sixty days of the receipt of the application
- Liquidator must, within 30 days, file a copy of the NCLT's order of dissolution of company with the RoC
- On receipt of copy of NCLT's order, RoC must publish a notice of the company's dissolution in the Official Gazette



## POWERS AND DUTIES OF LIQUIDATOR

- Settle the list of contributories
- Call for general meetings for the purpose of obtaining any required sanction or for any other purpose
- Maintain the books of account
- Prepare quarterly statement of accounts and after audit, file them with the RoC
- Payment of debts and adjustment of inter se rights of the contributories



## **AUTHORITIES ENFORCING THE COMPANIES ACT, 2013**

### **Ministry of Corporate Affairs**

Administers corporate and other allied laws, rules and regulations

### **High Courts**

Some powers proposed to be handed over to National Company Law Tribunal - NCLT

### **Regional Directors**

Oversee the working of RoCs in their respective regions

### **Registrars of Companies**

Responsible for registration of companies and related matters

### **Company Law Board**

Till establishment of the NCLT

### **Serious Fraud Investigation Office**

For investigation of corporate frauds

### **Securities and Exchange Board of India**

In case of listed companies

### **Reserve Bank of India**

In case of transactions involving foreign exchange

### **Competition Commission of India**

In case of mergers / amalgamations beyond the statutory threshold



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With the dynamic nature of corporate laws, there are many new concepts being introduced for the betterment of corporate governance norms. This dynamism have been reflected in the Companies Act, 2013 with the introduction of many new concepts and elaboration of the existing rudimentary provisions necessitating a demand for an apt and sharper understanding of these provisions. The SCL at IICA, equipped with its state-of-the-art technological aids and pool of highly acclaimed academicians and professionals in the field of corporate laws aims at creating a programmed ecosystem for knowledge dissemination, research and advisory consulting, policy drafting and analysis.



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**INDIAN INSTITUTE OF CORPORATE AFFAIRS**

Plot No. 6-8, Sector 5, IMT Manesar, Distt Gurgaon, Haryana 122050

Tel: 0124-362282, Website: [www.iica.in](http://www.iica.in), e-mail: [scl@iica.in](mailto:scl@iica.in)

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