COMPANIES ACT 1956 VS. 2013.

BY: ASST. PROF. SANJANA BHARADWAJ
DEPARTMENT OF LAW, SAVITRIBAI PHULE
PUNE UNIVERSITY
Objectives and Policies of the Companies Act, 1956

• The Companies Act plays the balancing role between these two competing factors, namely, management autonomy and investor protection.

• To protect the interests of large number of shareholders, as there exists separation of ownership from management in a company.

• To safeguard the interests of creditors.
Companies Act, 1956

- To help the development of companies in India on healthy lines.
- To help the attainment of the ultimate ends of the social and economic policy of the Government.
- To equip the Government with adequate powers to intervene in the affairs of a company in the public interest and as per the procedure prescribed by law.
TO ACHIEVE THE OBJECTIVES, THE FOLLOWING SECTIONS WERE INTRODUCED.
Regulation of Companies

• The Companies Act, 1956 empowers the Central Government to inspect the books of accounts of a company, to direct special audit, to order investigation into the affairs of a company and to launch prosecution for violation of the Companies Act, 1956.

• Books of accounts and other documents of the companies are inspected by the officers of the Directorate of Inspection and Investigation and the Registrars of Companies.
Regulation of Companies (contd.)

- If an inspection discloses a prima facie case of fraud or cheating, action is initiated under provisions of the Companies Act, 1956 or the same is referred to the Central Bureau of Investigation.
Regulation of Companies

- Sections 235 and 237 of the Companies Act empower the Central Government to order investigation into the affairs of a company under circumstances specified therein.
- The Company Law Board is also empowered to consider application of members for conducting investigation into the affairs of a company.
Protection of Interests of Shareholders/ Consumers

- Section 205A has been incorporated in the Companies Act, whereby unpaid or unclaimed dividends are to be kept in a separate account for three years by the company concerned.
Protection of Interests of Shareholders/ Consumers

• Under section 58A of the Companies Act, 1956, the Ministry has framed the Companies (Acceptance of Deposits) Rules, 1975.

• Under these Rules, companies are required to advertise and publish their financial accounts for the information and guidance of the public at the time of inviting the deposits.
Protection of Interests of Workers

• Sections 529 and 530 of the Companies Act provide that the dues of workers would rank pari passu with those of secured creditors in the event of closure of a company.
COMPANIES ACT, 2013.

- The Companies Act, 2013 passed by the Parliament has received the assent of the President of India on 29th August, 2013. The Act consolidates and amends the law relating to companies.
- The Companies Act, 2013 has been notified in the Official Gazette on 30th August, 2013.
### OVERVIEW OF ACTS

<table>
<thead>
<tr>
<th>COMPANIES ACT, 1956</th>
<th>COMPANIES ACT, 2013</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>13 PARTS</strong></td>
<td><strong>29 CHAPTERS</strong></td>
</tr>
<tr>
<td><strong>879 (658 + 221) SECTIONS</strong></td>
<td><strong>470 SECTIONS</strong></td>
</tr>
<tr>
<td><strong>15 SCHEDULES</strong></td>
<td><strong>7 SCHEDULES</strong></td>
</tr>
</tbody>
</table>

A major standout feature of the Companies Act, 2013 is that it gives substantive procedural powers to Central Government and hence major prescriptions are in forms of Rules that have been notified separately.
THE PRELIMINARY PROVISIONS

Introduction of New Definitions & Concepts in the Act, which were not existing in the Companies Act, 1956

- One Person Company
- Small Company
- KMP
- Registered Valuer
- Auditing Standards
- Secretarial Audit

- Associate Company
- Dormant Company
- Promoters
- Class Action Suit
- Independent Director
CLASS ACTION

• A class action, a class suit, or a representative action is a form of lawsuit in which a large group of people collectively bring a claim to court and/or in which a group of defendants is being sued.

• The Companies Act, 2013 provides for class-action lawsuits, which can allow a large number of people with common interest in a matter to sue or be sued as a group.
CLASS ACTION

• Under these, class-action suits may be filed by investors if they are of the opinion that the affairs of the company are being conducted in a manner prejudicial to the interest of the company, its shareholders or depositors.
This section provides that the auditor of the company shall have the right to have access at all the times to the books of accounts and vouchers of the company, whether kept at the registered place or at some other places of the company.
Held Personally liable.

- If the Chartered accountant, company secretary or the cost auditor do not comply with any of the provisions of this act then he will be punishable with a fine which shall not be less than Rs. 1 lakh but which can be extend to Rs. 25 lakh.
CA 1956 VS CA 2013
<table>
<thead>
<tr>
<th>Points of Comparison</th>
<th>Companies Act, 2013</th>
<th>Companies Act, 1956</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1)</td>
<td>(2)</td>
<td>(3)</td>
</tr>
<tr>
<td>FORMATION OF COMPANY</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Minimum No. of persons required to form a company</td>
<td>One Person can form a One Person Company.</td>
<td>One Person can’t form a company.</td>
</tr>
<tr>
<td></td>
<td>Minimum 2 for a private company other than OPC.</td>
<td>Minimum 2 for a private company.</td>
</tr>
<tr>
<td></td>
<td>Minimum 7 for a public co.</td>
<td>Minimum 7 for a public co.</td>
</tr>
<tr>
<td>Types of companies that</td>
<td>15 Types of Companies.</td>
<td>10 Types as under:</td>
</tr>
<tr>
<td>can be formed</td>
<td>In addition to the 10 types that could be formed under the 1956 Act as per Col. (3), following 5 new types of Cos. can be formed under 2013 Act:</td>
<td></td>
</tr>
<tr>
<td>--------------</td>
<td>--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td></td>
</tr>
</tbody>
</table>
|              | • One Person company (OPC) limited by shares  
• OPC limited by guarantee & having share capital  
• OPC limited by guarantee having no share capital  
• OPC Unlimited Company having share capital |
|              | • Public company limited by shares  
• Public company limited by guarantee & having share capital  
• Public company limited by guarantee & having no share capital  
• Public Unlimited company having share capital  
• Private Company limited by shares |
| Maximum number of members allowed in private company | 200 (for a private company other than OPC) | 50 |

**MEMORANDUM OF ASSOCIATION (MOA)**

| Objects clause of Memorandum | Objects of the Company to be classified and stated in MOA as: (i) the objects for which the company is proposed to be incorporated and (ii) any matter considered necessary in furtherance thereof. | Objects of the Company should be classified and stated in MOA as: (i) the main objects of the company; (ii) Objects incidental or ancillary to the attainment of the main objects and (iii) other objects of the company. |

**ARTICLES OF ASSOCIATION**

| Entrenchment provisions in Articles | Articles may contain such provisions | No enabling provisions in 1956 Act for articles to contain entrenchment provisions. |
| **REGISTERED OFFICE** | From which date, company must have a registered office? | On and from the 15\(^{th}\) day of its incorporation. | From the earlier of the following two dates:  
- The day on which it begins to carry on business,  
- The thirtieth day after the date of its incorporation. |
|-----------------------|--------------------------------------------------------|-------------------------------------------------------------|---------------------------------------------------------------------------|
| **Consequences of not furnishing verification of registered office / notice of change in registered office** | The company and every officer who is in default shall be liable to a penalty of Rs. 1,000 for every day during which the default continues but not exceeding Rs. 1,000,000  
- A company having share capital shall not be entitled to commence any business or exercise any borrowing power until it is furnished. | | |
<p>| <strong>Notice of change of registered office address to ROC-Time Limit</strong> | To be given to ROC within 15 days of such change. | To be given to ROC within 30 days of such change. | |
| <strong>Whether inclusion in the annual return of a company of a statement as to the address of its</strong> | The 2013 Act is silent on this issue. | No. [See Section 147(3) of the 1956 Act]. | |</p>
<table>
<thead>
<tr>
<th>ALTERATION OF ARTICLES</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Conversion of Public Company into Private Company</strong></td>
</tr>
</tbody>
</table>
## BOARD OF DIRECTORS

<table>
<thead>
<tr>
<th></th>
<th>Old Companies Act 1956</th>
<th>New Companies Act 2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maximum no. of directors</td>
<td>Maximum no. of directors is 12. The no can be increased by taking permission from the Government</td>
<td>Maximum no. directors have been increased to 15. The no can be increased by a resolution in the AGM</td>
</tr>
<tr>
<td>Woman Director</td>
<td>No compulsion for appointment of a woman director to the BOD</td>
<td>Every Listed Company/Public Company with paid up capital of Rs 100 Crores or more / Public Company with turnover of Rs 300 Crores or more shall have at least one Woman Director.</td>
</tr>
<tr>
<td>Resident Director</td>
<td>The law does not talk about this aspect</td>
<td></td>
</tr>
</tbody>
</table>
## FINANCIAL YEAR

<table>
<thead>
<tr>
<th>Companies Act, 1956</th>
<th>Companies Act, 2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>“Financial Year” means, in relation to any body corporate, the period in respect of which any profit and loss account of the body corporate laid before it in annual general meeting is made up, whether that period is a year or not:</td>
<td>“Financial Year” means in relation to any company or body corporate, means the period ending 31st day of the March every year, and where it has been incorporated on or after the 1st day of January of a year, the period ending on 31st day of march of the following year, in respect where of financial statement of the company or body corporate is made up.</td>
</tr>
</tbody>
</table>
Regulators

- National Company Law Tribunal (Tribunal or NCLT)
- National Financial Reporting Authority (NFRA)
- Serious Fraud Investigation Office (SFIO)
REFERENCES

• http://vassociates.in/images/pdf/Companies_Act_2013_Vs_Companies_Act_1956
• https://www.mca.gov.in/Ministry/pdf/ProvisionsTable_CompAct.pdf
ALL THE BEST.

IN CASE OF ANY DIFFICULTY, PLEASE FEEL FREE TO EMAIL AT
Sanjana.b80@gmail.com