

Companies Act, 2013 : Governance, Investor Protection, Restructuring, Arrangement and Amalgamation

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□ Governance Mechanism

- Board of Directors
- Independent Directors
- Committees of the Board

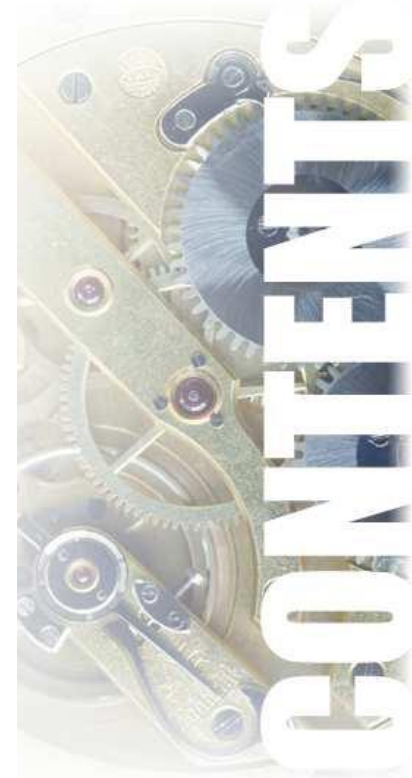


□ Investor Protection

- Enhanced Disclosure Requirement
- Shareholders Activism
- Insider Trading
- Freeze Action
- Class Action Suit



- Reconstruction, Compromise, M&A
 - Compromise and Arrangement
 - Merger and Amalgamation
 - Fast Track Merger
 - Merger of Foreign and Indian Company



Governance Mechanism in Companies Act 2013

Board of Directors

- ❑ Number of directors
 - Minimum – 3 in case of public, 2 in case of private and 1 in case of OPC
 - Maximum – 15
 - Appointment of more than 15 directors by special resolution

- ❑ Number of directorships
 - 20 in all
 - Not to exceed 10 in public companies



Board of Directors

- ❑ One resident director
 - All companies

- ❑ One women director
 - Listed company
 - Public company having
 - Paid up share capital of Rs. 100 Crores or more
 - Turnover of Rs. 300 Crores or more



Board of Directors

- ❑ At least 2 Independent Directors
 - Paid up share capital of Rs. 10 Crores or more
 - Turnover of Rs. 100 Crores or more
 - Having aggregate outstanding loans, debentures and deposits exceeding Rs. 50 Crores or more



Board of Directors (contd...)

- ❑ Directors to provide the reason for resignation

- ❑ Separation of position of Chairman and Managing Director / CEO for companies having multiple businesses
 - multiple businesses not defined



Board of Directors (contd...)

- ❑ Statutory duties laid down for Directors
 - act in accordance with the articles
 - due and reasonable care, skill and diligence and to exercise independent judgment
 - act in good faith
 - avoid conflict of interest
 - not achieve or attempt to achieve any undue gain or advantage
 - not assign his office



Board of Directors (contd...)

- ❑ Increased responsibility of Board of Directors
 - laying down internal controls
 - Devised proper systems to ensure compliance with the provisions of all applicable laws and systems were adequate and operating effectively



Committees of the Board

- ❑ Audit Committee / Nomination & Remuneration Committee
 - Listed company
 - Public companies having
 - Paid up capital of Rs. 10 Crores or more
 - Turnover of Rs. 100 Crores or more
 - Aggregate outstanding loans, debenture or deposits of Rs. 50 Crores or more



Committees of the Board (contd...)

- ❑ Stakeholders Relationship Committee
 - Company having more than 1,000 shareholders, debenture holders, deposit holders and any other security holders



Committees of the Board (contd...)

- ❑ Audit Committee
 - Minimum three directors
 - Independent directors having majority

- ❑ Nomination & Remuneration Committee
 - Three or more Non-Executive directors
 - Atleast one-half shall be independent directors



Committees of the Board (contd...)

- Stakeholders Relationship Committee
 - Chairman to be non-executive director
 - Other members to be decided by the Board of Directors



Establishment of Vigil Mechanism

- ❑ For reporting genuine concerns by directors and employees
- ❑ Applicability
 - Listed company
 - Companies accepting deposits from public
 - Company which have borrowed from banks, public financial institutions in excess of Rs. 50 Crores



Establishment of Vigil Mechanism

- ❑ Company having Audit Committee
 - Committee to act as vigil mechanism

- ❑ Others
 - Board of Directors to nominate a director to play a role of audit committee for vigil mechanism



Board Meetings

- ❑ Seven days' notice in writing to be given
- ❑ Gap between two meetings not to exceed 120 days
- ❑ Directors can participate either in person or through video conferencing
- ❑ If meeting called at shorter notice (less than seven days), presence of at least one independent director, if on Board, is compulsory
- ❑ Director remaining absent from all meetings in financial year to vacate office, even if leave of absence is granted



Board Meetings (contd...)

- ❑ Matters not to be dealt at meeting through video/ audio visual conferencing
 - Approval of annual financial statements
 - Approval of Board's report
 - Approval of the prospectus
 - Audit committee meeting for consideration of accounts
 - Approval of matters relating to amalgamation, merger, demerger, acquisition and takeover



Directors Liabilities

- ❑ Liability to the Company
 - Breach of fiduciary duty
 - Ultra vires act
 - Negligence
 - Mala fide acts
 - Misfeasance
- ❑ Personal liability to third parties
 - Omission or misrepresentation in prospectus
 - Failure to refund application money
 - Fraudulent conduct
 - Liability for breach of warranty
- ❑ Criminal Liability



[HC: Director carrying competing business breaches fiduciary duty, imposes restriction](#)

Key Managerial Personnel

- ❑ Applicable
 - Listed company
 - Public company having a paid-up capital of Rs. 10 Crores or more
- ❑ Appointment of following KMPs
 - Managing director or CEO or Manager and in their absence WTD
 - Company Secretary
 - Chief Financial Officer
- ❑ Appointment by the Board of Directors



Officer in Default

- ❑ Whole time Director
- ❑ KMP
- ❑ Directors, if there is no KMP
- ❑ Any person charged with the responsibility
- ❑ Any person in accordance with who advice or instructions, the Board is accustomed to act
- ❑ Every director who is aware of contravention under the Act by virtue of receipt of proceedings of the Board and not objected
- ❑ In respect of issue of shares – share transfer agents, registrars and merchant bankers



Investor Protection under Companies Act 2013

Enhanced Disclosure Requirements

- ❑ Enhanced disclosure requirement under the Act
- ❑ Contents of Directors' report greatly enhanced
- ❑ Directors' Responsibility Statement made almost the same as Sarbanes Oxley
- ❑ Seeks to achieve highest level of transparency on the working of the company



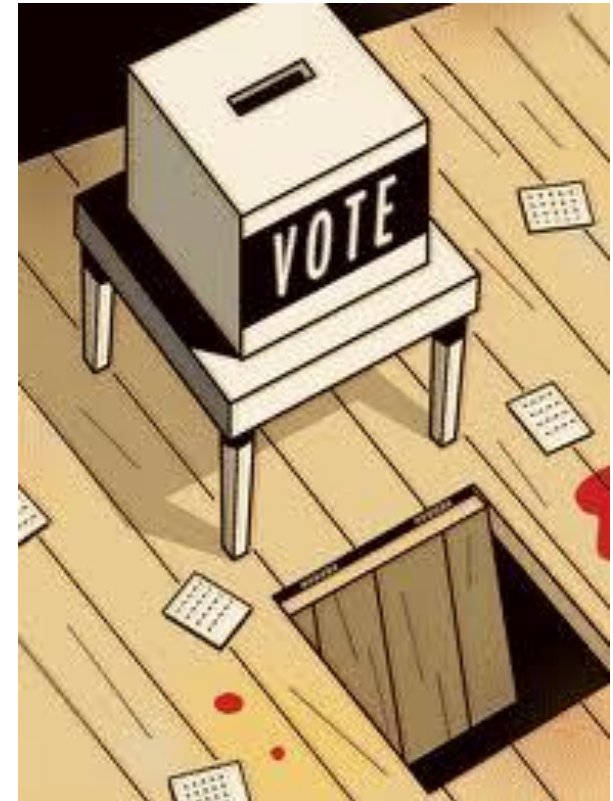
Disclosure in Directors Report

- ❑ Remuneration Policy of directors & KMP
- ❑ Ratio of the remuneration of each director to the median employee's remuneration
- ❑ Composition of Committees of the Board
- ❑ Details of establishment of Whistle Blower mechanism
- ❑ Remuneration Policy of directors, key managerial personnel and senior management
- ❑ Particulars of contracts or arrangements with related parties
- ❑ Manner in which formal annual evaluation has been made by the Board



Shareholders Approval for Additional Matters

- ❑ Loans to Directors
- ❑ Entering into contract with related party
- ❑ Appointment of directors exceeding 15 in numbers
- ❑ Reappointment of Independent Director who has held office for five consecutive years
- ❑ Sale / lease of undertaking, borrowing in excess of prescribed limits



Insider Trading

- ❑ Provisions incorporated on prohibition on insider trading of securities
- ❑ No person including any director or key managerial personnel of a company shall enter into insider trading
- ❑ Provisions seems to be applicable to all companies – listed or unlisted
 - Intent is to cover only listed companies



Freeze on assets

- ❑ Power introduced to freeze assets of the Company
- ❑ Tribunal can order for freezing on
 - Reference by Central Government
 - Any members entitled to apply against oppression
 - Creditors having Rs. 1 Lakhs or above amount outstanding
- ❑ Order could be passed if
 - removal, transfer or disposal of funds, assets, properties is likely to take place in a manner prejudicial to the interests of the company or its shareholders or creditors or in public interest



Class Action

- ❑ Satyam Fiasco
 - Indian Shareholders did not succeeded
 - US Investors owning ADR succeeded
- ❑ Concept of class action incorporated
 - Based on practices prevalent in the US
- ❑ Requisite strength of members, depositors could file Class Action suit
- ❑ Management or conduct of the affairs being conducted in a manner prejudicial to the interests of the company or its members or depositors



Compromise, Arrangement and Amalgamation

Compromise or Arrangement - Meaning

- ❑ A compromise or arrangement can be:
 - between a company and its creditors or any class of them
 - between a company and its members or any class of them
 - reorganisation of the company's share capital
 - *any scheme of corporate debt restructuring by not less than seventy-five per cent of the secured creditors in value.*
 - Any takeover offer
 - Mergers and amalgamations
 - reduction of share capital of the company

Buy-back process under Section 68 to be followed

HC: Composite scheme involving different arrangements with different cos. maintainable

Approval for Compromise / Arrangements

- ❑ Approval by majority representing 3/4th in value of the creditors or members or class thereof present and voting in person or by proxy or by postal ballot
- ❑ Approval of NCLT
- ❑ Valuation Report and effect of arrangement on creditors, KMPs, promoters and non-promoters and debenture holders to be given along with notice convening meeting

Objection to Compromise or Arrangement

- ❑ Person holding >10% of the shareholding or
- ❑ Having outstanding debt of >5% of total outstanding debt as per the latest audited balance sheet.

Treasury Shares

- ❑ Shares of the transferee company should not be held in the name of the transferee company or under a trust for the benefit of the transferee company or its subsidiary or associate company

- ❑ Should be cancelled or extinguished.
 - RIL / JP / M&M

Buy-Back of securities / Takeover by scheme of compromise/arrangement

- ❑ Scheme of compromise or arrangement can include buy back of securities, provided it is in accordance for buy-back provisions.
- ❑ Scheme of compromise and arrangement may include “takeover offer” in a prescribed manner.
- ❑ In case of listed companies such takeover offer shall be as per SEBI Regulations.

Merger of Listed Company with Unlisted Company

- ❑ In case of compromise/ arrangement between a listed transferor company and an unlisted transferee company
 - NCLT can provide that unlisted transferee company will continue to remain unlisted until NCLT directions
 - Exit option to be given to the shareholders of the listed transferor company wherein the exit price will not be less than the price determined in accordance with SEBI Regulations.

Notice of Meeting – Shareholder / Creditor

- ❑ Notice to be served to
 - CG
 - Income-tax authorities
 - RBI
 - SEBI
 - Stock exchanges
 - CCI (competition commission of India)
 - Sectoral regulators/ authorities

Fast Track Merger

- ❑ Fast track provisions made to facilitate merger between two or small companies or between holding company and its wholly owned subsidiary company or such other class of companies as may be prescribed.

- ❑ Approval required of:-
 - ✓ ROC
 - ✓ Official liquidator
 - ✓ Member or class of members holding at least 90% of total no. of shares
 - ✓ Majority of creditors or class of creditors representing 9/10th in value.

Merger of Indian Company with Foreign Company

- ❑ Foreign company, may with the prior approval of RBI, merge into Indian company or vice versa.
- ❑ Consideration for merger can be in the form of Cash and/or Depository Receipt.
- ❑ This would apply to foreign companies in jurisdiction as notified by CG.

Offer to sell by Minority shareholders to Majority shareholders

- ❑ Acquirer and/or PAC or person/group of persons holding 90% or more of the issued equity capital, can purchase the remaining equity shares from minority shareholders
- ❑ Price to be determined by registered valuer
- ❑ Minority shareholders may also offer to the majority shareholders to purchase their equity shareholding in the company
- ❑ Company to act as Escrow

Q&A

Thank you

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