

**N. L. Bhatia, FCS**

NL Bhatia & Associates  
Practising Company Secretaries  
Mumbai

[navnitlb@hotmail.com](mailto:navnitlb@hotmail.com)

**Dhrumil Shah, ACS**

Practising Company Secretary  
Mumbai

[dhrumil@dmsah.in](mailto:dhrumil@dmsah.in)

## Impact of The New Rules Under Companies Act, 2013

- Unlike the Companies Act, 1956, the new Act contains basically the substantive provisions only, relegating the procedural provisions to the rule making powers of the Executive. The Government has by now put in place a plethora of rules to support the substantive provisions. The impact of the Rules are critically examined here.

### INTRODUCTION

**T**he Companies Act, 2013 was passed by Lok Sabha on 18th December, 2012, and by the Rajya Sabha on 8th August, 2013 and 98 sections were notified on 12th September, 2013. Finally on 1st April, 2014 most of the other Sections were notified except certain sections under chapters relating to inspection, inquiry and investigation; compromise, arrangements and amalgamations; prevention of operation and mismanagement; registered valuers; removal of names of companies from the register of companies; revival and rehabilitation of sick company; winding up; winding up by the tribunal; voluntary winding up; provisions applicable to every mode of winding up; official liquidators; companies authorized to register under this act; national company law tribunal; special courts.

Companies Act 2013 has replaced the more than six decades old Companies Act of 1956. In doing so the Parliament has compressed many scattered provisions under the old Act and consolidated the same by deleting obsolete provisions. As a result, the new Act has 470 Sections under 29 Chapters and seven Schedules as against 658 sections under 12 Chapters and fifteen Schedules of the 1956 Act. In the process, the Parliament

has moved away from the old format of retaining substantial and procedural provisions in the statute. It has retained only substantial powers in the Act and procedural matters have been transferred to delegated rules. Thus more than 70 per cent of the provisions of the statutes would be dealt by the Government without seeking prior approval of the Parliament. Thus they have adopted a new approach of retaining substantial provisions in the Act and delegating the procedural aspects to the Rule making body. The





# Article

IMPACT OF THE NEW RULES UNDER COMPANIES ACT, 2013

procedural aspects would be easy to modify to keep pace with the fast changing economic and other requirements. These rules shall be laid before each house of Parliament, while in session for a total period of 30 days.

## DRAFT RULES

One of the unique features of Rules under the Act is that draft rules were kept open for public comments. While finalizing the draft rules the Government has taken into consideration the views of Industries Associations, Professional bodies and Institutions. The above system has helped in modifying various draft rules while finalizing the same. Some of the important features are discussed herein.

### a. Relatives:

The definition of related party in the draft rules was very wide and unwieldy for practical operations this would be clear from the comparison of two definitions in the draft and final rules.

| Draft Rules  | Final Rules  |
|--|--|
| List of relatives  | "Relative" with reference to any person, means anyone who is related to another, if- |
| For the purposes of sub-clause (iii) of sub-section (77) of section 2, a person shall be deemed to be the relative of another, if he or she is related to another in the following manner: |  |
| (1) Spouse   | i. They are members of a Hindu Undivided Family;                                     |
| (2) Father (including step-father)   | ii. They are husband and wife; or  |
| (3) Father's father  | iii. One person is related to the other as per following list.                       |
| (4) Father's mother  | (1) Father: Provided that the term "Father" includes step-father.                    |
| (5) Mother (including step-mother)   | (2) Mother: Provided that the term "Mother" includes the step-mother.                |
| (6) Mother's mother  | (3) Son: Provided that the term "Son" includes the step-son.                         |
| (7) Mother's father  | (4) Son's wife.  |
| (8) Son (including step-son)   | (5) Daughter.  |
| (9) Son's wife   | (6) Daughter's husband.  |
| (10) Son's son   | (7) Brother: Provided that the term "Brother" includes the step-brother;             |
| (11) Son's daughter  | (8) Sister: Provided that the term "Sister" includes the step-sister.                |
| (12) Daughter (including step-daughter)  |  |
| (13) Daughter's husband  |  |
| (14) Brother (including step-brother)  |  |
| (15) Sister (including step-sister)  |  |

In the draft rules the list of relatives was very wide covering 17 relatives including HUF and the spouse. The draft Rules covered relatives spread over 5 Generations. In the Final Rules the relatives had been limited to three generations. In the old system of Joint Hindu Family relative used to reside under one roof. With the globalization and growth of job opportunities in cities the relatives are widespread and Joint Hindu Families had been substantively replaced by unit family as a result one brother does not know what the other brother is doing, not to speak of brother in laws and sister in laws. In the process directors and Key managerial personal were finding difficult to ascertain the interest of relatives in holding or subsidiaries companies.

As a matter of fact only dependent parents and dependent children could be legitimately included in the List of Relatives, in which case the head of the family is aware of the transaction. The matter gets complicated when such details are asked from Foreign Directors.

### b. Related Party

A Related Party definition under section 2 sub clause 76

A Public Company in which a director or manager is a director and holds along with his relatives more than 2% of its paid up share capital (the word "or holds" has been changed to "and holds" by Company's 1<sup>st</sup> (Removal of Difficulties) Order, 2014. Thus a Public Company does not become its related party merely because there is a common director. This difficulty was removed by the Ministry after Public comments and practical difficulties faced by Corporate World.

### c. Difficulties in Incorporation

The incorporation process has been made more complicated and costly. This results in delay of incorporation of Companies which is found more painful when foreign national want to incorporate Company in India. According to World Bank Report incorporation in advanced countries is carried out in one day where as in India it takes 25 to 30 days. Therefore, there is an urgent need to re-visit the incorporation procedure and simplify the same. According to new procedure for filing forms resubmission is allowed only once, whereas, under the old Act resubmission was not limited to one time only.

## ACCEPTANCE OF DEPOSIT

Under the 1956 Act, acceptance of deposits from members, directors or their relatives could be done without any regulatory compliance. Under section 73 of the 2013 Act, a private company is required to undergo lot of formalities before accepting any deposits from its members also. It also has become costly even as compared to bank deposits. By a recent circular the MCA has clarified that insurance cover for deposit is not required. However, the following two suggestions deserve consideration:



➤ The incorporation process has been made more complicated and costly. This results in delay of incorporation of companies which is found more painful when foreign national want to incorporate Company in India. According to World Bank Report incorporation in advanced countries is carried out in one day where as in India it takes 25 to 30 days. Therefore, there is an urgent need to re-visit the incorporation procedure.

1. Under the Act the company is required to create deposit repayment reserve account and deposit 15% of deposits maturing during immediately two years with any schedule bank. Thus in aggregate a company is required to deposit 30 per cent of deposit maturing in the immediately two years. (Current Financial Year and the next financial year). Further, the amount so deposited shall not be utilized for any purpose other than for repayment of deposits. The 15% deposit be restricted to only deposits maturing during the year. This will reduce the cost of acceptance of deposit.
2. The eligibility criteria for public companies to accept deposit be reduced from net worth of 100 Crores rupees to Rs. 50 Crores and turnover of Rs. 500 to Rs. 250 Crores. Further, the track record of the company in repayment of deposit and interest may be taken into consideration while reducing the eligibility criteria. For example there are many companies which have been resorting to public deposits and honouring their commitments for repayment of deposit and interest thereon without any default, such companies would be put to sever financial constrains.

## PARTICIPATION IN BOARD AND GENERAL MEETINGS

Most of the private companies are two member companies comprising of husband and wife as directors and members. Such couples also create other private companies. In their dealings between two such companies, the restriction imposed by Section 184 of the Companies Act, 2013 for passing board and general meeting resolutions has brought many such transactions to a deadlock, even in cases where there are only two directors and one of the directors is interested in a transaction, the transaction shall not be possible, in as much as related parties are prohibited from participating in a discussion and voting on the resolutions. As a result, such companies have to induct outside person both as a director and shareholder. Such inducted persons who carry 0.1 per cent of the shares of the company pass resolutions in

respect of material transactions. This has created unprecedented complications for private companies which are unconnected with any promoter group.

The concept of related party could be validly applied in the context of companies where there are both related and unrelated directors / members. In public listed companies there are promoters' group shareholders and minority shareholders. There such a concept could properly be applied for listed companies. Thus, there is a need for grant of relief to private companies.

Earlier under section 300 (2) of the Companies Act, 1956, the Directors in Private Limited Company were not debarred from taking part in discussion and voting and not excluded for the purpose of quorum in respect of resolution in which they are interested. Now under Rule 15 of Chapter XII of Companies Act, 2013 the directors of Private Limited Company shall not be present at the meeting during the discussion on subject matter in which they are interested.

## ORDINARY BUSINESS AT AGM

Under the 1956 Act, ordinary business was reserved for deliberation at the Annual General Meeting. Under the 2013 Act even ordinary business like adoption of accounts, retirement of directors, declaration of dividend and appointment of Auditors have been subjected to E-voting, thereby the seriousness of Annual General Meeting have been considerably reduced.

## RETIREMENT OF DIRECTORS BY ROTATION

Under the 2013 Act, Independent Directors are not liable to retire by rotation. Further, Managing/ Whole time Directors are appointed for a term of 3-5 years. Therefore, in many instances confusion prevails in applying the rule of two thirds Directors retiring by rotation. In some critical cases, the managing / whole time director, who was appointed for a term of three years is required to be retired, which may tantamount to break in service. Thus there is an urgent need for clarification in this matter.

## CONCLUSION

The Companies Act, 2013 appears to have been enforced in haste. Many provisions require review and reconsideration. Even the matter of general meeting, e-voting and deliberation at the meeting is full of controversy and pending before the Bombay High Court. In a short span of less than three months MCA has issued about 16 Circulars, 6 Notifications 4 removals of difficulties Order. Another area where difficulty is experienced relates to frequent revision of prescribed forms resulting in delay in submission / resubmission. The need of the hour is to urgently bring an end to controversial issues in consultation with professionals and corporates. 