

CONNECTION

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LALIT BAJAJ & ASSOCIATES



Highlights of New Provisions Notified Under Companies Act, 2013

The Ministry of Corporate Affairs has notified 98 sections of the new Companies Act, 2013. These sections have come into effect from 12th September 2013. Subsequent to coming into effect of these Sections under the new Act, the corresponding Sections under the Companies Act, 1956 automatically stand repealed. For other Sections, the Companies Act, 1956 still holds good till the relevant sections under the new Act are notified.

In the present write up, we focus light on some of the important provisions which have been notified for attention of our readers. A complete list of all the sections which have been notified is also given at the end of write up for easy and ready reference of our readers.

Many of the sections which have been notified have provisions similar to that of Companies Act, 1956. However, in some of the Sections new provisions have been inculcated which demands our immediate attention. Immediately after notifying these sections, the Ministry has also issued some clarifications regarding their applicability for stakeholder convenience. We will discuss on these clarifications also under the relevant sections.

HIGHLIGHTS OF NEW PROVISIONS NOTIFIED UNDER CA, 2013

Section 2 - Definitions

Section 2 under Companies Act, 2013 contains 94 definitions out of which all definitions except 12 definitions have been notified. In a few definitions, a particular portion has not been notified. A list containing the details of definitions notified and non-notified is given later at the end of the write up.

The definition of Private Company given under CA, 2013 is different from the earlier Act and the new definition has got notified on 12th of September 2013. The Ministry on 13th September 2013 has clarified that all incorporation documents being filed on or after 12.09.2013 must contain the new definition only.

Section 102 - Statement to be annexed to notice

Section 102 of CA, 2013 corresponds to Section 173 of CA, 1956 which specifies the requirement of annexing a statement along with the notice of general meeting where any special business has to be transacted. The important changes in this section are:

- Interest of not only directors/manager has to be disclosed (as



prescribed in CA, 1956) but also that of every key managerial personnel and relatives of directors, manager and KMP.

· Earlier, with regard to any special business concerning another company, disclosure of shareholding interest of director/manager in that other company had to be disclosed if such share holding was more than 20%. Now the percentage has been changed to 2% and also the same has been made applicable to all promoters, directors, manager and KMP.

· CA, 2013 also specifies that if any benefit accrues to any director, manager, promoter or KMP or their relatives because of non-

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Special points of interest:

- Dec 15 - Payment of Advance Tax Companies(75%) & Others (60%)
- Dec 15 - E Payment of PF for Nov
- Dec 21 - Submission of MVAT Return for Nov
- Dec 31 - Due date of furnishing declaration under VCES



disclosure or insufficient disclosure, then the concerned person will be deemed to be holding the amount of benefit in trust for the company. This is a new specification under CA, 2013.

· CA, 2013 also contains the penalty clause which provides for a penalty of Rs. 50,000/- or 5 times the amount of benefit, whichever is more. Earlier no specific penalty was provided.

· **This Section is applicable to all companies except to a One Person Company.**

Earlier, Section 170 of CA, 1956 provided that the provisions of section 173 will apply to private companies only if the Articles do not provide anything otherwise.

MCA has clarified that the provisions of this section will apply to all notices issued on or after 12th September, 2013.

Section 103 – Quorum for meetings

This section corresponds to section 174 of the CA, 1956 which prescribes the quorum for general meetings.

Section 103 has prescribed new quorum requirement for public companies which is as follows:

- No. of members as on date of meeting being

1000 or less, quorum requirement should be 5 members personally present.

- No. of members as on date of meeting being 1000 to 5000, quorum requirements should be 15 members personally present.
- No. of members as on date of meeting being more than 5000, quorum requirements should be 30 members personally present.

The quorum requirement for private companies remains same at 2 members personally present.

Section 180 – Restrictions on powers of Board

This section corresponds to section 293 of CA, 1956 which contains a list of items which can be transacted by the Board only after obtaining approval of the shareholders. The important points of difference are:

· CA, 2013 mandates approval by means of special resolution only.

· CA, 1956 mandated that approval has to be obtained in a meeting. This requirement seems to have been dispensed with in CA, 2013 as the word “meeting” has been replaced with “special resolution”.

· This Section is applicable to all companies as compared to only public companies and subsidiaries of public companies as contained in CA, 1956.

MCA has clarified that the provisions of this section will apply to all notices issued on or after 12th September, 2013.

Section 185 – Loans to Directors etc.

This section corresponds to Section 295 of Companies Act, 1956 which contains provisions regarding giving loans to directors and other entities in which directors are interested. The main points of difference in the new Act are:

· This Section is applicable to all companies as compared to only public companies and subsidiaries of public companies as contained in CA, 1956.

· In CA, 1956 loans were permitted with approval of Central Government. Now, the transaction is totally prohibited except in following cases:

(a) the giving of any loan to a managing or whole-time director—

(i) as a part of the conditions of service extended by the company to all its employees; or

(ii) pursuant to any scheme approved by the members by a special resolution; or

(b) a company which in the ordinary course of its business provides loans or gives guarantees or securities for the due repayment of any loan and in respect of such loans an interest is charged at a rate not less than the bank rate declared by the Reserve Bank of India.

“ The Quorum requirement for Private Cos. remains same at 2 members personally present”



Following transactions are prohibited subject to exception above:

- Giving of loan, including any loan represented by a book debt
- Giving any guarantee or providing any security in connection with any loan taken.

The above transactions by the company to following entities are prohibited subject to exception above:

(a) any director of the lending company, or of a company which is its holding company or any partner or relative of any such director;

(b) any firm in which any such director or relative is a partner;

(c) any private company of which any such director is a director or member;

(d) anybody corporate at a general meeting of which not less than 25% of the total voting power may be exercised or controlled by any such director, or by two or more such directors, together; or

(e) anybody corporate, the Board of directors, managing director or manager, whereof is accustomed to act in accordance with the directions or instructions of the Board, or of any director or directors, of the lending company.

Section 192 – Restrictions on non-cash transactions involving directors

This is a new section introduced under CA, 2013. This Section contains that a company has to obtain prior approval its members by means of a special reso-

lution for entering into any agreement relating to acquisition/sale of assets for consideration other than cash between the company and its director, or director of holding, subsidiary or associate company or any other person connected with the director.

The Section also contains that the notice calling the general meeting should include the particulars of the arrangement along with the value of the assets involved in such arrangement duly calculated by a registered valuer.

Section 447 to 449 – Punishment for fraud, false statement and false evidence

Section 447 is a new Section under CA, 2013 which deals extensively with fraud. Section 447 defines fraud as:

“fraud” in relation to affairs of a company or any body corporate, includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss

Penalty for Fraud

Any person who is found to be guilty of fraud, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may

extend to three times the amount involved in the fraud.

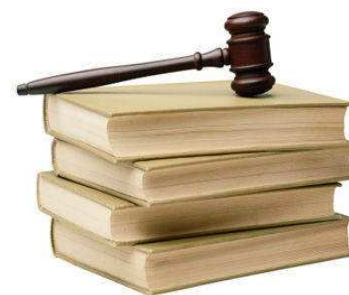
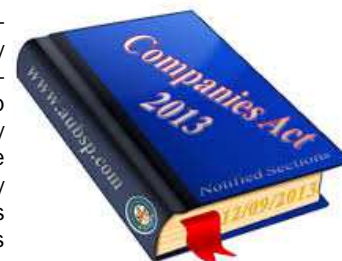
This section has far reaching consequences as firstly the penalty is very stringent – imprisonment up to ten years, secondly, many sections in the Act are linked to this section by providing in those sections that the penalty is same as that for fraud and thirdly the definition of fraud is very wide in its connotation. It covers all persons including directors, employees, professionals etc.

Section 448 and 449 correspond to Section 628 and 629 of the CA, 1956 respectively. There is no change in the sections except that the penalty has been increased.

Section 450 – Punishment where no specific penalty or punishment is provided

This section corresponds to Section 629A of Companies Act, 1956 and provides penalty for those cases where no specific penalty has been provided in the respective section or any where else in the Act. In CA, 2013 the amount has been raised to Rs. 10,000/- plus Rs. 1,000/- for every day of default as against Rs. 5,000/- plus Rs. 500/- provided in CA, 1956.

This Section has been notified from 12.09.2013 and it means that now for any contravention under the Sections of Companies Act, 1956 also, for which no penalty is provided in the Act, the penalty as provided in CA, 2013 will be applicable.



CBDT lowers threshold limit for providing Landlord's PAN

If you are a salaried taxpayer claiming HRA (house rent allowance) deduction, watch out. The central government has lowered the exemption limit for reporting the rent received. Salaried taxpayers claiming

HRA exemption and paying a rent of over ₹ 1 lakh per year have to give landlords PAN (permanent account number). Till now, if the total rent paid was less than ₹ 15,000 a month there was no need to submit the landlords PAN details. The new rule effectively lowers the rent limit from ₹ 15,000 a month to ₹ 8,333 per month for claiming HRA exemption without making any disclosures.

Further, if annual rent paid by the employee exceeds ₹ 1,00,000 per annum, it is mandatory for the employee to report PAN of the



landlord to the employer, the Central Board of Direct Taxes said in its latest circular. In case the landlord does not have a PAN, a declaration to this effect from the landlord along with the name and address of the landlord should be filed by the employee, it said.

Though incurring actual expenditure on payment of rent is a pre-requisite for claiming deduction under section 10(13A) of the I-Tax Act, it has been decided as an administrative measure that salaried employees drawing HRA up to ₹ 3,000 per month will be

exempted from production of rent receipt. The new rule is aimed at people claiming HRA exemption for living in their own house. It has to be noted that only the expenditure actually incurred on payment of rent in respect of residential accommodation occupied by the assessee subject to the limits laid down in Rule 2A, qualifies for exemption from income-tax, CBDT said in its circular.

Thus, HRA granted to an employee who is residing in a house/flat owned by him is not exempt from income-tax. The disbursing authorities should satisfy themselves in this regard by insisting on production of evidence of actual payment of rent before excluding the house rent allowance or any portion thereof from the total income of the employee, CBDT said.

“If annual rent paid exceeds ₹ 1 lac per annum, it is mandatory for the employee to report PAN of the landlord to the employer”

E Payment of Tax above ₹ 1 Lakh a Must

In a bid to increase compliance and widen the tax net, the government made it mandatory for traders to make online payment of excise duty and service tax for amounts exceeding ₹ 1 lakh. Earlier, those with dues of ₹ 10 lakh and above were required to electronically pay their taxes. “It has now been decided to reduce the

threshold of mandatory e-payment from ₹ 10 lakh to ₹ 1 lakh for both central excise and service tax payment with effect from January 1, 2014,” the Central Board of Excise and Customs (CBEC) said.



Simplification of Demat Account Opening Process

1. SEBI has taken a number of steps in the recent past to simplify the Account opening and KYC process in the securities markets. In continuation of the efforts in the same direction, it has now been decided in consultation



with both the Depositories and Associations of stock brokers and Depository Participants to further simplify and rationalize the demat account opening process.

2. The existing Beneficial Owner-Depository Participant Agreements shall be replaced with a common document "Rights and Obligations of the Beneficial Owner and Depository Participant". The document annexed herewith shall be mandatory and binding on all the existing and new clients and depository participants. This will harmonize the account opening process for trading as well as demat account. This will also rationalise the number of signatures by the investor, which he is required to affix at present on a number of pages.

3. The Depository Participant shall provide a copy of Rights and Obligations Document to the beneficial owner and shall take an acknowledgement of the same. They shall ensure that any clause in any voluntary document neither

dilutes the responsibility of the depository participant nor it shall be in conflict with any of the clauses in this Document, Rules, Bye-laws, Regulations, Notices, Guidelines and Circulars issued by SEBI and the Depositories from time to time. Any such clause introduced in the existing as well as new documents shall stand null and void.

4. The Depositories are directed to:

i. Bring the provisions of this circular to the notice of the Depository Participants and also disseminate the same on their websites. They shall take necessary steps to implement this circular immediately and ensure its full compliance in respect of all new clients within 3 months from the date of this circular.

ii. Advise the depository participants to intimate their clients the modified provisions of the Rights and Obligations Document, replacing the existing BO-DP agreements.

iii. Make necessary amendments to the relevant bye-laws, rules and regulations for the implementation of the above decision in coordination with each other to achieve uniformity in approach.

iv. Communicate to SEBI, the status of the implementation of the provisions of this circular in their Monthly Development Reports.

5. This circular is issued in exercise of powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992 to protect the interests of investors in securities and to promote the development of and to regulate the securities markets.

6. This circular is available on SEBI website (www.sebi.gov.in) under the categories "Legal Framework" and "Circulars".



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Helpdesk in Connection with VCES 2013

Service Tax Mumbai Commissionerate has organized an Helpdesk for the purpose of accepting the applications and resolving issues in connection with VCES 2013 on Wednesday, 11th December, 2013 at 2nd Floor, Meeting room, ICAI Bhavan, Anveshak, 27, Cuffe Parade, Mumbai 400 005.

The schedule of the program will be as under:

11.00 a.m. to 01.00 p.m. – Submission of forms of VCES, 2013.

03.00 p.m. to 05.00 p.m. – Resolving the issues of VCES by Commissioners & Additional Commissioners.



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